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Contents

Federal Register

Vol. 88, No. 19

Monday, January 30, 2023

Separate Parts In This Issue

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.

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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.

Rules and Regulations

Federal Register
Vol. 88, No. 19
Monday, January 30, 2023

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Doc. No. AMS–SC–21–0098]

California and Imported Kiwifruit; Handling Regulations

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Kiwifruit Administrative Committee (Committee) to modify the handling regulations prescribed under the Federal marketing order for kiwifruit grown in California. This action revises the size and uniformity requirements for all varieties of *Actinidia chinensis* species kiwifruit, which is commonly known as golden kiwifruit, regulated under the marketing order. A corresponding change is also made to the kiwifruit import regulation as required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Effective March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Western Region Field Office, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California. Part 920 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and comprises kiwifruit growers operating within the production area, and a public member.

This final rule is also issued under section 8e of the Act (7 U.S.C. 608e–1), which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this final rule is unlikely to 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.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the provisions of the Order, fresh market shipments of kiwifruit produced in California are required to be inspected and are subject to grade, size, quality, maturity, pack, and container requirements. This final rule revises the minimum size and uniformity requirements for certain varieties of kiwifruit handled under the Order. As required by section 8e of the Act, the revision to the minimum size requirement will also be applied to the import regulations for kiwifruit.

Section 920.51 of the Order provides authority for the Committee to recommend regulations to the Secretary. Section 920.52 of the Order provides authority for the establishment of handling regulations. Further, § 920.53 provides the authority to recommend the modification, suspension, or termination of such regulations when the Committee finds that industry conditions so dictate. Section 920.302 establishes the minimum grade, size, quality, maturity, pack, and container requirements for kiwifruit handled subject to the Order. Under the authority of § 920.53, the Committee determined that the production and marketing conditions for some varieties

of kiwifruit have changed and that the handling requirements should be modified accordingly.

Prior to this rule change, the handling regulations required that all varieties of kiwifruit be a minimum Size 45, defined as a maximum of 55 pieces of fruit in an 8-pound sample. In addition, kiwifruit packed in containers were required to be fairly uniform in size.

At its meeting on September 29, 2021, the Committee unanimously recommended modifying the regulations to accommodate varieties of *Actinidia chinensis* species kiwifruit that are characteristically smaller in size and less uniform than the more common varieties grown in California that are *Actinidia deliciosa* species. No other species of kiwifruit are known to be grown in California.

This final rule relaxes the minimum size requirement for all varieties of *Actinidia chinensis* species kiwifruit to Size 49, defined in the requirements as a maximum of 64 pieces of fruit in an 8-pound sample. In addition, the final rule exempts all varieties of *Actinidia chinensis* species kiwifruit from the requirement that fruit packed in a container be fairly uniform in size.

At the time that the Order's handling regulations were established in 1985, practically all the kiwifruit grown in California were varieties of the *Actinidia deliciosa* species. As such, the requirements were implemented to accommodate the characteristics of those varieties. Recently, production of varieties of *Actinidia chinensis* species kiwifruit has been increasing in California. This sector of the industry now accounts for approximately eight percent of the acreage and five percent of the production in the state. Given the natural characteristics of *Actinidia chinensis* species kiwifruit, the current minimum size and uniformity requirements preclude some high-quality kiwifruit from entering the fresh market. Relaxing the minimum requirements for those varieties will allow growers to market more of their fruit in the fresh market, increasing their total revenue. The change is expected to benefit domestic kiwifruit growers, handlers, and consumers.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this action modifies the minimum size requirement for varieties of *Actinidia chinensis* species kiwifruit under the domestic handling regulations, a corresponding change is made to the import regulations.

Minimum grade, size, quality, and maturity requirements for kiwifruit imported into the United States are currently in effect under § 944.550 (7 CFR 944.550). Paragraph (a) of that section specifies the minimum size requirement. This final rule lowers the minimum size requirement for varieties of *Actinidia chinensis* species kiwifruit to Size 49, defined as a maximum of 64 pieces of kiwifruit in an 8-pound sample. In accordance with the Act, under the kiwifruit import regulations, imported kiwifruit are not subject to container and pack requirements. Accordingly, the change in the Order's uniformity requirement does not affect the kiwifruit import requirements.

The relaxation in the size requirements for imports of *Actinidia chinensis* varieties will allow a greater quantity of kiwifruit to be imported. The change is expected to benefit kiwifruit importers and consumers of imported kiwifruit.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 133 kiwifruit growers in the production area and 20 handlers subject to regulation under the Order. In addition, there are approximately 80 importers of kiwifruit. Small producers of kiwifruit are defined by the Small Business Administration (SBA) as those having annual receipts less than $3,000,000. Small agricultural service firms, which include kiwifruit handlers and importers, are defined by the SBA as those having annual receipts of less than $30,000,000. The SBA threshold for growers changed in between the proposed and the final rule. Thus, AMS changed the RFA to reflect the new amount in this final rule. The change did not impact the number of growers considered to be small.

The USDA National Agricultural Statistics Service (NASS) reported that total production of California kiwifruit for the 2020–2021 season was 39,760 tons. NASS further reported that the average producer price was $1,920 per ton over that period. Multiplying $1,920 per ton by the production quantity of 39,760 tons yields an annual crop revenue estimate of $76,339,200. The average annual fresh kiwifruit revenue for each of the 133 growers for the 2020–2021 season is therefore calculated to be $573,979 ($76,339,200 divided by 133), which is less than the SBA threshold of $3,000,000 for small producers of kiwifruit. Therefore, on average and given a normal distribution, the majority of growers may be classified as small businesses.

In addition, based on information reported by USDA's Market News Service (Market News), the average Free On Board (F.O.B.) shipping point price for California kiwifruit over the 2020–2021 season was $23.28 per 9 kilogram container (19.8 pounds equivalent). Multiplying $23.28 by the shipment quantity of 4,016,162 containers (39,760 tons times 2,000 pounds per ton divided by 19.8 pounds) yields an annual crop revenue estimate of $93,496,251. The average annual fresh kiwifruit revenue for each of the 20 handlers is therefore calculated to be $4,674,813 ($93,496,251 divided by 20), which is below the SBA threshold of $30,000,000 for agricultural service firms. Therefore, on average and assuming a normal distribution, the majority of the handlers may be classified as small businesses.

Further, USDA's Foreign Agricultural Service reported 80,279 metric tons of kiwifruit were imported during the 2020–2021 season with a reported value of $184,488,000. Using that data, the average revenue for each of the approximately 80 kiwifruit importers would be $2,306,100 ($184,488,000 divided by 80), which is below the $30,000,000 SBA threshold for small agricultural service firms. As such, the majority of kiwifruit importers may be classified as small businesses.

This final rule relaxes the minimum size and uniformity requirements prescribed in the Order's handling regulations. The final rule lowers the minimum size requirement for all varieties of *Actinidia chinensis* species kiwifruit from Size 45 to 49, defined in the requirements as a maximum of 64 pieces of fruit in an 8-pound sample. In addition, the final rule exempts all varieties of *Actinidia chinensis* species kiwifruit from the Order's container requirement that fruit be fairly uniform in size.

This action will not impose any additional costs to the industry. It is expected to increase revenue to handlers and growers of *Actinidia chinensis* species varieties of kiwifruit, as smaller size fruit, and fruit that lacks uniformity, will be allowed to enter the market. The quality of fruit to consumers is not expected to be significantly affected, as relaxing the size and uniformity requirements will not impact the Order's minimum quality requirements. All kiwifruit marketed under the Order will continue to be packed to the minimum grade of KAC No.1.

The Committee considered alternatives to the recommended changes, including taking no action and continuing to regulate according to the requirements as currently established. In addition, the Committee considered lowering the size requirements for all varieties of kiwifruit. However, the Committee determined that the minimum size requirement is effective for *Actinidia deliciosa* varieties and that it should not be changed. The Committee also considered establishing other minimum sizes for *Actinidia chinensis* varieties higher and lower than the minimum size recommended but believed that Size 49 will allow more fruit to be marketed and still maintain the high standards of California kiwifruit. Ultimately, the Committee determined that relaxation of the handling regulation, as recommended, is in the best interests of the growers, handlers, and consumers of California kiwifruit and rejected all other alternatives.

Committee meetings were widely publicized throughout the California kiwifruit industry. All interested persons were invited to attend meetings and participate in Committee deliberations. Like all Committee meetings, the September 27, 2021, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Also, the embassies of countries that export kiwifruit to the United States, and known kiwifruit importers, will be notified of this final rule upon its publication. Finally, interested persons were invited to submit comments on the proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on June 17, 2022 (87 FR 36412). Copies of the proposed rule were also mailed or sent via email to all California kiwifruit handlers. A copy of the proposed rule was made available through the internet by AMS. A 60-day comment period ending August 16, 2022, was provided for interested persons to respond to the proposal. Three comments were received in favor of the rule. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this final rule is consistent with and will effectuate the purposes of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges, Plums, Prunes.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR parts 920 and 944 as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 920.302 by:

■ a. Revising paragraphs (a)(2), (a)(4) heading, and (a)(4)(i); and

■ b. In paragraph (a)(4)(ii)(A):

■ i. Designating the table as table 1 to paragraph (a)(4)(ii)(A);

■ ii. Revising the three column headings;

■ iii. Removing the entry for ''45 or smaller'' and adding an entry for ''45'' in its place; and

■ iv. Adding an entry for ''49'' in numerical order and footnotes 1 and 2 at the end of the table.

The revisions and additions read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(2) *Size requirements.* Such kiwifruit, except for varieties of the *Actinidia chinensis* species, shall be at least a minimum Size 45, defined as a maximum of 55 pieces of fruit in an 8-pound sample. Varieties of the *Actinidia chinensis* species shall be at least a minimum Size 49, defined as a maximum of 64 pieces of fruit in an 8-pound sample.

* * * * *

(4) *Pack requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit, except for varieties of the *Actinidia chinensis* species, shall be fairly uniform in size.

(ii)(A) * * *

TABLE 1 TO PARAGRAPH (a)(4)(ii)(A)—SIZE DESIGNATION AND SIZE VARIATION CHART

Size designation	Maximum number of fruit per 8-pound sample	Size variation tolerance (diameter) [1]
* * * * * * *		
45	55	1/4-inch (6.4 mm).
[2] 49	64	Not applicable.

[1] Not applicable to *Actinidia chinensis* species varieties.
[2] Applicable only to *Actinidia chinensis* species varieties.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

■ 3. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 4. Amend § 944.550 by revising paragraph (a) to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 16 percent is provided for kiwifruit that is ''badly misshapen,'' and except that such kiwifruit shall have a minimum of 6.2 percent soluble solids. Such fruit, except for varieties of the *Actinidia chinensis* species, shall be at least Size 45, which means there shall be a maximum of 55 pieces of fruit in an 8-pound sample. Varieties of the *Actinidia chinensis* species shall be at least Size 49, which means there shall be a maximum of 64 pieces of fruit in an 8-pound sample. The average weight of all samples in a specific lot must weigh at least 8 pounds (3.632 kilograms), provided that no individual sample may be less than 7 pounds 12 ounces (3.472 kilograms).

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–01701 Filed 1–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1740

[RUS–22–Telecom–0056]

RIN 0572–AC62

Rural eConnectivity Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; request for comments.

SUMMARY: The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as ''RUS'' or ''the Agency'', is issuing a final rule with comment. The intent of the final rule is to make updates to the Rural eConnectivity Program (ReConnect Program) regulation to ensure that requirements are clear, accurate as presented and in compliance with Federal reporting requirements.

DATES:

Effective date: This final rule is effective May 1, 2023.

Comment date: Comments due on or before March 31, 2023.

ADDRESSES: You may submit comments, identified by docket number RUS–22-Telecom-0056 and Regulatory Information Number (RIN) number 0572–AC62 through *https://www.regulations.gov.*

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general inquiries, contact Laurel Leverrier, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: *laurel.leverrier@usda.gov,* telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development is a mission area within USDA comprising the RUS, the Rural Housing Service, and the Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving infrastructure, housing, and business throughout rural America. The RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection and culture and historic preservation.

The ReConnect Program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband services and infrastructure, the program will fuel long-term rural economic development and opportunities in rural America. The final rule to establish and codify requirements for the ReConnect Program was published in the **Federal Register** on February 26, 2021 (86 FR 11603).

The intent of these proposed changes is to remove outdated requirements, ensure that the requirements in the regulation are clear, accurate as presented and in compliance with federal reporting requirements. These changes will help provide clarity for the applicants as they prepare their applications for the ReConnect Program.

II. Summary of Changes to the Rule

The changes made to 7 CFR part 1740 include:

1. The definition of non-funded service area (NFSA) was updated in § 1740.2 to include telecommunications as well as broadband as a type of service. The program requires applicants to report revenues for all types of data, video, and/or voice services that are offered in the NFSA, so updating the definition should make it clearer that the revenues reported should be inclusive of all services.

2. Several sections were updated to clarify that non-federal entities identified under 2 CFR part 200 should submit a single audit for the previous year from the date the application is submitted while other entities will be required to submit a comparative audit. The language, as currently presented, does not make it clear that non-federal entities, as defined under 2 CFR part 200, that are subject to the Single Audit Act are only required to provide one year of audited financial statements during the years when they have received more than $750,000 in federal assistance. The sections updated to be clear of the application of the Single Audit Act include:

(a) Sections 1740.10(a) and 1740.60(d)(12), which was redesignated as (c)(12), were updated to remove the word ''comparative.''

(b) Section 1740.63 was updated to add a new paragraph (a)(1) and revisions were made to paragraph (a)(2).

(c) Section 1740.80 was updated to add a new paragraph (b) and revisions were made to the redesignated paragraph (c).

(3. Section 1740.46 was amended to update the title from ''Buy American Requirement'' to ''The Buy American preference and the Buy American requirement'' and to better clarify and explain the Buy American provision requirements of the Infrastructure Investment and Jobs Act.

4. Section 1740.60 was updated to remove paragraph (b) as this information is now considered obsolete in response to the governmentwide initiative to transition to a unique entity identifier (UEI) in lieu of a Dun and Bradstreet number. Paragraph (c), redesignated as paragraph (b), was updated to add the UEI language and to remove the requirement to provide a CAGE code.

5. Section 1740.60(d)(19), redesignated as (c)(19), was updated to make it clear that applicants must have Tribal consent from the appropriate Tribal official if services are proposed on or over Tribal Land.

III. Executive Orders and Acts

Executive Order 12866, Regulatory Impact Analysis

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

Congressional Review Act

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

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule.

Executive Order 12372, Intergovernmental Consultation

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Regulatory Flexibility Act Certification

RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Assistance Listing Number (Formally Known as Catalog of Federal Domestic Assistance)

The Assistance Listing number assigned to the Rural e-Connectivity Pilot Program is 10.752. The Assistance Listings are available on the internet at *https://sam.gov/.*

Unfunded Mandates

This rule contains no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of § 202 and 205 of the Unfunded Mandates Reform Act of 1995.

E-Government Act Compliance

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The final rule published February 26, 2021 (86 FR 11603) was reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires federal agencies to consult and coordinate with tribes on a government-

to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.

The amendments in this final rule documenting Tribal support consent and support of proposed projects serving Tribal lands were informed and drafted based on direct feedback from Tribal leaders during Tribal consultation hosted by USDA's Office of Tribal Relations and Rural Development in 2021 and 2022. These changes have also been incorporated into recent ReConnect funding announcements and the same provisions are now included in this final rule for consistency. If Tribal leaders are interested in additional consultation with RUS on these amendments, they are encouraged to contact USDA's Office of Tribal Relations or Rural Development's Tribal Coordinator at: *AIAN@usda.gov* to request such a consultation.

Civil Rights Impact Analysis

Rural Development, a mission area for which RUS is an agency, has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this Final Rule is not likely to adversely or disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this rule.

Information Collection and Recordkeeping Requirements

The Information Collection and Recordkeeping requirements contained in this rule have been approved by OMB under OMB Control Number 0572–0152. This final rule contains no new reporting or recording keeping requirements.

List of Subjects in 7 CFR Part 1740

Broadband, Community development, Grant programs-communications, Loan programs—communications, Rural areas, Telecommunications.

Accordingly, for reasons set forth in the preamble, 7 CFR part 1740 is amended to read as follows:

PART 1740—RURAL ECONNECTIVITY PROGRAM

■ 1. The authority citation for part 1740 continues to read as follows:

Authority: 7 U.S.C. 1981(b)(4), 7 U.S.C. 901 *et seq.,* 7 U.S.C. 950aaa *et seq.,* and 7 U.S.C. 950cc.

Subpart A—General

■ 2. Amend § 1740.2 by revising the definition of ''Non-funded service area (NFSA)'' to read as follows:

§ 1740.2 Definitions.

* * * * *

Non-funded service area (NFSA) means any area in which the applicant offers telecommunication/broadband service, or intends to offer telecommunication/broadband service, during the forecast period, but which is not part of its Proposed Funded Service Area.

* * * * *

Subpart B—Eligibility Requirements

■ 3. Amend § 1740.10 by revising paragraph (a) to read as follows:

§ 1740.10 Eligible projects.

* * * * *

(a) Submit a complete application and provide all supporting documentation including unqualified, audited financial statements from the date the application is submitted as detailed in § 1740.63.

* * * * *

Subpart D—Award Terms

■ 4. Revise § 1740.46 to read as follows:

§ 1740.46 The Buy American preference and the Buy American requirement. (Amended)

The domestic content preference under this Program applies differently to two classes of awardees: those that are defined as Non-Federal Entities under 2 CFR 200.1 and those that are not.

(a) *Non-Federal Entity awardees.* Funding to Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section 70914 of the Build America, Buy America Act (BABA) within the Infrastructure Investment and Jobs Act (IIJA).

(b) *All other awardees.* Awardees shall use in connection with the expenditure of loan and grant funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in any eligible country. For purposes of this section, an ''eligible country'' is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Buy American regulations may be found at, and any requests for waiver must be submitted pursuant to, 7 CFR part 1787.

Subpart E—Application Submission and Evaluation

■ 5. Amend § 1740.60 by:
■ a. Removing paragraph (b);
■ b. Redesignating paragraph (c) as paragraph (b) and revising newly redesignated paragraph (b);
■ c. Redesignating paragraph (d) as paragraph (c) and revising newly redesignated paragraph (c)(12) and the first sentence of newly redesignated paragraph (c)(19) introductory text; and
■ d. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

§ 1740.60 Elements of a complete application.

* * * * *

(b) *System for Award Management (SAM*). Prior to submitting an application, the applicant must register in SAM and also obtain a unique entity identifier (UEI) as part of the registration process. Applicants can register and obtain the UEI at *https://www.sam.gov/content/home.* SAM registration must be active with current data at all times, from the application review throughout the active Federal award funding period. To maintain active SAM registration, the applicant must review and update the information in the SAM database annually from the date of initial registration or from the date of the last update or renewal. The applicant must ensure that the

information in the database is current, accurate, and complete. The UEI of the applicant must be included in the application.

(c) * * *

(12) Unqualified, audited financial statements from the date the application is submitted as detailed in § 1740.63;

* * * * *

(19) If service is being proposed on or over Tribal Land, a Tribal Government Resolution of Consent from the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue must be provided to show that they are in support of the project and will allow construction to take place on Tribal Land. * * *

* * * * *

■ 6. Amend § 1740.63 by:

■ a. Redesignating paragraphs (a)(2) through (5) as paragraphs (a)(3) through ((6).

■ b. Redesignating paragraph (a)(1) as paragraph (a)(2);

■ c. Adding a new paragraph (a)(1); and

■ d. Revising the first sentence of newly redesignated paragraph (a)(2).

The addition and revision read as follows:

§ 1740.63 Financial information.

(a) * * *

(1) Applicants subject to 2 CFR part 200 must submit an audited financial statement for the previous year from the date the application is submitted. If an application is submitted and the most recent year-end audit has not been completed, the applicant can use the previous audit that has been completed.

(2) Applicants not subject to 2 CFR part 200 must submit unqualified, comparative, audited financial statements for the previous year from the date the application is submitted. * * *

* * * * *

Subpart F—Closing, Servicing, and Reporting

■ 7. Amend § 1740.80 by:

■ c. Redesignating paragraphs (c) through (g) as paragraphs (d) through (h);

■ b. Redesignating paragraph (b) as paragraph (c);

■ a. Adding a new paragraph (b); and

■ d. Revising the first sentence of newly redesignated paragraph (c).

The addition and revision read as follows:

§ 1740.80 Accounting, monitoring, and reporting requirements.

* * * * *

(b) Awardees subject to 2 CFR part 200 must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, in accordance with 2 CFR part 200, subpart F.

(c) Awardees not subject to 2 CFR part 200 must submit annual comparable audited financial statements along with a report on compliance and on internal control over financial reporting in accordance with the requirements of 7 CFR part 1773 using the RUS' online reporting system.

* * * * *

Andrew Berke,

Administrator, Rural Utilities Service, Rural Development.

[FR Doc. 2023–01621 Filed 1–27–23; 8:45 am]

BILLING CODE 3410–15–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Consumer Financial Protection Circular 2023–01: Unlawful Negative Option Marketing Practices

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2023–01, titled ''Unlawful Negative Option Marketing Practices.'' In this circular, the Bureau responds to the question, ''Can persons that engage in negative option marketing practices violate the prohibition on unfair, deceptive, or abusive acts or practices in the Consumer Financial Protection Act (CFPA)?''

DATES: The Bureau released this circular on its website on January 19, 2023.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to *Circulars@cfpb.gov.*

FOR FURTHER INFORMATION CONTACT: Colin Reardon, Senior Counsel, Office of Law & Policy, at (202) 570–6740. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Question Presented

Can persons that engage in negative option marketing practices violate the prohibition on unfair, deceptive, or abusive acts or practices in the Consumer Financial Protection Act (CFPA)?

Response

Yes. ''Covered persons'' and ''service providers'' must comply with the prohibition on unfair, deceptive, or abusive acts or practices in the CFPA.[1] Negative option marketing practices may violate that prohibition where a seller (1) misrepresents or fails to clearly and conspicuously disclose the material terms of a negative option program; (2) fails to obtain consumers' informed consent; or (3) misleads consumers who want to cancel, erects unreasonable barriers to cancellation, or fails to honor cancellation requests that comply with its promised cancellation procedures.

Background on Negative Option Marketing

As used in this Circular, the phrase ''negative option'' refers to a term or condition under which a seller may interpret a consumer's silence, failure to take an affirmative action to reject a product or service, or failure to cancel an agreement as acceptance or continued acceptance of the offer.

Negative option programs are common across the market, including in the market for consumer financial products and services, and such programs can take a variety of forms. For example, in automatic renewal plans, consumers' subscriptions are automatically renewed when they expire unless consumers affirmatively cancel their subscriptions by a certain date. In continuity plans, consumers agree in advance to receive a product or service, which they continue to receive until they cancel the agreements. In trial marketing plans, consumers receive products or services for free (or for a reduced fee) for a trial period. After the trial period, consumers are automatically charged a fee (or a higher fee) on a recurring basis unless they affirmatively cancel.

Negative option programs can cause serious harm to consumers who do not wish to receive the products or services for which they are charged. Harm is most likely to occur when sellers mislead consumers about terms and conditions, fail to obtain consumers' informed consent, or make it difficult for consumers to cancel. The Consumer Financial Protection Bureau (CFPB) has received consumer complaints, including complaints from older

[1] 12 U.S.C. 5481(6), (26), 5531, 5536. For simplicity, the remainder of this Circular refers to covered persons and service providers as ''sellers.'' The CFPB notes, however, that entities and individuals can be covered persons or service providers (and thus subject to liability under the CFPA) even if they do not themselves engage in ''selling'' a consumer financial product or service with a negative option feature.

consumers, about being repeatedly charged for services they did not intend to buy or no longer want to continue purchasing. Some consumers have reported that they were enrolled in subscriptions without knowledge of the program and its cost.[2] Consumers have also complained about the difficulty of cancelling subscription-based services and about charges made to their credit card or bank account after they requested cancellation.[3]

In recent decades, the Federal Trade Commission (FTC) has brought numerous enforcement cases challenging harmful negative option practices using its authority under section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices.[4] The FTC's enforcement cases have also frequently relied on the Restore Online Shoppers' Confidence Act (ROSCA) [5] and the Telemarketing Sales Rule (TSR).[6] The FTC recently summarized its enforcement work regarding negative option marketing in a policy statement, which noted that its cases have ''involve[d] a range of deceptive and unfair practices, including inadequate disclosures of hidden charges in ostensibly 'free' offers and other products or services, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures.'' [7]

Since it began enforcement in 2011, the CFPB has brought enforcement actions to halt a variety of harmful negative option practices, which have primarily relied on the CFPA's prohibition on unfair, deceptive, and abusive acts or practices.[8] For example, the CFPB has brought multiple enforcement actions involving optional ''add-on'' products offered to credit card users, such as debt protection and identity protection products, which featured recurring fees that continued until consumers affirmatively cancelled.[9] In other enforcement actions involving negative option practices, the CFPB has found or alleged that consumer reporting companies,[10] debt relief companies,[11] credit repair companies,[12] payment processors,[13] and service providers [14] have engaged in unfair, deceptive, and abusive acts or practices.

The CFPB has also relied on other Federal consumer financial laws that it enforces to address certain harmful negative option marketing practices. The Electronic Fund Transfer Act (EFTA) and Regulation E prohibit preauthorized electronic fund transfers from a consumer's bank account without written authorization.[15] The TSR also prohibits deceptive acts or practices by telemarketers, including failing to disclose the material terms of a negative option feature of an offer and misrepresenting the total cost to purchase goods or services.[16]

Recently, the CFPB and FTC have taken action to combat the rise of digital dark patterns, which are design features used to deceive, steer, or manipulate users into behavior that is profitable for a company, but often harmful to users or contrary to their intent.[17] Dark patterns can be particularly harmful when paired with negative option programs, causing consumers to be misled into purchasing subscriptions and other services with recurring charges and making it difficult for consumers to cancel and avoid such charges.[18]

Analysis

The CFPB is issuing this Circular to emphasize that covered persons and service providers who engage in negative option marketing are required to comply with the CFPA's prohibition on unfair, deceptive, and abusive acts or practices.[19] The CFPB further emphasizes that its approach to negative option marketing is generally in alignment with the FTC's approach to section 5 of the FTC Act as set forth in its recent policy statement. In particular, the CFPB shares the view that a seller offering a negative option program risks violating the law if the seller (1) does not clearly and conspicuously disclose the material terms of the negative option offer to the consumer, (2) does not obtain the consumer's informed consent, or (3) misleads consumers who wish to cancel, erects unreasonable barriers to cancellation, or impedes the effective operation of promised cancellation procedures.[20]

Disclosure. Sellers may violate the CFPA's prohibition on deceptive acts or practices if they misrepresent or fail to clearly and conspicuously disclose the material terms of an offer for a product or service with a negative option feature. Under the CFPA, a

[2] *See Consumer Response Annual Report* at 25 (CFPB Mar. 2018), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf; Monthly Complaint Report* at 16 (CFPB May 2017), *https://files.consumerfinance.gov/f/documents/201705_cfpb_Monthly_Complaint_Report.pdf.*

[3] *See Consumer Response Annual Report* at 67 (CFPB Mar. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf; Consumer Response Annual Report* at 88 (CFPB Mar. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.*

[4] *See, e.g., FTC* v. *Vonage Holdings Corp.,* No. 3:22–cv–6435 (D.N.J. 2022); *FTC* v. *Age of Learning, Inc.,* No. 2:20–cv–07996 (C.D. Cal. 2020); *FTC* v. *Apex Capital Group, LLC,* No. 2:18–cv–09573 (C.D. Cal. 2018); *FTC* v. *Triangle Media Corp.,* No. 3:18–cv–01388 (S.D. Cal. 2018); *FTC* v. *AdoreMe, Inc.,* No. 1:17–cv–09083 (S.D.N.Y. 2017); *FTC* v. *RevMountain, LLC,* No. 2:17–cv–02000 (D. Nev. 2017); *FTC* v. *Health Formulas, LLC,* No. 2:14–cv–01649 (D. Nev. 2016); *FTC* v. *JDI Dating, Ltd.,* No. 1:14–cv–08400 (N.D. Ill. 2014); *FTC* v. *Complete Weightloss Center,* No. 1:08–cv–00053 (D.N.D. 2008); *FTC* v. *Consumerinfo.com,* No. 05–cv–801 (C.D. Cal. 2005); *see also* 15 U.S.C. 45.

[5] 15 U.S.C. 8401 *et seq.*

[6] 16 CFR part 310.

[7] Enforcement Policy Statement Regarding Negative Option Marketing, 86 FR 60822, 60823 (Nov. 4, 2021) (hereafter, FTC Policy Statement).

[8] 12 U.S.C. 5531, 5536.

[9] *See CFPB* v. *Sterling Jewelers, Inc.,* No. 1:19–cv–00448 (S.D.N.Y. 2019); *First National Bank of Omaha,* File No. 2016–CFPB–0014 (Aug. 25, 2016) (consent order); *Citibank, N.A.,* File No. 2015–CFPB–0015 (July 21, 2015) (consent order); *Synchrony Bank, f/k/a GE Capital Retail Bank,* No. 2014–CFPB–0007 (June 19, 2014) (consent order); *Bank of America, N.A.,* File No. 2014–CFPB–0004 (Apr. 9, 2014) (consent order); *American Express Centurion Bank,* File No. 2013–CFPB–0011 (Dec. 24, 2013) (consent order); *Discover Bank,* File No. 2012–CFPB–0005 (Sept. 24, 2012) (joint consent order with FDIC); *Capital One Bank, (USA) N.A.,* 2012–CFPB–0001 (July 18, 2012) (consent order). For a description of consumer protections applicable to credit card add-on products and the CFPB's compliance expectations regarding such products, see *Marketing of Credit Card Add-on Products,* CFPB Bulletin 2012–06 (July 18, 2012).

[10] *CFPB* v. *Transunion,* No. 1:22–cv–01880 (N.D. Ill. 2022); *Equifax Inc.,* File No. 2017–CFPB–0001 (Jan. 3, 2017) (consent order); *Transunion Interactive, Inc.,* File No. 2017–CFPB–0002 (Jan. 3, 2017) (consent order).

[11] *CFPB* v. *Student Financial Aid Services, Inc.,* No. 2:15–cv–00821 (E.D. Cal. 2015).

[12] *CFPB* v. *Prime Marketing Holdings, LLC,* No. 2:16–cv–07111 (C.D. Cal. 2016).

[13] *CFPB* v. *ACTIVE Network, LLC,* No. 4:22–cv–00898 (E.D. Tex. 2022).

[14] *CFPB* v. *Affinion Group Holdings, Inc.,* No. 5:15–cv–01005 (D. Conn. 2015); *CFPB* v. *Intersections Inc.,* No. 1:15–cv–835 (E.D. Va. 2015).

[15] *See* 15 U.S.C. 1693e(a); 12 CFR 1005.10(b); *see also CFPB* v. *Student Financial Aid Services, Inc.,* No. 2:15–cv–00821 (E.D. Cal. 2015). The CFPB described these requirements in more detail in a 2015 compliance bulletin. *See Requirements for Consumer Authorization for Preauthorized Electronic Fund Transfers,* CFPB Compliance Bulletin 2015–06 (Nov. 23, 2015).

[16] 16 CFR 310.3(a)(1)(vii), (a)(2)(i); *see also CFPB* v. *Prime Marketing Holdings, LLC,* No. 2:16–cv–07111 (C.D. Cal. 2016); *Citibank, N.A.,* File No. 2015–CFPB–0015 (July 21, 2015) (consent order); *CFPB* v. *Student Financial Aid Services, Inc.,* No. 2:15–cv–00821 (E.D. Cal. 2015).

[17] *See, e.g., FTC* v. *Age of Learning, Inc.,* No. 2:20–cv–07996 (C.D. Cal. 2020); Statement of CFPB Director Rohit Chopra on Complaint Against ACTIVE Network (Oct. 18, 2022), *https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-on-complaint-against-active-network/.*

[18] *See Bringing Dark Patterns to Light* at 11–15 (FTC Sept. 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.*

[19] Sellers should also comply with other consumer protection laws enforceable by the CFPB that may apply to their conduct, such as EFTA, Regulation E, and the TSR.

[20] *See* FTC Policy Statement, 86 FR 60823–25.

representation or omission is deceptive if it is likely to mislead a reasonable consumer and is material.[21] A ''material'' representation or omission ''involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.'' [22] Where a seller makes a partial disclosure about the nature of a product or service, its failure to disclose other material information may be deceptive.[23] In assessing the meaning of a representation or omission, the CFPB looks to the overall, net impression of the communication, meaning that it considers the context of the entire advertisement, transaction, or course of dealing rather than evaluating statements in isolation.[24]

The material terms of a negative option offer would typically include the following, to the extent applicable:

- That the consumer is enrolling in and will be charged for the product or service.
- The amount (or range of amounts) that the consumer will be charged.
- That charges will be on a recurring basis unless the consumer takes affirmative steps to cancel the product or service.
- That, in a trial marketing plan, charges will begin (or increase) after the trial period unless the consumer takes affirmative action.[25]

A seller would likely violate the CFPA by misrepresenting or failing to adequately disclose these material terms, as the CFPB's enforcement cases illustrate. For example, the CFPB found that consumer reporting agencies deceptively represented that credit-related products were ''free'' when, in reality, consumers who signed up for a ''free'' trial were automatically enrolled in a subscription program with a recurring monthly fee unless they cancelled.[26] In those cases, disclosures about the negative option feature were often displayed in fine print, in low contrast, and were generally placed in a less prominent location, such as the bottom of a web page, grouped with other disclosures. Thus, the disclosures were neither clear nor conspicuous. Similarly, in several credit card add-on cases, the CFPB found that credit card issuers engaged in deceptive marketing and enrollment practices where they did not adequately inform consumers that they were purchasing add-on products or misrepresented the cost of the add-on products.[27]

Consent. Sellers engaged in negative option marketing would likely violate the CFPA where they fail to obtain the consumer's informed consent before charging the consumer.[28] Consent will generally not be informed if, for example, a seller mischaracterizes or conceals the negative option feature, provides contradictory or misleading information, or otherwise interferes with the consumer's understanding of the agreement. The CFPB has brought deception and unfairness claims under the CFPA where sellers failed to obtain consumers' informed consent.[29]

With respect to deception, as noted, a representation is deceptive if it is likely to mislead a reasonable consumer and is material.[30] In the credit card add-on cases, the CFPB found that credit card issuers engaged in a deceptive practice when the card issuers falsely represented to consumers that they were agreeing to receive information about an add-on product rather than purchasing the product.[31]

With respect to unfairness, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and the injury is not outweighed by countervailing benefits to consumers or to competition.[32] Applying that standard, the CFPB alleged that a debt relief company engaged in an unfair practice by charging consumers on an automatic, recurring basis where the recurring charges were not clearly explained or disclosed to consumers at the time of purchase.[33]

Cancellation. It is understandable that sellers will generally prefer to retain their existing customers, but they must do so in a manner that complies with the CFPA. For purposes of the prohibition on deception, certain types of representations are presumed to be material, including express representations and representations regarding costs.[34] Consistent with that principle, the CFPB found that a credit card issuer engaged in a deceptive practice when it represented that consumers could cancel an add-on product ''immediately'' and with ''no questions asked'' but then directed sales representatives to repeatedly rebut requests to cancel, with the result that consumers were often unable to cancel unless they demanded cancellation multiple times in succession.[35] The CFPB has also found that sellers engaged in deceptive practices by making misrepresentations about the costs and benefits of their products and services in order to persuade consumers not to cancel.[36]

In addition, the CFPB agrees with the FTC that sellers would likely violate the law if they erect unreasonable barriers to cancellation or fail to honor cancellation requests that comply with their promised cancellation procedures. Such conduct would include, for example, ''[h]ang[ing] up on consumers who call to cancel; plac[ing] them on hold for an unreasonably long time; provid[ing] false information about how to cancel; or misrepresent[ing] the

[21] *See CFPB* v. *Gordon,* 819 F.3d 1179, 1192–93 (9th Cir. 2016).

[22] *Novartis Corp.* v. *FTC,* 223 F.3d 783, 786 (D.C. Cir. 2000) (quoting *In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 165 (1984)).

[23] *See, e.g., Sterling Drug Inc.* v. *FTC,* 741 F.2d 1146, 1154 (9th Cir. 1984) (drug company's failure to disclose that its drug only contained ordinary aspirin was misleading when its advertisements implied that the drug did not contain aspirin); *see also FTC* v. *Bay Area Business Council, Inc.,* 423 F.3d 627, 635 (7th Cir. 2005) (''[T]the omission of a material fact, without an affirmative misrepresentation, may give rise to an FTC Act violation.'').

[24] *See, e.g., CFPB* v. *Aria,* 54 F.4th 1168, 1173 (9th Cir. 2022); *Gordon,* 819 F.3d at 1193; *see also FTC* v. *E.M.A. Nationwide, Inc.,* 767 F.3d 611, 631 (6th Cir. 2014); *Fanning* v. *FTC,* 821 F.3d 164, 170 (1st Cir. 2016).

[25] This list is not exhaustive, and additional terms of a negative option offer may be material depending on the facts and circumstances.

[26] *Equifax Inc.,* File No. 2017–CFPB–0001 (Jan. 3, 2017) (consent order); *Transunion Interactive, Inc.,* File No. 2017–CFPB–0002 (Jan. 3, 2017) (consent order).

[27] *See, e.g., First National Bank of Omaha,* File No. 2016–CFPB–0014 (Aug. 25, 2016) (consent order); *Synchrony Bank, f/k/a GE Capital Retail Bank,* No. 2014–CFPB–0007 (June 19, 2014) (consent order); *Bank of America, N.A.,* File No. 2014–CFPB–0004 (Apr. 9, 2014) (consent order).

[28] *Cf. FTC* v. *Kennedy,* 574 F. Supp. 2d 714, 721 (S.D. Tex. 2008) (defendant engaged in unfair practice in violation of section 5 of the FTC Act by imposing charges on consumers' telephone bills without obtaining their informed consent).

[29] A seller offering a negative option program must also comply with 12 U.S.C. 5531(d), which provides that an act or practice is abusive if it (1) materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service or (2) takes unreasonable advantage of the consumer's (a) lack of understanding of the material risks, costs, or conditions of the product or service; (b) inability to protect their interests in selecting or using a consumer financial product or service; or (b) reasonable reliance on a covered person to act in the consumer's interests.

[30] *See Gordon,* 819 F.3d at 1192–93.

[31] *Fifth Third Bank,* File No. 2015–CFPB–0025 (Sept. 28, 2015) (consent order); *Bank of America, N.A.,* File No. 2014–CFPB–0004 (Apr. 9, 2014) (consent order).

[32] 12 U.S.C. 5531(c).

[33] *CFPB* v. *Student Financial Aid Services, Inc.,* No. 2:15–cv–00821 (E.D. Cal. 2015). Specifically, the CFPB alleged that the company's practice caused injuries by subjecting consumers to charges they did not authorize or bargain for, those injuries were not reasonably avoidable because the fact of the recurring charges and negative option feature were not clearly explained or disclosed to consumers, and the injury was not outweighed by any countervailing benefits to consumers or competition.

[34] *See Novartis Corp.,* 223 F.3d at 786.

[35] *First National Bank of Omaha,* File No. 2016–CFPB–0014 (Aug. 25, 2016) (consent order).

[36] *Citibank, N.A.,* File No. 2015–CFPB–0015 (July 21, 2015) (consent order); *Capital One Bank, (USA) N.A.,* 2012–CFPB–0001 (July 18, 2012) (consent order).

reasons for delays in processing consumers' cancellation requests.'' [37] Depending on the facts and circumstances, such conduct may constitute an unfair, deceptive, or abusive act or practice in violation of the CFPA.

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other ''enumerated consumer laws,'' 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.,* 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with $10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

Consumer Financial Protection Circulars are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

Consumer Financial Protection Circulars are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.,* 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

Consumer Financial Protection Circulars are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–01560 Filed 1–27–23; 8:45 am]

BILLING CODE 4810–AM–P

[37] FTC Policy Statement, 86 FR 60823, 60826.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0540; Airspace Docket No. 22–AAL–49]

RIN 2120–AA66

Amendment of Alaskan Federal Airway V–531 Near Point Hope, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Alaskan Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airway V–531 (hereinafter referred to as Alaskan V–531) due to the planned decommissioning of the Point Hope, AK (PHO), Non-Directional Beacon (NDB) navigational aid (NAVAID).

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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2022–0540 in the **Federal Register** (87 FR 32378; May 31, 2022), amending Alaskan V–531 due to the planned decommissioning of the Point Hope, AK, NDB NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Alaskan VOR Federal airways are published in paragraph 6010(b) 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 Alaskan VOR Federal airway action listed in this document will be published subsequently in FAA Order JO 7400.11.

Differences From the NPRM

The NPRM proposed amending Alaskan V–531 to read: ''From Fairbanks, AK, via Tanana, AK; Huslia, AK; Selawik, AK; to Kotzebue, AK''. Use of the word ''via'' to describe the change was in error. To conform to the FAA's preferred language, the final rule removes the ''via'' from the regulatory text. The route remains the same as proposed; the final rule does not incorporate any substantive changes to the airway.

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 Alaskan V–531 due to the planned decommissioning of the Point Hope, AK, NDB NAVAID. The airway amendment action is described below.

Alaskan V–531. Alaskan V–531 extends between the Fairbanks, AK, VOR/Tactical Air Navigation (VORTAC) and the Point Hope, AK, NDB. The airway segment between the Kotzebue, AK, VOR/Distance Measuring Equipment (VOR/DME) and the Point Hope, AK, NDB is removed. As amended, the airway is changed to extend between the Fairbanks VORTAC and the Kotzebue VOR/DME.

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will 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 of amending Alaskan V–531 due to the planned decommissioning of the Point Hope, AK, NDB NAVAID, 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 further 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), and paragraph 5–6.5k, which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this 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. 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, and effective September 15, 2022, is amended as follows:

Paragraph 6010(b). Alaskan VOR Federal Airways.

* * * * *

V–531 [Amended]

From Fairbanks, AK; Tanana, AK; Huslia, AK; Selawik, AK; to Kotzebue, AK.

* * * * *

Issued in Washington, DC, on January 23, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–01607 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1115; Airspace Docket No. 22–AGL–10]

RIN 2120–AA66

Amendment of V–181 and T–400, and Revocation of V–250 and the Yankton, SD, Low Altitude Reporting Point in the Vicinity of Yankton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airway V–181 and Area Navigation (RNAV) route T–400 and revokes VOR Federal airway V–250 and the Yankton, SD, Low Altitude Reporting Point. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Yankton, SD, VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Yankton VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2022–1115 in the **Federal Register** (87 FR 58041; September 23, 2022), amending VOR Federal airway V–181 and RNAV route T–400 and revoking VOR Federal airway V–250 and the Yankton, SD, Low Altitude Reporting Point due to the planned decommissioning of the VOR portion of the Yankton, SD, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a), United States Area Navigation Routes (T-routes) are published in paragraph 6011, and Domestic Low Altitude Reporting Points are published in paragraph 7001 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 Air Traffic Service (ATS) route and low altitude reporting point actions listed in this document will be published subsequently in FAA Order JO 7400.11.

Differences From the NPRM

Subsequent to the NPRM, the FAA published a rule for Docket No. FAA–2022–0248 in the **Federal Register** (87 FR 64695; October 26, 2022), amending VOR Federal airway V–181 by removing the airway segment between the Sioux Falls, SD, VOR/Tactical Air Navigation (VORTAC) and the Fargo, ND, VOR/DME. That airway amendment, effective December 29, 2022, is included in this rule.

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 VOR Federal airway V–181 and RNAV route T–400 and revoking VOR Federal airway V–250 and the Yankton, SD, low altitude reporting point. The ATS route and low altitude reporting point amendments and revocations are due to the planned decommissioning of the Yankton, SD, VOR. The ATS route and low altitude reporting point actions are described below.

V–181: V–181 extends between the Kirksville, MO, VORTAC and the Sioux Falls, SD, VORTAC; and between the Fargo, ND, VOR/DME and the Grand Forks, ND, VOR/DME. The airway segment overlying the Yankton VOR/DME between the Norfolk, NE, VOR/DME and the Sioux Falls, SD, VORTAC is removed. As amended, the airway is changed to extend between the Kirksville, MO, VORTAC and the Norfolk, NE, VOR/DME and between the Fargo, ND, VOR/DME and the Grand Forks, ND, VOR/DME.

V–250: V–250 extends between the O'Neill, NE, VORTAC and the Yankton, SD, VOR/DME. The airway is removed in its entirety.

T–400: T–400 extends between the LLUKY, NE, waypoint (WP) and the ZOSAG, MN, WP. The IMUPP, SD, WP on the route is replaced with the FIITS, SD, WP to define the route crossing point between T–400 and T–405. The full T–400 route description is listed in the amendments to part 71 as set forth below.

Yankton, SD: The Yankton, SD, low altitude reporting point is removed.

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will 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 of amending VOR Federal airway V–181 and RNAV route T–400 and revoking VOR Federal airway V–250 and the Yankton, SD, Low Altitude Reporting Point, due to the planned decommissioning of the VOR portion of the Yankton, SD, VOR/DME NAVAID, 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 further 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); paragraph 5–6.5b, which categorically excludes from further environmental impact review actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, Designation of jet routes and VOR Federal airways); paragraph 5–6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima; and paragraph 5–6.5k, which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change

concentration of aircraft on these tracks. As such, this 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. 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, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–181 [Amended]

From Kirksville, MO; Lamoni, IA; Omaha, IA; to Norfolk, NE. From Fargo, ND; to Grand Forks, ND.

* * * * *

V–250 [Removed]

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–400 LLUKY, NE to ZOSAG, MN [Amended]

LLUKY, NE	WP	(Lat. 42°29′20.26″ N, long. 098°38′11.44″ W)
FIITS, SD	WP	(Lat. 42°55′06.67″ N, long. 097°23′06.12″ W)
DURWN, MN	WP	(Lat. 43°38′48.91″ N, long. 095°34′55.87″ W)
MEMCO, MN	WP	(Lat. 44°13′11.42″ N, long. 093°54′45.23″ W)
ZOSAG, MN	WP	(Lat. 44°49′30.74″ N, long. 093°26′34.08″ W)

* * * * *

Paragraph 7001 Domestic Low Altitude Reporting Points.

* * * * *

Yankton, SD [Removed]

* * * * *

Issued in Washington, DC, on January 24, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–01790 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31471; Amdt. No. 570]

IFR Altitudes; Miscellaneous Amendments

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

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, February 23, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on January 24, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 03, 2010.

PART 95—IFR ALTITUDES

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, and 14 CFR 11.49(b)(2).

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT

[Amendment 570 effective date February 23, 2023]

From	To	MEA
Color Routes		
§ 95.5 Green Federal Airway G15 is Amended to Delete		
ST MARYS, AK NDB	ANVIK, AK NDB	4000
ANVIK, AK NDB	TAKOTNA RIVER, AK NDB	*9000
*6000—MOCA		
*7000—GNSS MEA		
§ 95.5 Green Federal Airway G17 is Amended to Delete		
WAINWRIGHT VILLAGE, AK NDB	ATQASUK, AK NDB	*1600
*1100—MOCA		
§ 95.5 Green Federal Airway G18 is Amended to Delete		
HOTHAM, AK NDB	POINT LAY, AK NDB	*10000
*6000—MOCA	COP 096 HHM.	
POINT LAY, AK NDB	ATQASUK, AK NDB	2300
	COP 050 PIZ	
§ 95.4 Green Federal Airway G7 is Amended to Delete		
GAMBELL, AK NDB/DME	FORT DAVIS, AK NDB	3000
FORT DAVIS, AK NDB	NORTON BAY, AK NDB	*5000
*4200—MOCA		
§ 95.4 Green Federal Airway G9 is Amended to Delete		
OSCARVILLE, AK NDB	ZEKEG, AK FIX.	
NE BND		*6000
SW BND		*3000
*2100—MOCA		
ZEKEG, AK FIX	CAIRN MOUNTAIN, AK NDB	6000
§ 95.10 Amber Federal Airway A2 is Amended to Delete		
U.S. CANADIAN BORDER	NABESNA, AK NDB	*8400
*6700—MOCA		
NABESNA, AK NDB	DELTA JUNCTION, AK NDB	8000
§ 95.10 Amber Federal Airway A4 is Amended to Delete		
EVANSVILLE, AK NDB	ANAKTUVUK PASS, AK NDB	*10000
*8300—MOCA		
§ 95.10 Amber Federal Airway A5 is Amended to Delete		
AMBLER, AK NDB	EVANSVILLE, AK NDB	*7500
*6600—MOCA		
§ 95.10 Amber Federal Airway A6 is Amended to Delete		
ST MARYS, AK NDB	NORTH RIVER, AK NDB	5000
§ 95.20 Red Federal Airway R1 is Amended to Delete		
ST PAUL ISLAND, AK NDB/DME	GARRS, AK FIX	*4600
*2700—MOCA		

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 570 effective date February 23, 2023]

From	To	MEA
GARRS, AK FIX	CHINOOK, AK NDB	4600
§ 95.2 Red Federal Airway R51 is Amended to Delete		
SUMNER STRAIT, AK NDB	SITKA, AK NDB	7000
§ 95.6 Blue Federal Airway B26 is Amended to Delete		
CHENA, AK NDB	YUKON RIVER, AK NDB	7000
§ 95.6 Blue Federal Airway B37 is Amended to Delete		
SUMNER STRAIT, AK NDB *6400—MOCA	ELEPHANT, AK NDB	*7000
ELEPHANT, AK NDB *5000—MOCA *5000—GNSS MEA	SPARL, AK FIX	*6000
§ 95.60 Blue Federal Airway B4 is Amended to Delete		
UTOPIA CREEK, AK NDB/DME *6200—MOCA	EVANSVILLE, AK NDB	*8000
EVANSVILLE, AK NDB *6600—MOCA	YUKON RIVER, AK NDB	*8000
§ 95.60 Blue Federal Airway B7 is Amended to Delete		
CAPE NEWENHAM, AK NDB/DME	OSCARVILLE, AK NDB	4600
§ 95.6 Blue Federal Airway B79 is Amended to Delete		
U.S. CANADIAN BORDER	NICHOLS, AK NDB	5000
§ 95.60 Blue Federal Airway B8 is Amended to Delete		
TIN CITY, AK NDB/DME	SHISHMAREF, AK NDB	4000

From MAA	To	MEA
§ 95.3000 Low Altitude RNAV Routes **§ 95.3209 RNAV Route T209 is Amended by Adding**		
TBERT, GA WP	SPONG, GA FIX.	
1800	17500.	
SPONG, GA FIX	DOVER, GA FIX.	
2000	17500.	
DOVER, GA FIX	MILEN, GA FIX.	
1900	17500.	
MILEN, GA FIX	BEANS, GA FIX.	
2000	17500.	
BEANS, GA FIX	WANSA, SC WP.	
2300	17500.	
WANSA, SC WP	BLANE, SC FIX.	
2000	17500.	
BLANE, SC FIX	LUKES, SC FIX.	
2300	17500.	
LUKES, SC FIX	HRTWL, SC WP.	
2400	17500.	
HRTWL, SC WP	REEDY, SC FIX.	
2400	17500.	
REEDY, SC FIX	PETON, SC FIX.	
3000	17500.	
PETON, SC FIX	DUNKE, SC FIX.	
2900	17500.	
DUNKE, SC FIX	ILEYO, SC WP.	
2700	17500.	
ILEYO, SC WP	*UNMAN, SC FIX.	
2900	17500.	
*4800—MCA	UNMAN, SC FIX, N BND.	
UNMAN, SC FIX	STYLZ, NC WP.	

From MAA	To	MEA
6200	17500.	
is Amended to Delete		
EHEJO, GA FIX	NASDE, GA WP.	
2000	17500.	
NASDE, GA WP	YASLU, GA WP.	
2000	17500.	
YASLU, GA WP	JAMTA, GA WP.	
2000	17500.	
JAMTA, GA WP	COLLIERS, SC VORTAC.	
2500	17500.	
§ 95.3224 RNAV Route T224 is Amended by Adding		
COLIN, VA FIX	SHLBK, MD WP.	
*5000	11000.	
*1600—MOCA		
SHLBK, MD WP	QUENS, MD WP.	
1800	17500.	
QUENS, MD WP	PRNCZ, MD WP.	
1700	17500.	
PRNCZ, MD WP	SMYRNA, DE VORTAC.	
1800	17500.	
SMYRNA, DE VORTAC	BRIEF, NJ FIX.	
2000	17500.	
BRIEF, NJ FIX	JIIMS, NJ WP.	
1800	17500.	
JIIMS, NJ WP	LEBVE, NJ FIX.	
1800	17500.	
LEBVE, NJ FIX	COYLE, NJ VORTAC.	
1900	17500.	
COYLE, NJ VORTAC	DIXIE, NJ FIX.	
1900	17500.	
DIXIE, NJ FIX	KENNEDY, NY VOR/DME.	
2000	17500.	
KENNEDY, NY VOR/DME	KEEPM, NY FIX.	
2000	17500.	
KEEPM, NY FIX	CALVERTON, NY VOR/DME.	
2000	17500.	
CALVERTON, NY VOR/DME	KEYED, NY FIX.	
1900	17500.	
KEYED, NY FIX	VIKKY, NY FIX.	
1800	17500.	
VIKKY, NY FIX	FLIBB, CT FIX.	
1700	17500.	
FLIBB, CT FIX	YODER, CT FIX.	
1900	17500.	
YODER, CT FIX	KURTY, CT FIX.	
2100	17500.	
KURTY, CT FIX	YANTC, CT WP.	
2600	17500.	
YANTC, CT WP	JEWIT, CT FIX.	
2400	17500.	
JEWIT, CT FIX	FOSTY, RI FIX.	
2500	17500.	
FOSTY, RI FIX	WOONS, RI FIX.	
2400	17500.	
WOONS, RI FIX	MILIS, MA FIX.	
2000	17500.	
MILIS, MA FIX	BOSTON, MA VOR/DME.	
2300	17500.	
§ 95.3239 RNAV Route T239 is Amended by Adding		
PCANN, GA WP	SHANY, GA FIX.	
2000	17500.	
SHANY, GA FIX	TYGRR, AL WP.	
2300	17500.	
TYGRR, AL WP	MILER, AL FIX.	
2000	17500.	
Is Amended to Delete		
PECAN, GA VOR/DME	SHANY, GA FIX.	

From MAA	To	MEA
2000	17500.	
SHANY, GA FIX	EUFAULA, AL VORTAC.	
2300	17500.	
EUFAULA, AL VORTAC	MILER, AL FIX.	
2000	17500.	
Is Amended to Read in Part		
MILER, AL FIX	KENTT, AL FIX.	
2400	17500.	
§ 95.3286 RNAV Route T286 is Amended by Adding		
FONIA, ND FIX	DICKINSON, ND VORTAC.	
*5000	17500.	
DICKINSON, ND VORTAC	NEXRU, ND FIX.	
*4600	17500.	
NEXRU, ND FIX	HAYNI, ND FIX.	
*4700	17500.	
HAYNI, ND FIX	JELRO, SD FIX.	
*4800	17500.	
*4300—MOCA		
JELRO, SD FIX	BFFLO, SD FIX.	
*4900	17500.	
*4400—MOCA		
BFFLO, SD FIX	JORNO, SD FIX.	
*4600	17500.	
JORNO, SD FIX	RAPID CITY, SD VORTAC.	
*5100	17500.	
GRAND ISLAND, NE VOR/DME	HTHWY, NE WP.	
*3600	17500.	
HTHWY, NE WP	ROBINSON, KS DME.	
*3100	17500.	
Is Amended to Delete		
GRAND ISLAND, NE VOR/DME	PAWNEE CITY, NE VORTAC.	
*3600	17500.	
PAWNEE CITY, NE VORTAC	ROBINSON, KS DME.	
*3100	17500.	
§ 95.3291 RNAV Route T291 is Amended by Adding		
HARCUM, VA VORTAC	COLIN, VA FIX.	
1900	17500.	
COLIN, VA FIX	SHLBK, MD WP.	
*5000	11000.	
*1600—MOCA		
SHLBK, MD WP	LOUIE, MD FIX.	
*5000	11000.	
*1600—MOCA		
LOUIE, MD FIX	GRACO, MD FIX.	
*5000	11000.	
*1500—MOCA		
GRACO, MD FIX	*BAABS, MD WP.	
*5000	11000.	
*2000—MCA	BAABS, MD WP, N BND.	
*1600—MOCA		
BAABS, MD WP	VINNY, PA FIX.	
2700	11000.	
VINNY, PA FIX	GRAMO, PA FIX.	
3200	11000.	
GRAMO, PA FIX	HARRISBURG, PA VORTAC.	
5000	11000.	
Is Amended to Delete		
LOUIE, MD FIX	BAABS, MD WP.	
*5000	11000.	
*1800—MOCA		
BAABS, MD WP	HARRISBURG, PA VORTAC.	
*5000	11000.	
*3000—MOCA		

From MAA	To	MEA
Is Amended to Read in Part		
HARRISBURG, PA VORTAC	MORTO, PA FIX.	
3600	17500.	
MORTO, PA FIX	*SELINSGROVE, PA VOR/DME.	
3300	17500.	
*3800—MCA	SELINSGROVE, PA VOR/DME, NE BND.	
SELINSGROVE, PA VOR/DME	MILTON, PA VORTAC.	
3800	17500.	
MILTON, PA VORTAC	MEGSS, PA FIX.	
4000	17500.	
MEGSS, PA FIX	LAAYK, PA FIX.	
4800	17500.	
LAAYK, PA FIX	LEDIE, NY WP.	
4700	17500.	
LEDIE, NY WP	DELANCEY, NY VOR/DME.	
4900	17500.	
§ 95.3292 RNAV Route T292 is Amended by Adding		
LYNRD, AL WP	ANTUH, AL WP.	
2000	17500.	
MOVIL, AL WP	DAYVS, AL WP.	
2500	17500.	
DAYVS, AL WP	VLKNN, AL WP.	
2500	17500.	
Is Amended to Delete		
SEMMES, AL VORTAC	ANTUH, AL WP.	
2000	17500.	
MOVIL, AL WP	BROOKWOOD, AL VORTAC.	
2500	17500.	
BROOKWOOD, AL VORTAC	VLKNN, AL WP.	
2500	17500.	
§ 95.3295 RNAV Route T295 is Amended by Adding		
POORK, VA WP	KREGG, VA WP.	
2000	17500.	
KREGG, VA WP	HOUKY, VA WP.	
1900	17500.	
HOUKY, VA WP	TAPPA, VA FIX.	
1900	17500.	
TAPPA, VA FIX	COLIN, VA FIX.	
1900	17500.	
COLIN, VA FIX	SHLBK, MD WP.	
*5000	11000.	
*1600—MOCA		
SHLBK, MD WP	LOUIE, MD FIX.	
*5000	11000.	
*1600—MOCA		
LOUIE, MD FIX	GRACO, MD FIX.	
*5000	11000.	
*1500—MOCA		
GRACO, MD FIX	BAABS, MD WP.	
*5000	11000.	
*1600—MOCA		
Is Amended to Delete		
LOUIE, MD FIX	BAABS, MD WP.	
*5000	11000.	
*1800—MOCA		
Is Amended to Read in Part		
BAABS, MD WP	LANCASTER, PA VOR/DME.	
*5000	11000.	
*2200—MOCA		
§ 95.3315 RNAV Route T315 is Amended by Adding		
JARLO, WV WP	MONTS, WV FIX.	
4000	17500.	

From MAA	To	MEA
MONTS, WV FIX	LAFOR, WV FIX.	
5000	17500.	
LAFOR, WV FIX	SHANE, WV WP.	
5700	17500.	
SHANE, WV WP	VUTCU, WV WP.	
5900	17500.	
VUTCU, WV WP	TILFO, WV WP.	
5600	17500.	
TILFO, WV WP	PEEBE, WV FIX.	
5300	17500.	
PEEBE, WV FIX	CASTE, VA FIX.	
6100	17500.	
CASTE, VA FIX	DBRAH, VA WP.	
6100	17500.	
DBRAH, VA WP	SPNKS, VA WP.	
5400	17500.	
SPNKS, VA WP	KONRD, VA WP.	
3700	17500.	
KONRD, VA WP	MATTO, VA WP.	
3600	17500.	
MATTO, VA WP	STAFD, VA WP.	
*2800	17500.	
*2300—MOCA		
STAFD, VA WP	CRUMB, VA FIX.	
2200	17500.	
CRUMB, VA FIX	FLAT ROCK, VA VORTAC.	
2200	17500.	
FLAT ROCK, VA	VORTAC WAVES, VA WP.	
2600	17500.	
WAVES, VA WP	TAPPA, VA FIX.	
2100	17500.	
TAPPA, VA FIX	COLIN, VA FIX.	
1900	17500.	
COLIN, VA FIX	SHLBK, MD WP.	
*5000	11000.	
*1600—MOCA		
SHLBK, MD WP	QUENS, MD WP.	
1800	17500.	
QUENS, MD WP	PRNCZ, MD WP.	
1700	17500.	
PRNCZ, MD WP	CHOPS, MD FIX.	
1800	17500.	
CHOPS, MD FIX	COSHA, DE WP.	
1800	17500.	
COSHA, DE WP	ATWEL, DE FIX.	
1800	17500.	
ATWEL, DE FIX	DONIL, DE FIX.	
1700	17500.	
DONIL, DE FIX	LEEAH, NJ FIX.	
1700	17500.	
LEEAH, NJ FIX	TUBER, NJ FIX.	
1800	17500.	
TUBER, NJ FIX	ATLANTIC CITY, NJ VORTAC.	
1800	17500.	
ATLANTIC CITY, NJ VORTAC	PANZE, NJ FIX.	
2100	17500.	
PANZE, NJ FIX	DIXIE, NJ FIX.	
1900	17500.	
DIXIE, NJ FIX	KENNEDY, NY VOR/DME.	
2000	17500.	
KENNEDY, NY VOR/DME	KEEPM, NY FIX.	
2000	17500.	
KEEPM, NY FIX	TRANZ, NY FIX.	
2000	17500.	
TRANZ, NY FIX	PUGGS, NY FIX.	
2000	17500.	
PUGGS, NY FIX	EEGOR, CT WP.	
1800	17500.	
EEGOR, CT WP	DWAIN, CT FIX.	
2100	17500.	
DWAIN, CT FIX	SEALL, CT FIX.	
2400	17500.	
SEALL, CT FIX	SNIVL, CT FIX.	
2500	17500.	

From MAA	To	MEA
SNIVL, CT FIX	HARTFORD, CT VOR/DME.	
2600	17500.	
§ 95.3320 RNAV Route T320 is Added to Read		
GILFF, VA WP	CAVDI, MD WP 2000	17500
CAVDI, MD WP	DAILY, MD FIX.	
1900	17500.	
DAILY, MD FIX	VAALI, MD WP.	
1900	17500.	
VAALI, MD WP	TUNDR, MD WP.	
1700	17500.	
TUNDR, MD WP	BILIT, MD FIX.	
1800	17500.	
BILIT, MD FIX	CHOPS, MD FIX.	
1800	17500.	
CHOPS, MD FIX	WNSTN, NJ WP.	
*2000	17500.	
*1500—MOCA		
WNSTN, NJ WP	AVALO, NJ FIX.	
1700	17500.	
AVALO, NJ FIX	BRIGS, NJ FIX.	
2000	17500.	
BRIGS, NJ FIX	MANTA, NJ FIX.	
*2500	17500.	
*1300—MOCA		
MANTA, NJ FIX	BEADS, NY FIX.	
*2500	17500.	
*1300—MOCA		
BEADS, NY FIX	ORCHA, NY WP.	
1900	17500.	
ORCHA, NY WP	BOROS, NY FIX.	
2000	17500.	
BOROS, NY FIX	GROTON, CT VOR/DME.	
1900	17500.	
GROTON, CT VOR/DME	YANTC, CT WP.	
*2300	17500.	
*1800—MOCA		
YANTC, CT WP	MOGUL, CT FIX.	
2300	17500.	
MOGUL, CT FIX	BLATT, CT FIX.	
2500	17500.	
BLATT, CT FIX	GRAYM, MA FIX.	
*2800	17500.	
*2300—MOCA		
GRAYM, MA FIX	GARDNER, MA VOR/DME.	
3000	17500.	
§ 95.3325 RNAV Route T325 is Amended by Adding		
RAMRD, KY WP	RENRO, KY WP.	
*4500	17500.	
*2400—MOCA		
Is Amended to Delete		
BOWLING GREEN, KY DME	RENRO, KY WP.	
*4500	17500.	
*2400—MOCA		
§ 95.3356 RNAV Route T356 is Amended by Adding		
TWIRK, MD WP	*BRILA, MD WP.	
#2600	17500.	
*5300—MCA	BRILA, MD WP, SE BND.	
#3700 MCA	TWIRK, MD WP, SE BND.	
BRILA, MD WP	*WOOLY, MD FIX.	
2600	17500.	
*6000—MCA WOOLY, MD FIX, SE BND.		
ODESA, MD FIX	*APEER, MD WP.	
*4000	17500.	
*4000—MCA	APEER, MD WP, S BND.	
*1700—MOCA		
APEER, MD WP	REESY, PA WP.	

From MAA	To	MEA
2000	17500.	
REESY, PA WP	FOLEZ, PA WP.	
2300	17500.	
FOLEZ, PA WP	PIKKE, PA WP.	
*2700	17500.	
*2200—MOCA		
PIKKE, PA WP	BOYER, PA FIX.	
2800	17500.	
BOYER, PA FIX	*KERYN, PA FIX.	
3000	17500.	
*2600—MCA	KERYN, PA FIX, SE BND.	
KERYN, PA FIX	*HWANG, PA FIX.	
2500	17500.	
*2600—MCA	HWANG, PA FIX, NW BND.	
HWANG, PA FIX	RAVINE, PA VORTAC.	
3500	17500.	
RAVINE, PA VORTAC	SELINSGROVE, PA VOR/DME.	
3500	17500.	
SELINSGROVE, PA VOR/DME	*COVOB, PA FIX.	
3800	17500.	
*4400—MCA	COVOB, PA FIX, NW BND.	
COVOB, PA FIX	*SWISS, PA FIX.	
4700	17500.	
*4500—MCA	SWISS, PA FIX, SE BND.	
SWISS, PA FIX	FAVUM, PA FIX.	
4400	17500.	
FAVUM, PA FIX	WIGGZ, PA WP.	
4600	17500.	
Is Amended to Delete		
ODESA, MD FIX	*ELUDE, MD FIX.	
*4000	17500.	
*4000—MCA	ELUDE, MD FIX, S BND.	
*1800—MOCA		
Is Amended to Read in Part		
WOOLY, MD FIX	DROSA, MD WP.	
*6000	17500.	
*2100—MOCA		
DROSA, MD WP	OBWON, MD WP.	
*6000	17500.	
*2500—MOCA		
GATBY, MD FIX	ODESA, MD FIX.	
*4000	17500.	
*1500—MOCA		
§ 95.3358 RNAV Route T358 is Amended to Read in Part		
CPTAL, MD WP	TWIRK, MD WP.	
*5000	17500.	
*4300—MOCA		
TWIRK, MD WP	MOYRR, MD WP.	
*5000	17500.	
*3200—MOCA		
SWANN, MD FIX	SMYRNA, DE VORTAC.	
1800	17500.	
SMYRNA, DE VORTAC	AVALO, NJ FIX.	
1800	17500.	
§ 95.3360 RNAV Route T360 is Added to Read		
SHANE, WV WP	FRETT, WV WP.	
6400	17500.	
*6000—MCA	FRETT, WV WP, W BND.	
FRETT, WV WP	NATTS, WV FIX.	
5800	17500.	
NATTS, WV FIX	*BOOME, VA FIX.	
6500	17500.	
*5600—MCA	BOOME, VA FIX, W BND.	
BOOME, VA FIX	*OBEPE, VA FIX.	
5400	17500.	
*5900—MCA	OBEPE, VA FIX, SE BND.	

From MAA	To	MEA
OBEPE, VA FIX	*ROMAN, VA FIX.	
6300	17500.	
*5100—MCA	ROMAN, VA FIX, NW BND.	
ROMAN, VA FIX	BRAIL, VA FIX.	
4400	17500.	
BRAIL, VA FIX	*ARVON, VA FIX.	
2900	17500.	
*2500—MCA	ARVON, VA FIX, NW BND.	
ARVON, VA FIX	WAVES, VA WP.	
2200	17500.	
§ 95.3398 RNAV Route T398 is Amended by Adding		
RRORY, TX WP	MERIC, TX WP.	
2500	17500.	
MERIC, TX WP	SLOTH, TX WP.	
2200	17500.	
§ 95.3424 RNAV Route T424 is Added to Read		
SMRRF, TN WP	KEYSE, TN FIX.	
3000	17500.	
KEYSE, TN FIX	*LAUNS, TN FIX.	
3600	17500.	
*4300—MCA	LAUNS, TN FIX, E BND.	
LAUNS, TN FIX	*TMPSN, TN WP.	
5300	17500.	
*5300—MCA	TMPSN, TN WP, W BND.	
TMPSN, TN WP	BUCKY, TN FIX.	
4700	17500.	
BUCKY, TN FIX	EDDDY, TN WP.	
3000	17500.	
EDDDY, TN WP	CRECY, TN WP.	
3200	17500.	
CRECY, TN WP	PENCE, TN FIX.	
3300	17500.	
PENCE, TN FIX	OTWAY, TN FIX.	
3400	17500.	
OTWAY, TN FIX	*TAKEN, TN FIX.	
3800	17500.	
*4600—MCA	TAKEN, TN FIX, E BND.	
TAKEN, TN FIX	HORAL, TN WP.	
*6700	17500.	
*6700—MOCA		
HORAL, TN WP	DAMAS, TN FIX.	
6700	17500.	
DAMAS, TN FIX	*STOVE, VA FIX.	
8000	17500.	
*7200—MCA	STOVE, VA FIX, W BND.	
STOVE, VA FIX	SPEEL, VA FIX.	
6700	17500.	
SPEEL, VA FIX	*MAXME, VA FIX.	
5900	17500.	
*5600—MCA	MAXME, VA FIX, W BND.	
MAXME, VA FIX	*DANCO, VA WP.	
5000	17500.	
*4700—MCA	DANCO, VA WP, W BND.	
DANCO, VA WP	*BUFIY, VA FIX.	
4400	17500.	
*5000—MCA	BUFIY, VA FIX, E BND.	
BUFIY, VA FIX	DBRAH, VA WP.	
5500	17500.	
§ 95.3426 RNAV Route T426 is Added to Read		
DANCO, VA WP	*TABER, VA FIX.	
5600	17500.	
*5300—MCA	TABER, VA FIX, W BND.	
TABER, VA FIX	*PIGGS, VA FIX.	
5200	17500.	
*3900—MCA	PIGGS, VA FIX, NW BND.	
PIGGS, VA FIX	DUNCE, VA FIX.	
3300	17500.	
DUNCE, VA FIX	*JAVVA, VA FIX.	

From MAA	To	MEA
2800	17500.	
*2700—MCA	JAVVA, VA FIX, NW BND.	
JAVVA, VA FIX	MCDON, VA WP.	
2600	17500.	

§ 95.3437 RNAV Route T437 is Added to Read

SIROC, GA WP	BROUN, GA FIX.	
*2100	17500.	
*1600—MOCA		
BROUN, GA FIX	HARPS, GA FIX.	
2300	17500.	
HARPS, GA FIX	KELER, GA FIX.	
1800	17500.	
KELER, GA FIX	TBERT, GA WP.	
1800	17500.	
TBERT, GA WP	DURBE, SC WP.	
2000	17500.	
DURBE, SC WP	CAYCE, SC WP.	
2000	17500.	
CAYCE, SC WP	BLOTS, SC FIX.	
2400	17500.	
BLOTS, SC FIX	ZUKUR, SC FIX.	
2300	17500.	
ZUKUR, SC FIX	CRLNA, NC WP.	
2500	17500.	
CRLNA, NC WP	MOPED, NC FIX.	
2600	17500.	
MOPED, NC FIX	OWALT, NC FIX.	
2700	17500.	
OWALT, NC FIX	JOTTA, NC FIX.	
3000	17500.	
JOTTA, NC FIX	*MEGXE, NC FIX.	
3800	17500.	
*5600—MCA	MEGXE, NC FIX, N BND.	
MEGXE, NC FIX	DOILY, VA FIX.	
5900	17500.	
DOILY, VA FIX	DANCO, VA WP.	
5200	17500.	
DANCO, VA WP ZOOMS, WV FIX.		
6500	17500.	

§ 95.3439 RNAV Route T439 is Added to Read

PIGON, AL FIX	PICKS, AL FIX.	
*2000	17500.	
PICKS, AL FIX	RABEC, AL WP.	
*2000	17500.	
RABEC, AL WP	WALTY, AL FIX.	
*2400	17500.	
WALTY, AL FIX	DAYVS, AL WP.	
*2500	17500.	
DAYVS, AL WP	OAKGO, AL WP.	
*2500 17500.		
OAKGO, AL WP	NEGEE, AL FIX.	
*2400	17500.	
NEGEE, AL FIX	NULLS, AL WP.	
**2600	17500.	
*3000—MCA	NULLS, AL WP, N BND.	
NULLS, AL WP	FOLSO, AL WP.	
*3100	17500.	
FOLSO, AL WP	MARZZ, AL WP.	
*2900	17500.	
MARZZ, AL WP	PNDAA, TN WP.	
*2700	17500.	
PNDAA, TN WP	HITMN, TN WP.	
*3000	17500.	

§ 95.3441 RNAV Route T441 is Added to Read

TROPP, SC WP	GRECI, SC FIX 1800 17500.	
GRECI, SC FIX	*ADCOM, SC FIX 1900 17500.	
*2100—MCA	ADCOM, SC FIX, NW BND.	
ADCOM, SC FIX	CAYCE, SC WP.	

From MAA	To	MEA
2200	17500.	
CAYCE, SC WP	WIDER, SC FIX.	
2000	17500.	
WIDER, SC FIX	BUBBA, SC FIX.	
2300	17500.	
BUBBA, SC FIX	WILLS, SC FIX.	
2000	17500.	
WILLS, SC FIX	UNARM, SC FIX.	
2300	17500.	
UNARM, SC FIX	BUILD, SC FIX.	
2400	17500.	
BUILD, SC FIX	*BURGG, SC WP.	
2700	17500.	
*2900—MCA	BURGG, SC WP, NW BND.	
BURGG, SC WP	*OBURY, NC FIX.	
3100	17500.	
*4900—MCA	OBURY, NC FIX, NW BND.	
OBURY, NC FIX	STYLZ, NC WP.	
6200	17500.	
STYLZ, NC WP	OZONE, NC FIX.	
6600	17500.	
OZONE, NC FIX	*RIGEL, NC FIX.	
6100	17500.	
*6700—MCA	RIGEL, NC FIX, NW BND.	
RIGEL, NC FIX	*MUMMI, NC FIX.	
7000	17500.	
*7100—MCA	MUMMI, NC FIX, NW BND.	
MUMMI, NC FIX	PUPDG, NC WP.	
7500	17500.	
PUPDG, NC WP	PENCE, TN FIX.	
7200	17500.	
§ 95.3445 RNAV Route T445 is Added to Read		
WESTMINSTER, MD VORTAC	HARRISBURG, PA VORTAC.	
3800	17500.	
HARRISBURG, PA VORTAC	SELINSGROVE, PA VOR/DME.	
3800	17500.	
SELINSGROVE, PA VOR/DME	LYKOM, PA WP.	
4400	17500.	
LYKOM, PA WP	STUBN, NY WP.	
4900	17500.	
STUBN, NY WP	BEEPS, NY FIX.	
4500	17500.	
BEEPS, NY FIX	ROCHESTER, NY VOR/DME.	
3300	17500.	
ROCHESTER, NY VOR/DME	AIRCO, NY FIX.	
2500	17500.	
§ 95.3468 RNAV Route T468 is Added to Read		
HILL CITY, KS VORTAC	KNSAS, KS WP.	
*4500	17500.	
*4000—MOCA		
KNSAS, KS WP	KOPSY, KS FIX.	
*4500	17500.	
*3400—MOCA		
KOPSY, KS FIX	STEEL, NE FIX.	
3600	17500.	
STEEL, NE FIX	LAMONI, IA VOR/DME.	
3400	17500.	
LAMONI, IA VOR/DME	LEWRP, MO WP.	
2900	17500.	
§ 95.3608 RNAV Route T608 is Amended by Adding		
GARDNER, MA VOR/DME	*BRONC, MA FIX.	
3700	17500.	
*2500—MCA	BRONC, MA FIX, W BND.	
BRONC, MA FIX	LOBBY, MA FIX.	
2300	17500.	
LOBBY, MA FIX	SOSYO, MA FIX.	
*2400	17500.	
*1900—MOCA		

From MAA	To	MEA
SOSYO, MA FIX	REVER, MA FIX.	
2100	17500.	
Is Amended to Delete		
GARDNER, MA VOR/DME	GRAYM, MA FIX.	
3000	17500.	
GRAYM, MA FIX	BLATT, CT FIX.	
*2800	17500.	
*2300—MOCA		
BLATT, CT FIX	MOGUL, CT FIX.	
2500	17500.	
MOGUL, CT FIX	YANTC, CT WP.	
2300	17500.	
§ 95.4000 High Altitude RNAV Routes		
§ 95.4068 RNAV Route Q68 is Amended by Adding		
SOPIE, TN FIX	RAMRD, KY WP.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
RAMRD, KY WP	YOCKY, KY FIX.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
Is Amended to Delete		
SOPIE, TN FIX BOWLING GREEN, KY DME.		
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
BOWLING GREEN, KY DME	YOCKY, KY FIX.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
§ 95.4141 RNAV Route Q141 is Added to Read		
HOUKY, VA WP	TAPPA, VA FIX.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
TAPPA, VA FIX	HYTRA, MD WP.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
HYTRA, MD WP	BLNTN, MD WP.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
BLNTN, MD WP	NALES, DE FIX.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
§ 95.4437 RNAV Route Q437 is Amended to Delete		
LLUND, NY FIX	BIZEX, NY WP.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
BIZEX, NY WP	BINGS, NY WP.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
BINGS, NY WP	WARUV, NY WP.	
*18000	45000.	
*18000—GNSS MEA		
*DME/DME/IRU MEA		
WARUV, NY WP	SLANG, VT WP.	
*18000	45000.	

From MAA	To	MEA
*18000—GNSS MEA *DME/DME/IRU MEA		

From	To	MEA
§ 95.6001 Victor Routes–U.S		
§ 95.6046 VOR Federal Airway V46 is Amended to Read in Part		
CALVERTON, NY VOR/DME #HAMPTON R–285 UNUSABLE, USE CALVERTON R–105.	HAMPTON, NY VORTAC	#2000
§ 95.6050 VOR Federal Airway V50 is Amended to Delete		
HASTINGS, NE VOR/DME PAWNEE CITY, NE VORTAC	PAWNEE CITY, NE VORTAC ST JOSEPH, MO VORTAC	4000 4000
§ 95.6067 VOR Federal Airway V67 is Amended to Delete		
CHOO CHOO, TN VORTAC	SHELBYVILLE, TN VOR/DME	4000
§ 95.6071 VOR Federal Airway V71 is Amended to Delete		
TOPEKA, KS VORTAC *2900—MOCA PAWNEE CITY, NE VORTAC	PAWNEE CITY, NE VORTAC LINCOLN, NE VORTAC	*4000 3000
§ 95.6159 VOR Federal Airway V159 is Amended to Delete		
EUFAULA, AL VORTAC TUSKEGEE, AL VOR/DME *1900—MOCA	TUSKEGEE, AL VOR/DME KENTT, AL FIX	2000 *2600
Is Amended by Adding		
EUFAULA, AL VORTAC *3800—MCA KENTT, AL FIX, NW BND	*KENTT, AL FIX	2500
Is Amended to Read in Part		
KENTT, AL FIX	VULCAN, AL VORTAC	3800
§ 95.6185 VOR Federal Airway V185 is Amended to Delete		
COLLIERS, SC VORTAC GREENWOOD, SC VORTAC *4000—MCA UNMAN, SC FIX SUGARLOAF MOUNTAIN, NC VORTAC MUMMI, NC FIX	GREENWOOD, SC VORTAC *UNMAN, SC FIX UNMAN, SC FIX, N BND. SUGARLOAF MOUNTAIN, NC VORTAC MUMMI, NC FIX SNOWBIRD, TN VORTAC	2400 3000 6000 7000 8000
§ 95.6190 VOR Federal Airway V190 is Amended to Read in Part		
PEAKS, AZ FIX *11000—GNSS MEA	TEDDI, AZ FIX. W BND E BND	 *10000 *13000
§ 95.6209 VOR Federal Airway V209 is Amended to Delete		
GADSDEN, AL VOR/DME *5000—MCA **3700—MOCA MENLA, AL FIX	*MENLA, AL FIX MENLA, AL FIX, SW BND. CHOO CHOO, TN VORTAC	**5000 4000
§ 95.6216 VOR Federal Airway V216 is Amended to Delete		
MANKATO, KS VORTAC PAWNEE CITY, NE VORTAC	PAWNEE CITY, NE VORTAC LAMONI, IA VOR/DME	3600 3400
§ 95.6218 VOR Federal Airway V218 is Amended to Read in Part		
BEBEL, MN FIX *10000—MCA	*SQEAK, MN FIX SQEAK, MN FIX, N BND.	10000

From	To	MEA
§ 95.6307 VOR Federal Airway V307 is Amended to Delete		
EMPORIA, KS VORTAC	* ALMAS, KS FIX	3300
* 5000—MCA	ALMAS, KS FIX, N BND.	
ALMAS, KS FIX	PAWNEE CITY, NE VORTAC	* 5000
* 3000—MOCA		
PAWNEE CITY, NE VORTAC	OMAHA, IA VORTAC	3000
§ 95.6356 VOR Federal Airway V356 is Amended to Delete		
FIDLE, CO FIX	* ELORE, CO FIX	* * 16500
* 12400—MCA	ELORE, CO FIX, W BND.	
* * 15600—MOCA		
§ 95.6568 VOR Federal Airway V358 is Amended to Read in Part		
SAN ANTONIO, TX VORTAC	GUADA, TX FIX	* 4000
* 2900—MOCA		
§ 95.6379 VOR Federal Airway V379 is Amended by Adding		
DEALE, MD FIX	SMYRNA, DE VORTAC	3000
Is Amended to Delete		
NOTTINGHAM, MD VORTAC	JETTA, MD FIX	1900
JETTA, MD FIX	* GRACO, MD FIX	* * 3000
* 10000—MRA		
* * 1600—MOCA		
§ 95.6505 VOR Federal Airway V505 is Amended to Read in Part		
* SQEAK, MN FIX	BEBEL, MN FIX	10000
* 10000—MCA	SQEAK, MN FIX, NW BND.	
§ 95.6541 VOR Federal Airway V541 is Amended to Delete		
GADSDEN, AL VOR/DME	EDDIE, AL FIX	3600
§ 95.6553 VOR Federal Airway V553 is Amended to Delete		
SALINA, KS VORTAC	PAWNEE CITY, NE VORTAC	3400
§ 95.6568 VOR Federal Airway V568 is Amended to Read in Part		
CORPUS CHRISTI, TX VORTAC	THREE RIVERS, TX VORTAC	2000
SAN ANTONIO, TX VORTAC	GUADA, TX FIX	* 4000
* 2900—MOCA		
§ 95.6573 VOR Federal Airway V573 is Amended to Delete		
BONHAM, TX VORTAC	SULPHUR SPRINGS, TX VOR/DME	2500
SULPHUR SPRINGS, TX VOR/DME	TEXARKANA, AR VORTAC	2000
§ 95.7001 JET Routes **§ 95.7064 JET Route J64 is Amended to Delete**		
HILL CITY, KS VORTAC	PAWNEE CITY, NE VORTAC.	
18000	45000.	
PAWNEE CITY, NE VORTAC	LAMONI, IA VOR/DME.	
18000	45000.	
§ 95.7130 JET Route J130 is Amended to Delete		
MC COOK, NE VOR/DME	PAWNEE CITY, NE VORTAC.	
18000	41000.	
§ 95.7192 JET Route J192 is Amended to Delete		
GOODLAND, KS VORTAC	PAWNEE CITY, NE VORTAC.	
18000	45000.	
PAWNEE CITY, NE VORTAC	IOWA CITY, IA VOR/DME.	
18000	45000.	

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V159 is Amended To Add Changeover Point			
EUFAULA, AL VORTAC	VULCAN, AL VORTAC	52	EUFAULA.
§ 95.8005 JET Routes Changeover Point J130 is Amended to Delete Changeover Point			
MC COOK, NE VOR/DME	PAWNEE CITY, NE VORTAC	72	MC COOK.

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BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

RIN 3084–AB46

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') is amending the Hart-Scott-Rodino (''HSR'') Premerger Notification Rules (''Rules'') that require the parties to certain mergers and acquisitions to file reports with the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'') (together the ''Antitrust Agencies'' or ''Agencies'') and to wait a specified period of time before consummating such transactions. The Commission is amending the Rules to conform to the new filing fee tiers enacted by the Merger Filing Fee Modernization Act of 2022 (''2022 Amendments''), contained within the Consolidated Appropriations Act, 2023.

DATES: Effective February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Room CC–5301, Washington, DC 20024, or by telephone at (202) 326–3100, Email: *rjones@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Section 7A of the Clayton Act (the ''Act'') requires the parties to certain mergers or acquisitions to file with the Commission and the Assistant Attorney General and wait a specified period before consummating the proposed transaction to allow the Antitrust Agencies to conduct their initial review of a proposed transaction's competitive impact. The reporting requirement and the waiting period that it triggers are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in Federal court to prevent consummation.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A of the Act. Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR parts 801, 802 and 803, and the appendices to part 803, the Notification and Report Form for Certain Mergers and Acquisitions (''HSR Form'') and Instructions to the Notification and Report Form for Certain Mergers and Acquisitions (''Instructions''), to govern the form of premerger notification to be provided by merging parties.

The Commission is amending parts 801 and 803 of the rules and the HSR Form and Instructions to make the ministerial changes required to conform with the fees and fee tiers established by the 2022 Amendments.

Affected in Part 801, Coverage Rules:

§ 801.1 Definitions.

Affected in Part 803, Transmittal Rules:

- § 803.9 Filing fee.
- Appendix A to Part 803—Notification and Report Form for Certain Mergers and Acquisitions
- Appendix B to Part 803—Instructions to Notification and Report Form for Certain Mergers and Acquisitions

Background

In 1990, section 605 of Public Law 101–162, 103 Stat. 1031 (15 U.S.C. 18a note), first required the Federal Trade Commission to assess and collect filing fees from persons acquiring voting securities or assets under the Act. Fee tiers, rather than a single fee, were established in 2000 by section 630(b) of Public Law 106–553, 114 Stat. 2762, 2762A–109. On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023, which included the 2022 Amendments. The 2022 Amendments, among other things, amend these fees and fee tiers. *See* Public Law 117–328, Div. GG, 136 Stat. 4459.

Prior to enactment of the 2022 Amendments, filers were required to pay $45,000; $125,000; or $280,000 per transaction, depending on the total value of the transaction. While these fees have remained constant since adoption in 2000, the value of the acquisition to which they apply had adjusted annually since 2005 to reflect changes in the gross national product (''GNP'').[1]

The new fee structure enacted by the 2022 Amendments includes six, rather than three, tiers. The filing fee has been lowered for certain transactions, but increased for others, particularly for acquisitions valued at more than $1 billion. As enacted, the fee thresholds for 2023 are as follows: [2]

Size (value) of transaction	Fee
<$161.5 million	$30,000
$161.5 to <$500 million	100,000
$500 million to <$1 billion	250,000
$1 billion to <$2 billion	400,000
$2 billion to <$5 billion	800,000
$5 billion or more	2,250,000

[1] *See* Public Law 106–553, 114 Stat. at 2762A–109 to –110, amending Section 605 of title VI of Public Law 101–162 (15 U.S.C. 18a note).

[2] See the notice ''Revised Jurisdictional Thresholds,'' published in the January 26, 2023, issue of the **Federal Register** (88 FR 5004).

Beginning in Fiscal Year 2024, the filing tiers will be adjusted annually to reflect changes in the GNP for the previous year.[3] Additionally, beginning in Fiscal Year 2024, the 2022 Amendments will require the filing fees to be increased annually, if the percentage increase in the consumer price index (''CPI'') for the prior year as compared to the CPI for the fiscal year ended on September 30, 2022, is greater than one percent.[4] Such adjustments to the fees will be rounded to the nearest $5,000. The Commission, with the concurrence of the Assistant Attorney General, is making the required ministerial revisions to parts 801 and 803 of the Rules and to the HSR Form and Instructions to conform to these changes.

I. Changes to Section 801.1 Definitions

Section 801.1(m), Definition of The Act

The Commission is making a ministerial change to the definition of ''the act'' to include reference to the 2022 Amendments. The Commission is not making any material changes to this section.

II. Changes to Section 803.9 Filing Fee

Section 803.9 describes how fees are determined and paid. The Commission is amending all eight of the examples in § 803.9 to conform with the changes to the fees and fee tiers required by the 2022 Amendments, to update dates and dollar values to reflect more recent adjusted jurisdictional thresholds, and to add clarity to the examples. Since the fees and fee tiers will not adjust until after fiscal year 2023, references to fees and fee tiers do not include ''(as adjusted).'' The Commission will adopt amendments to the Rules to reference ''as adjusted'' fees and fee tiers at the appropriate time. Specifically, the Commission will amend the examples in § 803.9 as follows:

- Revising Example 1 to update the determination of the filing fee to be consistent with the 2022 Amendments; and eliminate ''(as adjusted)'' from filing fee tiers.
- Revising Example 2 to provide example dollar values more in line with current adjusted jurisdictional thresholds; update the determination of the filing fee to be consistent with the 2022 Amendments; and eliminate ''(as adjusted)'' from filing fee tiers.
- Revising Example 3 to provide a date and example dollar values more in line with current adjusted jurisdictional thresholds; and update the determination of the filing fee to be consistent with the 2022 Amendments.
- Revising Example 4 to update the determination of the filing fee to be consistent with the 2022 Amendments; eliminate ''(as adjusted)'' from filing fee tiers; and eliminate reference to an explanation of valuation, which had been eliminated in prior rulemakings.[5]
- Revising Example 5 to update the determination of the filing fee to be consistent with the 2022 Amendments; eliminate ''(as adjusted)'' from filing fee tiers; and eliminate reference to an explanation of valuation, which had been eliminated in prior rulemakings.[6]
- Revising Example 6 to update the determination of the filing fee to be consistent with the 2022 Amendments; eliminate ''(as adjusted)'' from filing fee tiers; and add ''(as adjusted)'' to jurisdictional and notification thresholds.
- Revising Example 7 to provide a date and example dollar values more in line with current adjusted jurisdictional thresholds; update the determination of the filing fee to be consistent with the 2022 Amendments; and eliminate reference to an explanation of valuation, which had been eliminated in prior rulemakings.[7]
- Revising Example 8 to provide example dollar values more in line with current adjusted jurisdictional thresholds; and update the determination of the filing fee to be consistent with the 2022 Amendments.

III. Changes to Appendix A to Part 803—Notification and Report Form for Certain Mergers and Acquisitions

The Commission is amending appendix A to part 803, the HSR Form, to make ministerial changes to conform to the 2022 Amendments. The Commission is amending the ''Fee Information'' portion of the HSR Form to incorporate the six new fee tiers and fees.

IV. Changes to Appendix B to Part 803—Instructions to the Notification and Report Form for Certain Mergers and Acquisitions

The Commission is amending appendix B to part 803, the Instructions, to make ministerial changes to conform to the 2022 Amendments. Specifically, the Commission is changing the ''Fee Information'' section of the Instructions to reflect the new fee tiers and introduction of adjustments to the fees. Additionally, because the 2022 Amendments will require the relevant valuation of the acquisition and the fees themselves to be adjusted annually, the Commission is eliminating the table on page III of the instructions, leaving the web link that will update each time the fees and fee tier valuations change.

V. Administrative Procedure Act

The Commission finds good cause to adopt these changes without prior public comment. Under the Administrative Procedure Act (''APA''), notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B).

In this case, the Commission finds that public comment on these changes is unnecessary. The Commission is amending the HSR Rules to conform with the new fee tiers and fees enacted by Congress. These updates do not involve any substantive changes in the HSR Rules' requirements for entities subject to the Rules. Rather, they are conforming updates to the definition of the HSR Act and examples of how to calculate the appropriate fee.

In addition, these amendments fall within the category of rules covering agency procedure and practice that are exempt from the notice-and-comment requirements of the APA. See 5 U.S.C. 553(b)(3)(A).

For these reasons, the Commission finds that there is good cause under 5 U.S.C. 553(b)(3) for adopting this final rule as effective on February 27, 2023, without prior public comment.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke an HSR filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, amendments to the Act in 2001 were intended to reduce the burden of the premerger notification program further by exempting all transactions valued at less than $50 million (as adjusted

[3] Public Law 117–328, 136 Stat. 4459, Div. GG, Title I.

[4] *Id.*

[5] *See,* 82 FR 32123 (July 12, 2017); 76 FR 42471 (July 19, 2011).

[6] *Id.*

[7] *Id.*

annually).[8] Likewise, none of the rule amendments expand the coverage of the premerger notification rules in a way that would affect small business. In addition, the Regulatory Flexibility Act requirements apply only to rules or amendments that are subject to the notice-and-comment requirements of the APA. See 5 U.S.C. 603, 604. Because these amendments are exempt from those APA requirements, as noted earlier, they are also exempt from the Regulatory Flexibility Act requirements. In any event, to the extent, if any, that the Regulatory Flexibility Act applies, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as notice of this certification to the Small Business Administration.

VII. Paperwork Reduction Act

The Commission has existing Paperwork Reduction Act clearance for the HSR Rules (OMB Control Number 3084–0005). The Commission has concluded that these technical amendments do not change the substance or frequency of the pre-existing information collection requirements and, therefore, do not require further OMB clearance.

VIII. Other Matters

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).

List of Subjects in 16 CFR Parts 801 and 803

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission is amending 16 CFR parts 801 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by revising paragraph (m) to read as follows:

§ 801.1 Definitions.

* * * * *

(m) *The act.* References to ''the act'' refer to Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390, and as amended by Public Law 106–553, 114 Stat. 2762, and Public Law 117–328, Div. GG, 136 Stat. 4459. References to ''Section 7A()'' refer to subsections of Section 7A of the Clayton Act. References to ''this section'' refer to the section of these rules in which the term appears.

* * * * *

PART 803—TRANSMITTAL RULES

■ 3. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 4. Amend § 803.9 by revising paragraph (a) to read as follows:

§ 803.9 Filing fee.

(a) Each acquiring person shall pay the filing fee required by the act to the Federal Trade Commission, except as provided in *paragraphs (b), (c),* and *(f)* of this section. No additional fee is to be submitted to the Antitrust Division of the Department of Justice. Examples:

(1) ''A'' wishes to acquire voting securities issued by B, where the greater of the acquisition price and the market price is in excess of $50 million (as adjusted) but less than $100 million (as adjusted) pursuant to § 801.10 of this chapter. When ''A'' files notification for the transaction, it must indicate the $50 million (as adjusted) threshold. If the value of the voting securities is less than $161.5 million, ''A'' must pay a filing fee of $30,000 because the aggregate total amount of the acquisition is greater than $50 million (as adjusted) but less than $161.5 million. If the aggregate total value of the voting securities is at least $161.5 million, but less than $500 million, ''A'' must pay a filing fee of $100,000.

(2) ''A'' acquires $75 million of assets from ''B.'' The parties meet the size of person criteria of section 7A(a)(2)(B) of the act, but the transaction is not reportable because it does not exceed the $50 million (as adjusted) size of transaction threshold of that provision. Two months later ''A'' acquires additional assets from ''B'' valued at $175 million. Pursuant to the aggregation requirements of § 801.13(b)(2)(ii) of this chapter, the aggregate total amount of ''B's'' assets that ''A'' will hold as a result of the second acquisition is $250 million. Accordingly, when ''A'' files notification for the second transaction, ''A'' must pay a filing fee of $100,000 because the aggregate total amount of the acquisition is less than $500 million, but not less than $161.5 million.

(3) In 2023, ''A'' acquires $115 million of voting securities issued by B after submitting its notification and $30,000 filing fee and indicates the $50 million (as adjusted) threshold. Two years later, ''A'' files to acquire additional voting securities issued by B valued at $114.4 million because it will exceed the next higher reporting threshold (*see* § 801.1(h) of this chapter). Assuming the second transaction is reportable, and the value of its initial holdings is unchanged (*see* §§ 801.13(a)(2) and 801.10(c) of this chapter), the provisions of § 801.13(a)(1) of this chapter require that ''A'' report that the total value of the second transaction is $229.4 million, which is in excess of $100 million (as adjusted) notification threshold. This is because ''A'' must aggregate previously acquired securities in calculating the value of B's voting securities that it will hold as a result of the second acquisition. ''A'' should pay a filing fee of $100,000 because the total value is greater than $161.5 million but less than $500 million.

(4) ''A'' signs a contract with a stated purchase price of $162 million, subject to adjustments, to acquire all of the assets of ''B.'' If the amount of adjustments can be reasonably estimated, the acquisition price—as adjusted to reflect that estimate—is determined. If the amount of adjustments cannot be reasonably estimated, the acquisition price is undetermined. In either case the board or its delegee must also determine in good faith the fair market value. (§ 801.10(b) of this chapter states that the value of an asset acquisition is to be the fair market value or the acquisition price, if determined and greater than fair market value.) ''A'' files notification and submits a $30,000 filing fee. ''A'' 's decision to pay that fee may be justified on either of two bases. First, ''A'' may have concluded that the acquisition price can be reasonably estimated to be less than $161.5 million, because of anticipated adjustments—*e.g.,* based on due diligence by ''A's'' accounting firm indicating that one third of the inventory is not saleable. If fair market value is also determined in good faith to be less than $161.5 million, the $30,000 fee is appropriate. Alternatively, ''A'' may conclude that because the adjustments cannot reasonably be estimated, the acquisition price is undetermined. If so, ''A'' would base the valuation on the good faith determination of fair market value. The acquiring party's execution of the Certification also attests to the good faith valuation of the value of the transaction.

(5) ''A'' contracts to acquire all of the assets of ''B'' for in excess of $500 million. The assets include hotels, office

[8] By comparison, the dollar thresholds established for total annual receipts of a small business under the applicable small business size standards fall well under $50 million. *See* 13 CFR 121.201.

buildings, and rental retail property, all of which are exempted by § 802.2 of this chapter. Section 802.2 directs that these assets are exempt from the requirements of the act and that reporting requirements for the transaction should be determined by analyzing the remainder of the acquisition as if it were a separate transaction. Furthermore, § 801.15(a)(2) of this chapter states that those exempt assets are never held as a result of the acquisition. Accordingly, the aggregate amount of the transaction is in excess of $161.5 million), but less than $500 million. ''A'' will be liable for a filing fee of $100,000, rather than $250,000, because the value of the transaction is not less than $161.5 million but is less than $500 million.

(6) ''A'' acquires coal reserves from ''B'' valued at $150 million. No notification or filing fee is required because the acquisition is exempted by § 802.3(b) of this chapter. Three months later, A proposes to acquire additional coal reserves from ''B'' valued at $500 million. This transaction is subject to the notification requirements of the act because the value of the acquisition exceeds the $200 million limitation on the exemption in § 802.3(b). As a result of § 801.13(b)(2)(ii) of this chapter, the prior $150 million acquisition must be added because the additional $500 million of coal reserves were acquired from the same person within 180 days of the initial acquisition. Because aggregating the two acquisitions exceeds the $200 million exemption limitation, § 801.15(b) of this chapter directs that ''A'' will also hold the previously exempt $150 million acquisition; thus, the aggregate amount held as a result of the $500 million acquisition exceeds $500 million. Accordingly, ''A'' must file notification to acquire the coal reserves valued in excess of $500 million), but less than $1 billion and pay a filing fee of $250,000.

(7) In 2023, ''A'' intends to acquire 20 percent of the voting securities of B, a non-publicly traded issuer. The agreed upon acquisition price is $160.5 million subject to post-closing adjustments of up to plus or minus $2 million. ''A'' estimates that the adjustments will be minus $1 million. In this example, since ''A'' is able in good faith to reasonably estimate the adjustments to the agreed-on price, the acquisition price is deemed to be determined and the appropriate filing fee threshold is $50 million (as adjusted). Even if the post-closing adjustments cause the final price actually paid to exceed $161.5 million, ''A'' would be deemed to hold $159.5 million in B voting securities as a result of this acquisition. Note, that any additional acquisition by ''A'' of B voting may trigger another filing and require the appropriate fee.

(8) ''A'' intends to make a cash tender offer for a minimum of 50 percent plus one share of the voting securities of B, a non-publicly traded issuer, but will accept up to 100 percent of the shares if they are tendered. There are 12 million shares of B voting stock outstanding and the tender offer price is $100 per share. In this instance, since there is no cap on the number of shares that can be tendered, the value of the transaction will be the value of 100 percent of B's voting securities, and ''A'' must pay the $400,000 fee for the $1 billion filing fee threshold. Note that if the tender offer had been for a maximum of 50 percent plus one share the value of the transaction would be $600 million, and the appropriate fee would be $250,000, based on the $500 million filing fee threshold. This would be true even if the tender offer were to be followed by a merger which would be exempt under section 7A(c)(3) of the act.

* * * * *

■ 5. Revise appendix A to part 803 to read as follows:

Appendix A to Part 803—Notification and Report Form for Certain Mergers and Acquisitions

BILLING CODE 6750–01–P

16 C.F.R. Part 803 - Appendix

NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

(Filing is ☐ New ☐ Amended)

☐☐☐☐☐☐☐☐ TRANSACTION NUMBER ASSIGNED

FEE INFORMATION *(For Payer Only)*

AMOUNT PAID

○ $0.00 ○ $400,000.00

○ $30,000.00 ○ $800,000.00

○ $100,000.00 ○ $2,250,000.00

○ $250,000.00 ○ Specific Amount _____

TAXPAYER IDENTIFICATION NUMBER _____

OR SOCIAL SECURITY NUMBER FOR NATURAL PERSONS

NAME OF PAYER *(if different from PERSON FILING)* _____

WIRE TRANSFER ☐ or CERTIFIED CHECK / MONEY ORDER ☐

WIRE TRANSFER CONFIRMATION NO. _____

FROM (NAME OF INSTITUTION) _____

IS THIS A CORRECTIVE FILING? ☐ YES ☐ NO | CASH TENDER OFFER? ☐ YES ☐ NO | BANKRUPTCY? ☐ YES ☐ NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? ☐ YES ☐ NO

(Grants of early termination are published in the Federal Register and on the FTC web site, www.ftc.gov)

(*voluntary*) IS THIS ACQUISITION SUBJECT TO NON-US FILING REQUIREMENTS? ☐ YES ☐ NO

IF YES, list jurisdictions:

ITEM 1

1(a) PERSON FILING

NAME
HEADQUARTERS ADDRESS
ADDRESS LINE 2
CITY, STATE, COUNTRY
ZIP CODE
WEB SITE

1(b) PERSON FILING NOTIFICATION IS ☐ an acquiring person ☐ an acquired person ☐ both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE THE PERSON FILING NOTIFICATION

☐ Corporation ☐ Unincorporated Entity ☐ Natural Person ☐ Other *(Specify)* _____

1(d) DATA FURNISHED BY

☐ calendar year ☐ fiscal year *(specify period):* _____ (month/year) to _____ (month/year)

1(e) PUT AN "X" IN THE APPROPRIATE BOX BELOW AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION, IF DIFFERENT THAN THE ULTIMATE PARENT ENTITY

☐ Not Applicable | ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4. | ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME
ADDRESS
CITY, STATE, COUNTRY
ZIP CODE

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED, IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

NAME
ADDRESS
CITY, STATE, COUNTRY
ZIP CODE

☐ Not Applicable

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS THAT THE UPE HOLDS DIRECTLY OR INDIRECTLY IN THE ACQUIRING OR ACQUIRED ENTITY IDENTIFIED IN ITEM 1(f) _____ %

1(g) IDENTIFICATION OF PERSONS TO CONTACT REGARDING THIS REPORT

CONTACT PERSON 1		CONTACT PERSON 2	
FIRM NAME		FIRM NAME	
BUSINESS ADDRESS		BUSINESS ADDRESS	
CITY, STATE, COUNTRY		CITY, STATE, COUNTRY	
ZIP CODE		ZIP CODE	
TELEPHONE NUMBER		TELEPHONE NUMBER	
FAX NUMBER		FAX NUMBER	
E-MAIL ADDRESS		E-MAIL ADDRESS	

1(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS (See § 803.20(b)(2)(iii))

NAME
FIRM NAME
BUSINESS ADDRESS
CITY, STATE, COUNTRY
ZIP CODE
TELEPHONE NUMBER
FAX NUMBER
E-MAIL ADDRESS

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS

NAME	NON-REPORTABLE
	☐

LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

NAME	NON-REPORTABLE
	☐

2(b) THIS ACQUISITION IS *(put an "X" in all the boxes that apply)*

- ☐ an acquisition of assets
- ☐ a merger (see § 801.2)
- ☐ an acquisition subject to § 801.2 (e)
- ☐ a formation of a joint venture or other corporation or unincorporated entity (see § 801.40 or § 801.50)
- ☐ an acquisition subject to § 801.30 *(specify type)*
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31
- ☐ an acquisition of non-corporate interests
- ☐ other *(specify)*

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED *(acquiring person only in an acquisition of voting securities)*

☐ $50 million (as adjusted) ☐ $100 million (as adjusted) ☐ $500 million (as adjusted) ☐ 25% (see Instructions) (as adjusted) ☐ 50% ☐ N/A

2(d)(i) VALUE OF VOTING SECURITIES ALREADY HELD ($MM) $	**(v)** VALUE OF NON-CORPORATE INTERESTS ALREADY HELD ($MM) $	
(ii) PERCENTAGE OF VOTING SECURITIES ALREADY HELD %	**(vi)** PERCENTAGE OF NON-CORPORATE INTERESTS ALREADY HELD %	
(iii) TOTAL VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $	**(vii)** TOTAL VALUE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $	**(ix)** VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $
(iv) TOTAL PERCENTAGE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION %	**(viii)** TOTAL PERCENTAGE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION %	**(x)** AGGREGATE TOTAL VALUE ($MM) $

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

ACQUIRING UPE(S)	ACQUIRED UPE(S)
NAME	NAME
ADDRESS	ADDRESS
ADDRESS LINE 2	ADDRESS LINE 2
CITY, STATE	CITY, STATE
ZIP CODE, COUNTRY	ZIP CODE, COUNTRY

ACQUIRING ENTITY(S)	ACQUIRED ENTITY(S)
NAME	NAME
ADDRESS	ADDRESS
ADDRESS LINE 2	ADDRESS LINE 2
CITY, STATE	CITY, STATE
ZIP CODE, COUNTRY	ZIP CODE, COUNTRY

TRANSACTION DESCRIPTION

3(b) SUBMIT A COPY OF THE MOST RECENT VERSION OF THE CONTRACT OR AGREEMENT *(or letter of intent to merge or acquire)*

(IF SUBMITTING PAPER, DO NOT ATTACH THE DOCUMENT TO THIS PAGE) ATTACHMENT NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 4

PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 *(See Item by Item instructions)*. THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) ENTITIES WITHIN THE PERSON FILING NOTIFICATION THAT FILE ANNUAL REPORTS WITH THE SECURITIES AND EXCHANGE COMMISSION ☐ None

	CENTRAL INDEX KEY NUMBER

4(b) ANNUAL REPORTS AND ANNUAL AUDIT REPORTS ☐ None

	ATTACHMENT OR REFERENCE NUMBER

4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS ☐ None

	ATTACHMENT OR REFERENCE NUMBER

4(d) ADDITIONAL DOCUMENTS ☐ None

	ATTACHMENT OR REFERENCE NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5

5(a) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY CODE AND BY MANUFACTURED PRODUCT CODE

Check None at the bottom of the page and provide explanation if you are not reporting revenue

6-DIGIT INDUSTRY CODE AND/OR 10-DIGIT PRODUCT CODE	DESCRIPTION	YEAR TOTAL DOLLAR REVENUES ($MM)	
	Attachment:		
			☐ Overlap

NONE ☐ *(PROVIDE EXPLANATION)*

NAME OF PERSON FILING NOTIFICATION	DATE

5(b) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY ☒ Not Applicable

5(b)(i) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

Attachment:

5(b)(ii) DESCRIPTION OF CONSIDERATION THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

Attachment:

5(b)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

Attachment:

5(b)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 10-DIGIT PRODUCT CODE (manufactured)

Attachment:

CODE	DESCRIPTION

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

Attachment:

NAME	CITY	STATE	COUNTRY

6(b) HOLDERS OF PERSON FILING NOTIFICATION

Attachment:

ISSUER/ UNINCORPORATED ENTITY	SHAREHOLDER/ INTEREST HOLDER	HQ ADDRESS	% HELD

6(c)(i) HOLDINGS OF PERSON FILING NOTIFICATION

Attachment:

UPE OF FILING PERSON	ISSUER/ UNINCORPORATED ENTITY	% HELD

6(c)(ii) HOLDINGS OF ASSOCIATES *(ACQUIRING PERSON ONLY)*

Attachment:

TOP LEVEL ASSOCIATE	ISSUER/ UNINCORPORATED ENTITY	% HELD

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 7

OVERLAP DOLLAR REVENUES

7(a) 6-DIGIT NAICS INDUSTRY CODE AND DESCRIPTION ☐ None

CODE	DESCRIPTION	PERSON / ASSOCIATE / BOTH

7(b)(i) LIST THE NAME OF EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

UPE OF OTHER FILING PERSON	ENTITY THAT OVERLAPS (IF DIFFERENT)

7(b)(ii) LIST THE NAME OF EACH ASSOCIATE OF THE ACQUIRING PERSON THAT ALSO DERIVED DOLLAR REVENUES *(ACQUIRING PERSON ONLY)*

TOP LEVEL ASSOCIATE	ENTITY THAT OVERLAPS (IF DIFFERENT)

7(c) GEOGRAPHIC MARKET INFORMATION FOR EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

CODE	GEOGRAPHIC MARKET INFORMATION

7(d) GEOGRAPHIC MARKET INFORMATION FOR ASSOCIATES OF THE ACQUIRING PERSON *(ACQUIRING PERSON ONLY)*

CODE	GEOGRAPHIC MARKET INFORMATION

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 8

PRIOR ACQUISITIONS *(ACQUIRING PERSON ONLY)*

NAICS Code				
Acquired Entity				
Former HQ Address				
Acquisition Type	☐ Securities	☐ Assets	☐ Non Corporate Interests	Date of Acquisition:
Notes				

CERTIFICATION

This **NOTIFICATION AND REPORT FORM,** together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the

City of _____ , State of _____ [SEAL]

this _____ day of _____ , the year _____

Signature _____

My Commission expires _____

NAME OF PERSON FILING NOTIFICATION	DATE

16 C.F.R. Part 803 - Appendix NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS	Approved by OMB 3084-0005

Attach the Affidavit required by § 803.5 to the Form.

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty for each day during which such person is in violation of 15 U.S.C. §18a. The maximum daily civil penalty amount is listed in 16 C.F.R. §1.98(a).

Pursuant to the Hart-Scott-Rodino Act, information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 37 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

> Premerger Notification Office, Federal Trade Commission, 400 7th St. SW, Room #5301, Washington, DC 20024
> and
> Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

Under the **Paperwork Reduction Act**, as amended, 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. That number is 3084-0005, which also appears above.

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to the amount listed in 16 C.F.R. §1.98(a) per day. We also may be unable to process the Form unless you provide all of the requested information.

This page may be omitted when submitting the Form.

NAME OF PERSON FILING NOTIFICATION	DATE

ENDNOTES

ENDNOTE NUMBER	PERTAINING TO	ENDNOTE TEXT

NAME OF PERSON FILING NOTIFICATION	DATE

ATTACHMENTS

AttachTotal:

ATTACHMENT NUMBER	ATTACHMENT DESCRIPTION		
		DESCRIPTION	
	ATTACHED TO ITEM		

■ 6. Revise appendix B to part 803 to read as follows:

Appendix B to Part 803—Instructions to the Notification and Report Form for Certain Mergers and Acquisitions

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS **OMB: 3084-0005**

GENERAL

The Notification and Report Form ("the Form") is required to be submitted pursuant to § 803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 ("the Rules"). These instructions specify the information that must be provided in response to the items on the Form.

Information
The central office for information and assistance concerning the Form and the Rules is:

> Premerger Notification Office
> Federal Trade Commission, Room #5301
> 400 7th Street, S.W.
> Washington, D.C. 20024
> Phone: (202) 326-3100
> E-mail: HSRhelp@ftc.gov

Copies of the Form, Instructions and Rules as well as information to assist in completing the Form are available at the PNO website.

Definitions
The definitions used in this Form are set forth in the Rules. See Statute, Rules and Formal Interpretations for copies of the Hart-Scott-Rodino Act ("the Act"), the Rules, and the Federal Register Notices issuing the Rules and Rule amendments ("Statements of Basis and Purpose").

The term "documentary attachments" refers only to materials submitted in response to Item 3(b), Item 4 and to submissions pursuant to § 803.1(b) of the Rules.

The terms "person filing" or "filing person" mean the ultimate parent entity ("UPE"). (See § 801.1(a)(3)). The terms are used herein interchangeably.

Filing
Parties should file the completed Form, together with all documentary attachments, with the Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC") and the Premerger Unit of the Antitrust Division of the Department of Justice ("DOJ") (together, "the Agencies"). Filers have the option of submitting a DVD filing or a paper filing. Filings should be submitted to:

> Premerger Notification Office
> Federal Trade Commission, Room #5301
> 400 7th Street, S.W.
> Washington, D.C. 20024

and

> Department of Justice
> Antitrust Division
> Premerger and Division Statistics Unit
> 450 Fifth Street, N.W., Suite 1100
> Washington, D.C. 20530

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at the PNO website.

If submitting a DVD filing

1) Provide the FTC with:

   TWO (2) DVDs, each containing the Form, affidavit, certification and all documentary attachments, along with the original hard copies of the cover letter, certification and affidavit.

2) Provide DOJ with:

   TWO (2) DVDs containing the same content as above, along with **THREE** (3) hard copies of the cover letter.

The Form must be a searchable PDF document. All other files must be in searchable PDF or MS Excel spreadsheet format and saved in color, if applicable. This includes the affidavit and certification.

Label each DVD with the name of the person filing, the name of a contact person and that person's phone number. Leave space on the DVD for the Agencies to write the assigned transaction number and date of receipt.

If the DVD or files contain viruses, passwords, or are not readable, the filing will not be accepted and the waiting period will not start.

For further instructions on DVD filing and specific DVD requirements, go to HSR Resources on the PNO website.

If submitting a paper filing

1) Provide the FTC with:

   ONE (1) original and **ONE** (1) copy of the Form, certification page and affidavit, along with an original cover letter and **ONE** (1) set of documentary attachments.

2) Provide DOJ with:

   TWO (2) copies of the Form, certification page and affidavit, along with **THREE** (3) copies of the cover letter, and **ONE** (1) set of documentary attachments.

Affidavits
Affidavit(s) are required by § 803.5 and must attest to the good faith of the persons filing to complete the transaction. Affidavits must be notarized or use the language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury. If an entity is filing on behalf of the acquiring or acquired person, the affidavit must still attest to the good faith of the UPE.

In non-§ 801.30 transactions, the affidavit(s) (submitted by both persons filing) must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of the person filing notification to complete the transaction. (See § 803.5(b)).

In § 801.30 transactions, the affidavit (submitted only by the acquiring person) must attest:

1) that the issuer whose voting securities or the unincorporated entity whose non-corporate interests are to be acquired has received notice, as described below, from the acquiring person;

2) in the case of a tender offer, that the intention to make the tender offer has been publicly announced; and

3) the good faith intention of the person filing notification to complete the transaction.

Acquiring persons in § 801.30 transactions are required to submit a copy of the notice received by the acquired person pursuant to § 803.5(a)(3) along with the filing. This notice must include:

1) the identity of the acquiring person and the fact that the acquiring person intends to acquire voting securities of the issuer or non-corporate interests of the unincorporated entity;

2) the specific notification threshold that the acquiring person intends to meet or exceed in an acquisition of voting securities;

3) the fact that the acquisition may be subject to the Act, and that the acquiring person will file notification under the Act;

4) the anticipated date of receipt of such notification by the Agencies; and

5) the fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the Act. (See § 803.5(a)).

Responses
Enter the name of the person filing notification in Item 1(a) on page 1 of the Form, and enter the same name and the date on which the Form is completed at the top of each page of the Form.

If there is insufficient room on the Form for a response to a particular item, attach "additional pages" behind that item on the Form. Filers must submit a complete set of additional pages within each copy of the Form.

Each additional page should identify, at the top of the page, the name of the person filing notification, the date on which the Form is completed and the item to which it is addressed.

Voluntary submissions pursuant to § 803.1(b) should be identified as V-1, V-2, etc.

If unable to answer any item fully, provide such information as is available and a statement of reasons for non-compliance as required by § 803.3. If exact answers to any item cannot be given, enter best estimates and indicate the source or basis of such estimates. Add an endnote with the notation "est." to any item where data are estimated.

All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars.

Limited Response
The acquired person should limit its response in Items 5-7:

1) in the case of an acquisition of assets, to the assets being acquired;

2) in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such acquired entities; and

3) in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests are being acquired and all entities controlled by such acquired entities.

Separate responses may be required where a person is both acquiring and acquired. (See § 803.2(b)).

Information need not be supplied regarding assets, voting securities or non-corporate interests currently being acquired when their acquisition is exempt under the Act or Rules. (See § 803.2(c)).

Year
All references to "year" refer to calendar year. If data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period that most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) and North American Product Classification System (NAPCS) Data
The Form requests "dollar revenues" for non-manufactured and manufactured products with respect to operations conducted within the United States, and for products manufactured outside of the United States and sold into the United States. (See § 803.2(d)). Filing persons must submit data by 6-digit NAICS code to reflect both non-manufacturing and manufacturing dollar revenues. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must also submit data by 10-digit NAPCS code. (See Item 5 below).

In reporting information by 6-digit NAICS code, refer to the *North American Industry Classification System - United States, 2017* published by the Executive Office of the President, Office of Management and Budget.

In reporting information by 10-digit NAPCS code, refer to the concordance tables between 2012 product codes and 2017 NAPCS-based product codes published by the Bureau of the Census.

Information regarding NAICS and NAPCS is available at www.census.gov. This site also provides assistance in choosing the proper code(s) for reporting in Item 5 of the Form.

Thresholds
Filing fee and notification thresholds are adjusted annually pursuant to 15 U.S.C. § 18A(a)(2)(A) based on the change in gross national product, in accordance with 15 U.S.C. § 19(a)(5). The current threshold values can be found at Current Filing Thresholds.

END OF GENERAL SECTION

Online Style Sheet for the Form

Online Tips for the Form

THE FORM - ITEM BY ITEM

Fee Information
The fee for filing the Form is based on the aggregate total value of assets, voting securities and controlling non-corporate interests to be held as a result of the acquisition. Beginning fiscal year 2024, the fee tiers will adjust by the change in the gross national product and the fees may increase as a result of changes to the consumer price index, as provided in 15 U.S.C. 18(a) statutory note.

For current thresholds and fee information, see the PNO website.

Amount Paid
Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges.

Payer Identification
Provide the payer's name and 9-digit Taxpayer Identification Number (TIN). If the payer is a natural person with no TIN, provide the natural person's social security number.

Method of Payment
The preferred method of payment is by electronic wire transfer (EWT). For EWT payments, provide the EWT confirmation number and the name of the financial institution from which the EWT is being sent. If the EWT confirmation number is not available at the time of filing, provide this information to the PNO within two business days of filing.

In order for the FTC to track payment, the payer must provide information required by the Fedwire Instructions to the financial institution initiating the EWT. A template of the Fedwire Instructions is available at the PNO website on the Filing Fee Information page.

There are now specific, limited criteria for paying by certified check. Please see the Filing Fee Information page for details.

Corrective Filings
Put an X in the appropriate box to indicate whether the notification is a corrective filing (i.e., an acquisition that has already taken place without filing, in violation of the statute). See Procedures for Submitting Post-Consummation Filings for more information on how to proceed in the case of a corrective filing.

Cash Tender Offer
Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy
Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or by a debtor-in-possession for a transaction that is subject to Section 363(b) of the Bankruptcy Code (11 U.S.C. § 363).

Early Termination
Put an X in the "yes" box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register, as required by 15 U.S.C. § 18A(b)(2), and on the PNO website. Note that if either party in any transaction requests early termination, it may be granted and published.

Transactions Subject to International Antitrust Notification
If, to the knowledge or belief of the filing person at the time of filing, a non-U.S. antitrust or competition authority has been or will be notified of the proposed transaction, list the name of each such authority. Response to this item is voluntary.

Index of Hyperlinks in these Instructions:

PNO website: https://www.ftc.gov/enforcement/premerger-notification-program

Statute, Rules and Formal Interpretations: https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-formal-interpretations

HSR Resources: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources

Current Filing Thresholds: https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds

Online Style Sheet for the Form: https://www.ftc.gov/enforcement/premerger-notification-program/form-instructions/style-sheet

Online Tips for the Form: https://www.ftc.gov/system/files/attachments/form-instructions/hsr_form_tip_sheet_1.0.5.pdf

Filing Fee Information: https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information

Procedures for Submitting Post-Consummation Filings: https://www.ftc.gov/enforcement/premerger-notification-program/post-consummation-filings-hsr-violations

Online Tips for Item 4(c): https://www.ftc.gov/sites/default/files/attachments/hsr-resources/4ctipsheet.pdf

Online Tips for Item 4(d): https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/pno-guidance-item-4d

Online Tips for Item 5: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/reporting-revenues-item-5

Online Tips for Item 6: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-6-hsr-form

Online Tips for Item 7: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-7-hsr-form

ITEM 1

Item 1(a)
Provide the name, headquarters address and website (if one exists) of the person filing notification. The name of the person filing is the name of the UPE. (See § 801.1(a)(3)).

Item 1(b)
Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2).

Item 1(c)
Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity, natural person, or other (specify). (See § 801.1).

Item 1(d)
Put an X in the appropriate box to indicate whether data furnished in Item 5 is by calendar year or fiscal year. If fiscal year, specify the time period.

Item 1(e)
Put an X in the appropriate box to indicate if the Form is being filed on behalf of the UPE by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if the Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the filing person named in Item 1(a) of the Form.

Item 1(f)
For the acquiring person, if an entity other than the UPE listed in Item 1(a) is making the acquisition, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held directly or indirectly by the person named in Item 1(a) above.

For the acquired person, if the assets, voting securities or non-corporate interests of an entity other than the UPE listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held directly or indirectly by the person named in Item 1(a) above.

Item 1(g)
Provide the name and title, firm name, address, telephone number, and e-mail address of the primary and secondary individuals to contact regarding the Form. A second contact person is required. (See § 803.20(b)(2)(ii)).

Item 1(h)
Foreign filing persons must provide the name, firm name, address, telephone number, and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii)).

Note: The Form has fields for fax numbers in Item 1. Providing fax numbers is no longer necessary. The fields will be deleted during the next update of the HSR Form.

END OF ITEM 1

ITEM 2

Item 2(a)
Provide the names of all UPEs of acquiring and acquired persons that are parties to the transaction, whether or not they are required to file notification. If a person is not required to file, check the non-reportable box.

Item 2(b)
Put an X in all the boxes that apply to the transaction.

Item 2(c)
This item should only be completed by the acquiring person where voting securities are being acquired. If more than voting securities are being acquired, respond to this item only regarding voting securities. Put an X in the box to indicate the highest applicable threshold for which notification is being filed: $50 million (as adjusted), $100 million (as adjusted), $500 million (as adjusted), 25% (if the value of voting securities to be held is greater than $1 billion, as adjusted), or 50%. (See § 801.1(h)).

Note that the 50% notification threshold is the highest threshold and should be used for any acquisition of 50% or more of the voting securities of an issuer, regardless of the value of the voting securities. For instance, an acquisition of 100% of the voting securities of an issuer, valued in excess of $500 million (as adjusted) would cross the 50% notification threshold, not the $500 million (as adjusted) threshold.

Item 2(d)
Provide the requested information on assets, voting securities and non-corporate interests. If a combination of assets, voting securities and/or non-corporate interests are being acquired and allocation is not possible, note such information in an endnote.

For determining percentage of voting securities, evaluate total voting power per § 801.12.

For determining percentage of non-corporate interests, evaluate the economic interests per § 801.1(b)(1)(ii).

Item 2(d)(i)
State the value of voting securities already held. (See § 801.10).

Item 2(d)(ii)
State the percentage of voting securities already held. (See § 801.12).

Item 2(d)(iii)
State the total value of voting securities to be held as a result of the acquisition. (See § 801.10).

Item 2(d)(iv)
State the total percentage of voting securities to be held as a result of the acquisition. (See § 801.12).

Item 2(d)(v)
State the value of non-corporate interests already held. (See § 801.10).

Item 2(d)(vi)
State the percentage of non-corporate interests already held. (See § 801.1(b)(1)(ii)).

Item 2(d)(vii)
State the total value of non-corporate interests to be held as a result of the acquisition. (See § 801.10).

ITEM 2 cont.

Item 2(d)(viii)
State the total percentage of non-corporate interests to be held as a result of the acquisition. (See §§ 801.10 and 801.1(b)(1)(ii)).

Item 2(d)(ix)
State the value of assets to be held as a result of the acquisition. (See § 801.10).

Item 2(d)(x)
State the aggregate total value of assets, voting securities and non-corporate interests of the acquired person to be held as a result of the acquisition. (See §§ 801.10, 801.12, 801.13 and 801.14).

END OF ITEM 2

Most Common Mistakes When Completing the HSR Form

- Noncompliant affidavit
- Missing contact information in Item 1(g)
- Failure to describe target in Item 3(a)
- Incomplete privilege log
- Failure to properly identify authors and recipients of Item 4c/4d documents
- Failure to properly round revenues in Item 5 to nearest tenth of a million and failure to list in ascending order
- Failure to provide required geographic information (e.g., state, county, and city or town) in Item 7(c)(iv)(b)
- Failure to provide the total number of states and territories in response to Item 7(c)

ITEM 3

Item 3(a)
At the top of Item 3(a), list the name and mailing address of each acquiring and acquired person, and acquiring and acquired entity, whether or not required to file notification. It is not necessary to list every subsidiary wholly-owned owned by an acquired entity.

In the Transaction Description section, briefly describe the transaction, indicating whether assets, voting securities or non-corporate interests (or some combination) are to be acquired. Describe the business operation(s) being acquired. If assets, describe the assets and whether they comprise a business operation. Also, indicate what consideration will be received by each party and the scheduled consummation date of the transaction.

If any attached transaction documents use coded names to refer to the parties, please provide an index identifying the codes.

If there are additional filings, such as shareholder backside filings, associated with the transaction, identify those. Also, identify any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Part 802.

Item 3(b)
Furnish copies of all documents that constitute the agreement(s) among the acquiring person(s) and the person(s) whose assets, voting securities or non-corporate interests are to be acquired. Also furnish agreements not to compete and other agreements between the parties. Do not submit schedules and the like unless they contain agreements not to compete, other agreements between the parties, or other important terms of the transaction. For purposes of Item 3(b), responsive documents must be submitted; identifying an internet address or providing a link is not sufficient.

Documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement, Purchase and Sale Agreement) must be executed, while agreements not to compete may be provided in draft form if that is the most recent version.

If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement, if one exists.

Note that transactions subject to § 801.30 and bankruptcies under 11 U.S.C. § 363 do not require an executed agreement or letter of intent. For bankruptcies, provide the order from the bankruptcy court.

END OF ITEM 3

ITEM 4

Item 4(a)
Provide the names of all entities within the person filing notification, including the UPE, that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission, and provide the Central Index Key (CIK) number for each entity.

Item 4(b)
Provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the person filing notification.

The acquiring person should also provide the most recent reports of the acquiring entity(s) and any controlled entity whose dollar revenues contribute to an overlap reported in Item 7.

The acquired person should also provide the most recent reports of the acquired entity(s).

Natural persons need only provide the most recent reports for the highest level entity(s) they control. Do not provide personal balance sheets or tax returns.

If the most recent reports do not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the filing person must stipulate in Item 4(b) that it meets the test.

Note that the person filing notification may incorporate a document by reference to an internet address directly linking to the document. (See § 803.2(e)).

Items 4(c) and 4(d)
For each document responsive to Items 4(c) and 4(d), provide the:

1) document's title;

2) date of preparation; and

3) name and title of each individual who prepared the document.

If a specific date is not available, indicate the month and year the document was prepared.

If a large group of people prepared the document, list all the authors and their titles, identifying the principal authors.

Alternatively, it is acceptable to indicate that the document was prepared under the supervision of the lead author and to provide the name and title of that author. If a third party prepared the document, the date of preparation and the name of the third party will suffice.

Numbering
Number each document provided in response to Items 4(c) and 4(d). Number 4(c) documents 4(c)-1, 4(c)-2, 4(c)-3, etc. Likewise, number 4(d) documents 4(d)-1, 4(d)-2, 4(d)-3, etc., regardless of the three sub-categories within Item 4(d). If providing only one document, identify it as 4(c)-1 or 4(d)-1.

When submitting a document responsive to both 4(c) and 4(d), list it only once, under 4(c) or 4(d). If a document is responsive to both 4(c) and 4(d), do not cross-reference.

Privilege
Note that if the filing person withholds or redacts portions of any document responsive to Items 4(c) and 4(d) based on a claim of privilege, the person must provide a statement of reasons for non-compliance (a "privilege log") detailing the claim of privilege for each withheld or redacted document. (See § 803.3(d)).

For each document, include the:

1) title of the document;

2) its author;

3) author's title/position;

4) addressee;

5) addressee's title/position;

6) date;

7) subject matter;

8) all recipients of the original and any copies;

9) recipients' titles/positions;

10) document's present location; and

11) who has control over it.

Additionally, the filing person must state the factual basis supporting the privilege claim in sufficient detail to enable staff to assess the validity of the claim for each document without disclosing the protected information.

If a privileged document was circulated to a group, such as the Board or an investment committee, the name of the group is sufficient, but the filing person should be prepared to disclose the names and titles/positions of the individual group members, if requested. If the claim of privilege is based on advice from inside and/or outside counsel, the name of the inside and/or outside counsel providing the advice (and the law firm, if applicable) must be provided. If several lawyers participated in providing advice, identifying lead counsel is sufficient. In identifying who controls a document, the name of the law firm is sufficient.

When creating a privilege log, use a separate numbering system for withheld documents, such as P-1, P-2, etc. Redacted documents should also be listed in a separate log that complies with § 803.3(d).

Item 4(c)
Provide all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets.

Item 4(d)
Item 4(d)(i)
Provide all Confidential Information Memoranda prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the UPE of the acquiring or acquired person or of the acquiring or acquired entity(s) that specifically relate to the sale of the acquired entity(s)

ITEM 4 cont.

or assets. If no such Confidential Information Memorandum exists, submit any document(s) given to any officer(s) or director(s) of the buyer meant to serve the function of a Confidential Information Memorandum. This does not include ordinary course documents and/or financial data shared in the course of due diligence, except to the extent that such materials served the purpose of a Confidential Information Memorandum when no such Confidential Information Memorandum exists. Documents responsive to this item are limited to those produced up to one year before the date of filing.

Item 4(d)(ii)
Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors ("third party advisors") for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the UPE of the acquiring or acquired person or of the acquiring or acquired entity(s) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets that specifically relate to the sale of the acquired entity(s) or assets. This item requires only materials developed by third party advisors during an engagement or for the purpose of seeking an engagement. Documents responsive to this item are limited to those produced up to one year before the date of filing.

Item 4(d)(iii)
Provide all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided in response to this item.

END OF ITEM 4

Tip for Item 4
If there is insufficient room on the Form for a response, attach "additional pages" behind that item on the Form. (See Responses on page II).

Online Tips for Item 4(c)

Online Tips for Item 4(d)

ITEMS 5 THROUGH 7

Limited response for acquired person. For Items 5 through 7, the acquired person should limit its response in the case of an acquisition of:

1) assets, to the assets to be acquired;

2) voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer; and/or

3) non-corporate interests, to the unincorporated entity(s) being acquired and all entities controlled by such unincorporated entity(s).

A person filing as both acquiring and acquired persons may be required to provide a separate response to Items 5 through 7 in each capacity so that it can properly limit its response as an acquired person. (See §§ 803.2(b) and (c)).

ITEM 5

This item requests information regarding dollar revenues. (See NAICS and NAPCS Data section on page II). All persons must submit all dollar revenues at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), filers must also submit revenue by 10-digit NAPCS code. Concordance tables between 2012 10-digit NAICS codes and 10-digit 2017 NAPCS codes are available at: https://www.census.gov/programs-surveys/economic-census/guidance/understanding-napcs.html.

List all NAICS and NAPCS codes in ascending order.

Acquiring persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time the Form is prepared. Acquired persons filing notification should include the total dollar revenues for all entities included within the acquired entity at the time the Form is prepared. If no dollar revenues are reported, check the "None" box and provide a brief explanation.

Item 5(a)
Provide 6-digit NAICS industry data concerning the aggregate U.S. operations of the person filing notification for the most recent year in all NAICS Sectors in which the person engaged. If the dollar revenues for a non-manufacturing NAICS code totaled less than one million dollars in the most recent year, that code may be omitted from Item 5(a).

Additionally, provide 10-digit NAPCS product code data for each product code within all manufacturing NAICS Sectors (31-33) in which the person engaged in the U.S., including dollar revenues for each product manufactured outside the U.S. but sold into the U.S. Sales of any manufactured product should be reported in a manufacturing code, even if sold through a separate warehouse or retail establishment.

If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS codes and 10-digit NAPCS codes may be provided.

Check the Overlap box for every 6-digit manufacturing and non-manufacturing NAICS code and every 10-digit NAPCS code in which both parties to the transaction generate dollar revenues.

ITEM 5 cont.

Item 5(b)
Complete only if the acquisition is the formation of a joint venture corporation or unincorporated entity. (See §§ 801.40 and 801.50). If the acquisition is not the formation of a joint venture, check the "Not Applicable" box.

Item 5(b)(i)
List the contributions that each person forming the joint venture corporation or unincorporated entity has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(b)(ii)
Describe fully the consideration that each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

Item 5(b)(iii)
Describe generally the business in which the joint venture corporation or unincorporated entity will engage, including its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(b)(iv)
Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing, also specify each 10-digit NAPCS product code in which it will derive dollar revenues.

END OF ITEM 5

Tip for Item 5
Remember, all financial information should be expressed in millions of dollars, rounded to the nearest one-tenth of a million dollars.

Online Tips for Item 5

ITEM 6

An acquired person does not complete Item 6 if the transaction involves only the acquisition of assets. If the transaction involves a mix of assets along with voting securities and/or non-corporate interests, the acquired person must complete Item 6 as related to the voting securities and non-corporate interests.

Item 6(a)
Subsidiaries of filing person. List the name, city and state/country of all U.S. entities, and all foreign entities that have sales in or into the U.S., that are included within the person filing notification. Entities with total assets of less than $10 million may be omitted. Alternatively, the filing person may report all entities within it.

Item 6(b)
Minority shareholders. For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or unincorporated entity(s) within that UPE, list the name and headquarters mailing address of each shareholder that holds 5% or more but less than 50% of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person. (See § 801.1(c))

For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.

Item 6(c)
Minority holdings. Item 6(c) requires the disclosure of holdings of 5% or more but less than 50%, of any entity(s) that derives dollar revenues in any 6-digit NAICS code reported by the other person filing notification. Holdings in those entities that have total assets of less than $10 million may be omitted.

The acquiring person may rely on its regularly prepared financials that list its investments, and those of its associates that list their investments, to respond to Items 6(c)(i) and (ii), provided the financials are no more than three months old.

If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. In responding to Items 6(c)(i) and 6(c)(ii), it is permissible for the acquiring person to list all entities in which it or its associate(s) holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings in those entities that have total assets of less than $10 million may be omitted.

Item 6(c)(i)
Minority holdings of filing person. If the person filing notification holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an unincorporated entity, list the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year.

The acquired person should limit its response, based on its knowledge or belief, to entities that derive dollar revenues in the

ITEM 6 cont.

same 6-digit NAICS industry code as the acquiring person.

Item 6(c)(ii)
Minority holdings of associates.
This item should only be completed by the acquiring person.
Based on the knowledge or belief of the acquiring person, for each associate (see § 801.1(d)(2)) of the acquiring person holding:

1) 5% or more but less than 50% of the voting securities or non-corporate interests of the acquired entity(s); and/or

2) 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year;

list the associate, the issuer or unincorporated entity and the percentage held.

END OF ITEM 6

Tip for Item 6(c)
Remember, if NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed.

Online Tips for Item 6

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person, or any associate (see § 801.1(d)(2)) of the acquiring person, derived any amount of dollar revenues (even if omitted from Item 5) in the most recent year from operations:

1) in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition also derived any amount of dollar revenues in the most recent year; or

2) in which a joint venture corporation or unincorporated entity will derive dollar revenues;

then for each such 6-digit NAICS industry code follow the instructions below for this section.

Note that if the acquired entity is a joint venture, the only overlaps that should be reported are those between the assets to be held by the joint venture and any assets of the acquiring person or its associates not contributed to the joint venture.

Also, if the acquiring person reports an associate overlap only, the acquired person does not need to respond to Item 7.

Item 7(a)
Industry Code Overlap Information
Provide the 6-digit NAICS industry code and description for the industry, and indicate whether the overlap is from the person, an associate or both.

Item 7(b)
Item 7(b)(i)
If the UPE of the other person(s) filing notification derived dollar revenues in the same 6-digit industry code(s) listed in Item 7(a), list the name of that UPE and the name of the entity(s) within that UPE that actually derived those dollar revenues, if different from the entity(s) listed in Item 3(a).

Item 7(b)(ii)
This item should only be completed by the acquiring person.
List the name of each associate of the acquiring person that also derived dollar revenues through a controlled operating company(s) in the 6-digit industry and, if different, the name of the entity(s) that actually derived those dollar revenues.

Item 7(c)
Geographic Market Information
Use the 2-digit postal codes for states and territories and provide the total number of states and territories at the end of the response.

Note that except in the case of those NAICS industries in the Sectors and Subsectors mentioned in Item 7(c)(iv)(b), the person filing notification may respond with the word "national" if business is conducted in all 50 states.

Item 7(c)(i)
NAICS Sectors 31-33
For each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a), list the relevant geographic information in which, to the knowledge or belief of the person filing the notification, the products in that 6-digit NAICS industry code produced by the person filing notification are sold without a significant change in their form (whether they are sold by the person filing notification or by others to whom such products have been sold or resold). Except for industries covered

ITEM 7 cont.

by Item 7(c)(iv)(b), the relevant geographic information is all states or, if desired, portions thereof.

Item 7(c)(ii)
NAICS Sector 42
For each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a), list the states or, if desired, portions thereof in which the customers of the person filing notification are located.

Item 7(c)(iii)
NAICS Industry Group 5241
For each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a), list the state(s) in which the person filing notification is licensed to write insurance.

Item 7(c)(iv)(a)
Other NAICS Sectors
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

11	agriculture, forestry, fishing and hunting
21	mining
22	utilities
23	construction
48-49	transportation and warehousing
511	publishing industries
515	broadcasting
517	telecommunications
71	arts, entertainment and recreation

Item 7(c)(iv)(b)
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

2123	nonmetallic mineral mining and quarrying
32512	industrial gases
32732	concrete
32733	concrete products
44-45	retail trade, except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores)
512	motion picture and sound recording industries
521	monetary authorities - central bank
522	credit intermediation and related activities
532	rental and leasing services
62	health care and social assistance
72	accommodations and food services, except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses)
811	repair and maintenance, except 8114 (personal and household goods repair and maintenance)
812	personal and laundry services

Item 7(c)(iv)(c)
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

442	furniture and home furnishings stores
443	electronics and appliance stores
516	internet publishing & broadcasting
518	internet service providers
519	other information services
523	securities, commodity contracts and other financial investments and related activities
5242	insurance agencies and brokerages, and other insurance related activities
525	funds, trusts and other financial vehicles
53	real estate and rental and leasing
54	professional, scientific and technical services
55	management of companies and enterprises
56	administrative and support and waste management and remediation services
61	educational services
7212	recreational vehicle parks and recreational camps
7213	rooming and boarding houses
813	religious, grantmaking, civic, professional, and similar organizations
8114	personal and household goods repair and maintenance

Item 7(d)
This item should only be completed by the acquiring person. Use the geographic markets listed in Items 7(c)(i) through 7(c)(iv) to respond to this item, providing the information for associates of the acquiring person. Provide separate responses for each associate of the acquiring person and, if different, the controlled operating company(s) that actually derived the dollar revenues.

END OF ITEM 7

Online Tips for Item 7

ITEM 8

This item should only be completed by the acquiring person. Determine each 6-digit NAICS industry code listed in Item 7(a), in which the acquiring person derived dollar revenues of $1 million or more in the most recent year and in which either:

1) the acquired entity derived dollar revenues of $1 million or more in the recent year (or in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive dollar revenues of $1 million or more); or

2) in the case of acquired assets, to which dollar revenues of $1 million or more were attributable in the most recent year.

For each such 6-digit NAICS industry code, list all acquisitions of entities or assets deriving dollar revenues in that 6-digit NAICS industry code made by the acquiring person in the five years prior to the date of the instant filing, even if the transaction was non-reportable. List only acquisitions of 50% or more of the voting securities of an issuer or 50% or more of non-corporate interests of an unincorporated entity that had annual net sales or total assets greater than $10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

This item pertains only to acquisitions of U.S. entities/assets and foreign entities/assets with sales in or into the U.S., i.e., with dollar revenues that would be reported in Item 5.

For each such acquisition, supply:

1) the 6-digit NAICS industry code (by number and description) identified above in which the acquired entity derived dollar revenues;

2) the name of the entity from which the assets, voting securities or non-corporate interests were acquired;

3) the headquarters address of that entity prior to the acquisition;

4) whether assets, voting securities or non-corporate interests were acquired; and

5) the consummation date of the acquisition.

END OF ITEM 8

CERTIFICATION

See § 803.6 for requirements.

The certification must be notarized or use the language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury.

PRIVACY ACT STATEMENT

Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. § 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to the amount listed in 16 C.F.R. §1.98(a) per day.

We also may be unable to process the Form unless you provide all of the requested information.

DISCLOSURE NOTICE

Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 37 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024

and

Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Under the Paperwork Reduction Act, as amended, 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 operative OMB control number, 3084-0005, appears within the Notification and Report Form and these Instructions.

END OF FORM INSTRUCTIONS

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–01584 Filed 1–27–23; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 361

[Docket No. 230113–0008]

RIN 0625–XC049

Request for Information on Aluminum Import Monitoring and Analysis System

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notification of Request for Information (RFI).

SUMMARY: On May 5, 2021, the U.S. Department of Commerce (Commerce) announced that it would be lifting the stay of the final rule entitled ''Aluminum Import Monitoring and Analysis System'', effective June 28, 2021. In this document, as well as in the final rule, Commerce stated that because the Aluminum Import Monitoring and Analysis (AIM) system was a new program, Commerce would seek additional comment from the public on potential improvements or changes to the system in a subsequent document after the AIM system was in place. Now that the AIM system is in place, Commerce is issuing this RFI to provide parties with the opportunity to provide further comments on the system.

DATES: Interested persons and organizations are invited to submit comments on or before March 1, 2023.

ADDRESSES: To respond to this RFI, please submit electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov* and enter ITA–2023–0001 in the search field;

2. Click the ''Comment Now!'' icon, complete the required fields; and

3. Enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments responding to this document will be a matter of public record and will generally be available on the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Commerce will not accept comments accompanied by a request that part or all the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi at (202) 482–1930 or Shelby Anderson at (202) 482–1411.

SUPPLEMENTARY INFORMATION:

Background on Establishment of AIM System

Under the Aluminum Import Monitoring and Analysis (AIM) system, Commerce maintains an aluminum import licensing program and a public AIM monitor, available through the AIM system website. Additionally, importers, custom brokers, or their agents are required to apply for and obtain an import license for each entry of covered aluminum products through the AIM system website. To obtain an import license, each applicant must identify, among other requirements, the country or countries where the largest and second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted and the country where the aluminum product was most recently cast.

On December 23, 2020, Commerce published the final rule adopting regulations establishing the AIM system in 19 CFR part 361 (85 FR 83804; December 23, 2020). The original effective date for the final rule and part 361 was January 25, 2021, requiring license numbers to be reported to U.S. Customs and Border Protection (CBP) on entry summary documentation, or electronic equivalent, for covered aluminum products on or after this date. On January 4, 2021, Commerce launched the AIM system website and allowed for importers, customs brokers and their agents to begin applying for and obtaining their import licenses.

However, on January 27, 2021, Commerce published a notification that it was delaying the effective date of the final rule and part 361 until March 29, 2021 (86 FR 7237). In that notification, Commerce also opened a 30-day comment period to solicit public comment on all aspects of the final rule, the AIM system, and part 361. The comment period closed on February 26, 2021. On April 1, 2021, Commerce published an additional notification stating it was delaying compliance with most aspects of the final rule and part 361 by an additional 90 days, by staying part 361 (86 FR 17058). In that notification, Commerce explained that the delay would allow Commerce time to finalize the license application system and to provide both the public and CBP with sufficient advance notice of the new compliance date. Commerce also explained that the delay would allow Commerce to consider and respond, as appropriate, to the comments received during the January 27, 2021, to February 26, 2021, comment period.

On May 5, 2021, Commerce published another notification, announcing that it would be lifting the stay of the final rule on June 28, 2021, and addressing the comments that it received during the most recent comment period (86 FR 27513). Accordingly, as of June 28, 2021, Commerce required compliance with most aspects of the final rule and part 361. Additionally, consistent with the final rule and the May 5, 2021 notification, Commerce seeks comments from the public on potential improvements or changes to the AIM system in a subsequent document after the AIM system is in place.

Licensing Requirements

Consistent with the May 5, 2021 notification, Commerce began requiring importers to submit aluminum import license numbers to CBP for all entries of covered aluminum products on June 28, 2021.[1] Any importer, importing company, customs broker or importer's agent with a U.S. street address (as required for account creation) can register and gain access to the automatic aluminum import license issuance system. Once all necessary license information has been provided, licenses are issued automatically and instantaneously.

Most of the information required for license applications is separately required by CBP as part of the Form 7501, Customs Entry Summary. For certain fields, unique supply chain information was also required for the first time under the AIM system. Specifically, as described in the final rule and as stated in 19 CFR 361.103(c)(1)(xiii), (xiv), and (xv), among other requirements, Commerce requires the applicant to provide the following information: (1) the country where the largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted (referred to as ''country of smelt for the largest volume of primary aluminum'' or ''country of smelt'' as shorthand); (2) the country where the second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted (referred to as ''country of smelt for the second largest volume of primary aluminum'' or ''second country of smelt'' as shorthand); and (3) the country where the aluminum used in the imported aluminum product was

[1] Covered products are identified by HTS code on the AIM website at *https://www.trade.gov/aluminum-products-hts-codes.*

most recently cast (referred to as ''country of most recent cast'' for shorthand). These fields are further described under 19 CFR 361.103(c)(3).

Section 361.103(c)(3)(i)(A) defines the field for the country of smelt for the largest volume of primary aluminum as the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall–Héroult process. Recognizing that importers may have some initial difficulties in securing this information, 19 CFR 361.103(c)(3)(i)(C) allowed filers to state ''unknown'' for this field on the license application on a temporary basis through June 28, 2022. Similar to the country of smelt for the largest volume of primary aluminum field, 19 CFR 361.103(c)(3)(ii)(A) defines the field for the country of smelt for the second largest volume of primary aluminum as the country where the second largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall–Héroult process. Section 361.103(c)(3)(ii)(C) also allowed filers to state ''unknown'' in this field on a temporary basis through June 28, 2022. Effective June 29, 2022, filers may no longer state ''unknown'' for these fields.

AIM Monitors

Commerce currently publishes: (1) the U.S. Aluminum Import Monitor, which combines data from Census and import licenses and is updated weekly; (2) the Country of Most Recent Cast Dashboard with information on the country where imported aluminum products were most recently cast; (3) the Country of Smelt Dashboard with information on the country where the primary aluminum was smelted; and (4) the Global Aluminum Trade Monitor.

Currently, the AIM licensing system receives approximately 750 licenses per day. These licenses are reviewed, aggregated and published in the public AIM monitor on a weekly basis. This monitor allows for near real-time monitoring of aluminum imports. The import monitoring system on the public AIM system website reports certain information including country of origin, country of smelt, country of most recent cast, relevant aluminum product grouping, etc., and includes import quantity (metric tons), customs value (U.S. dollar, USD), and average unit value (USD/metric ton). Prior to releasing new data, Commerce engages in an extensive review of all new licenses to identify potentially erroneous applications and contacts applicants with questions. Commerce has also engaged in extensive industry outreach to educate applicants on the required licensing fields, particularly regarding the country of smelt and country of most recent cast fields, to ensure accurate data quality in the AIM monitors.

The AIM monitors are collectively one of the most frequently visited parts of the International Trade Administration website, typically being viewed over 5,000 times per week.

Request for Information

Now that 19 CFR part 361 has been fully in effect since June 29, 2022, and the Country of Smelt Dashboard was released in September 2022, Commerce is seeking additional comment from the public on potential improvements or changes to the system. Parties may also provide further comment on any issue discussed in the final rule, the May 5, 2021, notification or any topic related to the AIM system. Responses to this RFI will inform Commerce's policies and procedures related to the AIM system moving forward.

Dated: January 20, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–01464 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OLP 175]

Civil Monetary Penalties Inflation Adjustments for 2023

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after January 30, 2023, with respect to violations occurring after November 2, 2015.

DATES: This rule is effective January 30, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015) (''BBA''), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101–410 (the ''Inflation Adjustment Act''), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule (''June 2016 interim rule'') to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the Supplementary Information (also known as the preamble) of the Department's June 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments. The June 2016 interim rule was finalized without change by the publication of a final rule on April 5, 2019 (84 FR 13525).

After the initial adjustments in 2016, the BBA also provides for agencies to adjust their civil penalties on January 15 of each year to account for inflation during the preceding year, rounded to the nearest dollar. Accordingly, on February 3, 2017 (82 FR 9131), and on January 29, 2018 (83 FR 3944), the Department published final rules pursuant to the BBA to make annual inflation adjustments in the civil monetary penalties assessed or enforced by components of the Department after those dates, with respect to violations occurring after November 2, 2015.

The Department has continued to promulgate rules adjusting the civil money penalties for inflation thereafter. Most recently, the Department published a final rule on May 5, 2022 (87 FR 27513), to adjust the civil money penalties to account for inflation occurring since 2021.

II. Inflation Adjustments Made by This Rule

As required, the Department is publishing this final rule to adjust for 2023 the Department's current civil penalties. Under the statutory formula, the adjustments made by this rule are based on the Bureau of Labor Statistics'

Consumer Price Index for October 2022. The OMB Memorandum for the Heads of Executive Departments and Agencies M–23–05 (Dec. 15, 2022) *https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf* (last visited Dec. 29, 2022), instructs that the applicable inflation factor for this adjustment is 1.07745.

Accordingly, this rule adjusts the civil penalty amounts in 28 CFR 85.5 by applying this inflation factor mechanically to each of the civil penalty amounts listed (rounded to the nearest dollar).

Example:

- In 2016, the Program Fraud Civil Remedies Act penalty was increased to $10,781 in accordance with the adjustment requirements of the BBA.
- For 2017, where the applicable inflation factor was 1.01636, the existing penalty of $10,781 was multiplied by 1.01636 and revised to $10,957 (rounded to the nearest dollar).
- For 2018, where the applicable inflation factor is 1.02041, the existing penalty of $10,957 was multiplied by 1.02041 and revised to $11,181 (rounded to the nearest dollar).
- Had an adjustment rule been published in 2019, where the applicable inflation factor was 1.02041, the existing penalty of $11,181 would have been multiplied by 1.02522 and revised to $11,463 (rounded to the nearest dollar).
- For the final rule in 2020 *(in which the ending 2019 penalty amount calculations were used as the starting penalty amounts for purposes of calculation),* the starting penalty of $11,463 was multiplied by 1.01764 and revised to $11,665 (rounded to the nearest dollar.)
- For the final rule in 2021, where the applicable inflation factor was 1.01182, the existing penalty of $11,665 was multiplied by 1.01182 and revised to $11,803 (rounded to the nearest dollar).
- For the final rule in 2022, where the applicable inflation factor was 1.06222, the existing penalty of $11,803 was multiplied by 1.06222 and revised to $12,537 (rounded to the nearest dollar).
- For this final rule in 2023, where the applicable inflation factor is 1.07745 the existing penalty of $12,537 is multiplied by 1.07745 and revised to $13,508 (rounded to the nearest dollar).

This rule adjusts for inflation civil monetary penalties within the jurisdiction of the Department of Justice for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

III. Effective Date of Adjusted Civil Penalty Amounts

Under this rule, the adjusted civil penalty amounts for 2023 are applicable only to civil penalties assessed after January 30, 2023, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA.

The penalty amounts set forth in the existing provisions of 28 CFR 85.5, and its accompanying table, are applicable to all covered civil penalties assessed after August 1, 2016, and on or before January 30, 2023, with respect to violations occurring after November 2, 2015.

The revised table in this rule lists the civil penalty amounts as adjusted in 2023, 2022, 2021, and 2020. For penalties assessed prior to the adjustment rule adopted in 2020, section 85.5(c) of this rule directs readers back to the 2018 version of the rule, as published in the **Federal Register**, which sets forth the adjusted civil penalty amounts for penalties assessed prior to the 2020 adjustments. 83 FR 3944 (Jan. 29, 2018).

Civil penalties for violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, will continue to be subject to the civil monetary penalty amounts set forth in the Department's regulations in 28 CFR parts 20, 22, 36, 68, 71, 76, and 85 as such regulations were in effect prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016). See 83 FR 3944.

IV. Statutory and Regulatory Analyses

A. Administrative Procedure Act

The BBA provides that, for each annual adjustment made after the initial adjustments of civil penalties in 2016, the head of an agency shall adjust the civil monetary penalties each year notwithstanding 5 U.S.C. 553. Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a delayed effective date.

B. Regulatory Flexibility Act

Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. *See* 5 U.S.C. 603(a).

C. Executive Orders 12866 and 13563—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, 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).

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the BBA by making an across-the-board adjustment of the civil penalty amounts in 28 CFR 85.5 to account for inflation since the adoption of the Department's final rule published on May 9, 2022 (87 FR 27513).

D. Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (as adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 28 CFR Part 85

Administrative practice and procedure, Penalties.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Assistant Attorney General, Office of Legal Policy, by A.G. Order No. 5328–2022, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

■ 1. The authority citation for part 85 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.

■ 2. Section 85.5 is revised to read as follows:

§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.

(a) For civil penalties assessed after January 30, 2023, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the seventh column of table 1 to this section.

(b) For civil penalties assessed after May 9, 2022, and on or before January 30, 2023, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the sixth column of table 1 to this section. For civil penalties assessed after December 13, 2021, and on or before May 9, 2022, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the fifth column of table 1 to this section. For civil penalties assessed after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fourth column of table 1 to this section.

(c) For civil penalties assessed on or before June 19, 2020, the civil monetary penalties provided by law within the jurisdiction of the Department are set forth in this section (revised as of July 1, 2018).

(d) All figures set forth in table 1 to this section are maximum penalties, unless otherwise indicated.

TABLE 1 TO § 85.5

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 6/19/2020 ($)	DOJ penalty assessed after 12/13/2021 ($)	DOJ penalty assessed after 5/9/2022 FN1 ($)	DOJ penalty assessed after 1/30/2023 FN2 ($)
ATF						
18 U.S.C. 922(t)(5)	Brady Law—Nat'l Instant Criminal Check System (NICS); Transfer of firearm without checking NICS.		$8,831	$8,935	$9,491	$10,226.
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation.		3,230	3,268	3,471	3,740.
Civil Division						
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6)	2,048,915	2,073,133	2,202,123	2,372,677.
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day).	28 CFR 85.3(a)(7)	2,048,915	2,073,133	2,202,123	2,372,677.
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	10,244,577	10,365,668	11,010,620	11,863,393.
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8)	5,951	6,021	6,396	6,891.
31 U.S.C. 3729(a)	False Claims Act; FN3 Violations.	28 CFR 85.3(a)(9)	Min 11,665, Max 23,331.	Min 11,803, Max 23,607.	Min 12,537, Max 25,076.	Min 13,508, Max 27,018.
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a)	11,665	11,803	12,537	13,508.
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f)	11,665	11,803	12,537	13,508.
40 U.S.C. 123(a)(1)(A)	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12)	5,951	6,021	6,396	6,891.
41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks FN4 (per occurrence).	28 CFR 85.3(a)(13)	23,331	23,607	25,076	27,018.
18 U.S.C. 2723(b)	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Noncompliance (per day).		8,606	8,708	9,250	9,966.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 6/19/2020 ($)	DOJ penalty assessed after 12/13/2021 ($)	DOJ penalty assessed after 5/9/2022 FN1 ($)	DOJ penalty assessed after 1/30/2023 FN2 ($)
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes FN5 (per violation).	28 CFR 85.3(c)	102,446	103,657	110,107	118,635.
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; FN6 Violation by an individual (per violation).		107,050	108,315	115,054	123,965.
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; FN6 Violation by an organization (per violation).		1,070,487	1,083,140	1,150,533	1,239,642.
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; FN7 Violation (per violation).		13,525	13,685	14,536	15,662.
Civil Rights Division (excluding immigration-related penalties)						
18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 (“FACE Act”); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i).	17,161	17,364	18,444	19,872.
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii).	25,820	26,125	27,750	29,899.
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i).	25,820	26,125	27,750	29,899.
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Violation other than a nonviolent physical violation).	28 CFR 85.3(b)(2)(ii).	43,034	43,543	46,252	49,834.
42 U.S.C. 3614(d)(1)(C)(i)	Fair Housing Act of 1968; first violation.	28 CFR 85.3(b)(3)(i).	107,050	108,315	115,054	123,965.
42 U.S.C. 3614(d)(1)(C)(ii)	Fair Housing Act of 1968; subsequent violation.	28 CFR 85.3(b)(3)(ii).	214,097	216,628	230,107	247,929.
42 U.S.C. 12188(b)(2)(C)(i)	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i).	96,384	97,523	103,591	111,614.
42 U.S.C. 12188(b)(2)(C)(ii)	Americans With Disabilities Act; Public accommodations for individuals with disabilities subsequent violation.	28 CFR 36.504(a)(3)(ii).	192,768	195,047	207,183	223,229.
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i).	64,715	65,480	69,554	74,941.
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii).	129,431	130,961	139,109	149,883.
Criminal Division						
18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.		Min 370, Max 7,395.	Min 374, Max 7,482.	Min 397, Max 7,948.	Min 428, Max 8,564.
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation FN8.		23,331	23,607	25,076	27,018.
DEA						
21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a)	21,410	21,663	23,011	24,793.
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d)	74,388	75,267	79,950	86,142.
21 U.S.C. 842(c)(1)(A)	Controlled Substances Act (“CSA”); Violations of 842(a)—other than (5), (10), (16) and (17)—Prohibited acts re: controlled substances (per violation).		67,627	68,426	72,683	78,312.
21 U.S.C. 842(c)(1)(B)(i)	CSA; Violations of 842(a)(5), (10), and (17)—Prohibited acts re: controlled substances.		15,691	15,876	16,864	18,170.
21 U.S.C. 842(c)(1)(B)(ii)	SUPPORT for Patients and Communities Act; Violations of 842(b)(ii)—Failures re: opioids.		101,764	102,967	109,374	117,845.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 6/19/2020 ($)	DOJ penalty assessed after 12/13/2021 ($)	DOJ penalty assessed after 5/9/2022 FN1 ($)	DOJ penalty assessed after 1/30/2023 FN2 ($)
21 U.S.C. 842(c)(1)(C)	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).		541,933	548,339	582,457	627,568.
21 U.S.C. 842(c)(1)(D)	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).		1,084	1,097	1,165	1,255.
21 U.S.C. 842(c)(2)(C)	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard FN9.		406,419	411,223	436,809	470,640.
21 U.S.C. 842(c)(2)(D)	SUPPORT for Patients and Communities Act; Violations of 842(a)(5), (10) and (17) by a registered manufacture or distributor of opioids. Failures re: opioids.		508,820	514,834	546,867	589,222.
21 U.S.C. 856(d)	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises FN10.		374,763	379,193	402,786	433,982.
	Immigration-Related Penalties					
8 U.S.C. 1324a(e)(4)(A)(i)	Immigration Reform and Control Act of 1986 (“IRCA”); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i).	Min 583, Max 4,667.	Min 590, Max 4,722.	Min 627, Max 5,016.	Min 676, Max 5,404.
8 U.S.C. 1324a(e)(4)(A)(ii)	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii).	Min 4,667, Max 11,665.	Min 4,722, Max 11,803.	Min 5,016, Max 12,537.	Min 5,404, Max 13,508.
8 U.S.C. 1324a(e)(4)(A)(iii)	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii).	Min 6,999, Max 23,331.	Min 7,082, Max 23,607.	Min 7,523, Max 25,076.	Min 8,106, Max 27,018.
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual).	28 CFR 68.52(c)(5)	Min 234, Max 2,332.	Min 237, Max 2,360.	Min 252, Max 2,507.	Min 272, Max 2,701.
8 U.S.C. 1324a (note)	IRCA; Violation relating to participating employer’s failure to notify of final nonconfirmation of employee’s employment eligibility (per relevant individual).	28 CFR 68.52(c)(6)	Min 813, Max 1,625.	Min 823, Max 1,644.	Min 874, Max 1,746.	Min 942, Max 1,881.
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7)	2,332	2,360	2,507	2,701.
8 U.S.C. 1324b(g)(2)(B)(iv)(I).	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii).	Min 481, Max 3,855.	Min 487, Max 3,901.	Min 517, Max 4,144.	Min 557, Max 4,465.
8 U.S.C. 1324b(g)(2)(B)(iv)(II).	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix).	Min 3,855, Max 9,639.	Min 3,901, Max 9,753.	Min 4,144, Max 10,360.	Min 4,465, Max 11,162.
8 U.S.C. 1324b(g)(2)(B)(iv)(III).	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x).	Min 5,783, Max 19,277.	Min 5,851, Max 19,505.	Min 6,215, Max 20,719.	Min 6,696, Max 22,324.
8 U.S.C. 1324b(g)(2)(B)(iv)(IV).	IRCA; Unfair immigration-related employment practices, unfair documentary practices (per individual discriminated against).	28 CFR 68.52(d)(1)(xii).	Min 193, Max 1,928.	Min 195, Max 1,951.	Min 207, Max 2,072.	Min 223, Max 2,232.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(i).	Min 481, Max 3,855.	Min 487, Max 3,901.	Min 517, Max 4,144.	Min 557, Max 4,465.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii).	Min 3,855, Max 9,639.	Min 3,901, Max 9,753.	Min 4,144, Max 10,360.	Min 4,465, Max 11,162.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 6/19/2020 ($)	DOJ penalty assessed after 12/13/2021 ($)	DOJ penalty assessed after 5/9/2022 FN1 ($)	DOJ penalty assessed after 1/30/2023 FN2 ($)
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii).	Min 407, Max 3,251.	Min 412, Max 3,289.	Min 438, Max 3,494.	Min 472, Max 3,765.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv).	Min 3,251, Max 8,128.	Min 3,289, Max 8,224.	Min 3,494, Max 8,736.	Min 3,765, Max 9,413.
FBI						
49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation).	.....	1,722	1,742	1,850	1,993.
Office of Justice Programs						
34 U.S.C. 10231(d)	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	28 CFR 20.25	29,755	30,107	31,980	34,457.

[1] The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation on May 9, 2022.

[2] All figures set forth in this table are maximum penalties, unless otherwise indicated.

[3] Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1) (2015). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. Id. section 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

[4] Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 44 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than $10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

[5] Section 216(b) of Title 18 provides that the civil penalty should be no more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b) (2015). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

[6] Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b) (2015). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. Id. section 2105(b). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

[7] The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2015). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

[8] Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or $10,000. 18 U.S.C. 1956(b)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

[9] Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (11) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than $250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than $250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C) (2015). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

[10] Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of $250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

[11] The SUPPORT for Patients and Communities Act, Public Law 115–221 was enacted Oct. 24, 2018.

Dated: January 23, 2023.

Hampton Y. Dellinger,

Assistant Attorney General, Office of Legal Policy.

[FR Doc. 2023–01704 Filed 1–27–23; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0087]

RIN 1625–AA00

Safety Zone; Chinese Harbor; Santa Cruz Island, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone for the navigable waters in Chinese Harbor of Santa Cruz Island, California. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by ongoing salvage operations relating to the grounding of a 60-foot fishing vessel in Chinese Harbor. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port Los Angeles—Long Beach (COTP), or their designated representative.

DATES: This rule is effective without actual notice from 12:01 a.m. through 11:59 p.m. on January 30, 2023. For the purposes of enforcement, actual notice will be used from January 23, 2023, until January 30, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2023–0087 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 357–1603, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ 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) because it is impracticable. This is an emergency response to a vessel grounding and immediate action is needed to respond to potential safety hazards associated with the emergency oil recovery and vessel salvage operations. It is impracticable to publish an NPRM because we must establish this safety zone by January 23, 2023.

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 ensure the safety of persons, vessels, and the marine environment in the vicinity of Chinese Harbor during emergency oil recovery and vessel salvage operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231) and 46 U.S.C. 70011(b)(3). The Captain of the Port Los Angeles—Long Beach (COTP) has determined that potential hazards associated with emergency oil recovery and vessel salvage operations will be a safety concern for anyone within a 2500-foot radius of the grounded fishing vessel in Chinese Harbor. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while oil recovery and vessel salvage operations take place in the vicinity of Chinese Harbor.

IV. Discussion of the Rule

This rule establishes a safety zone from January 23, 2023, through January 30, 2023. The safety zone will cover all navigable waters from the surface to the sea floor in and around Chinese Harbor from the location of the commercial fishing vessel SPERANZA MARIE (Official Number 643138), currently on the shoreline at 34°01.87′ N, 119°36.25′ W and extending out along a 2500-foot radius from the vessel. These coordinates are based on North American Datum of 1983. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or their designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or (310) 521–3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

Designated representative means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the COTP in the enforcement of the safety zone.

If the COTP determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, 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, duration, and time-of-year of the safety zone. This rule impacts an area of 2500-yards during for 07 days during the month of January 2023. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of Chinese Harbor, Santa Cruz Island, CA.

B. Impact on Small Entities

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

significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing an area extending 2500-feet out from a grounded vessel in vicinity of Chinese Harbor and will last only while salvage operations are ongoing. It is categorically excluded from further review under paragraph L60, in Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2. 2.

■ 2. Add § 165. T11–121 to read as follows:

§ 165. T11–121 Safety Zone; Chinese Harbor; Santa Cruz Island, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor in and around Chinese Harbor from the vessel SPERANZA MARIE, currently on the shoreline at 34°01.87′ N, 119°36.25′ W, and extending out along a 2500-foot radius from the vessel. These coordinates are based on North American Datum of 1983.

(b) *Definitions.* As used in this section, *Designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Los Angeles—Long Beach (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by hailing Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or calling at (310) 521–3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from January 23, 2023, through January 30, 2023. If the COTP determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

Dated: January 23, 2023.

K.L. Bernstein,

Captain, U.S. Coast Guard, Acting Captain of the Port Sector Los Angeles—Long Beach.

[FR Doc. 2023–01751 Filed 1–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0062]

Security Zone; Potomac River and Anacostia River, and Adjacent Waters; Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a security zone along the Potomac River and Anacostia River, and adjacent waters at Washington, DC, for activities associated with the U.S. President's State of the Union Address before a Joint Session of Congress. The zone will be enforced on February 7, 2023 through the early morning hours on February 8, 2023. This action is necessary to protect government officials, mitigate potential terrorist acts and incidents, and enhance public and maritime safety and security immediately before, during, and after this activity. During the enforcement period, entry into or remaining within the zone is prohibited unless authorized by the Captain of the Port or his designated representative.

DATES: The regulations in 33 CFR 165.508 will be enforced from 9 a.m. on February 7, 2023, until 2 a.m. on February 8, 2023, for the security zone locations identified in 33 CFR 165.508(a)(6).

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email BM1 Tyler Fink, U.S. Coast Guard Sector Maryland-National Capital Region (Waterways Management Division); telephone 410–576–2519, email *Tyler.C.Fink@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce regulations in 33 CFR 165.508 for the zone locations identified in paragraph (a)(6) from 9 a.m. on February 7, 2023, to 2 a.m. on February 8, 2023. This action is being taken to protect government officials, mitigate potential terrorist acts and incidents, and enhance public and maritime safety and security immediately before, during, and after this event. Our regulations for the Security Zone; Potomac River and Anacostia River, and adjacent waters; Washington, DC, § 165.508(a)(6), specifies the location for this security zone as an area that includes all navigable waters described in paragraphs (a)(1) through (3), which includes Zones 1, 2, and 3.

- Security Zone 1, paragraph (a)(1); all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by the Francis Scott Key (US–29) Bridge, at mile 113, and bounded to the south by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51′21.3″ N, 077°02′00.0″ W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, including the waters of the Boundary Channel, Pentagon Lagoon, Georgetown Channel Tidal Basin, and Roaches Run.
- Security Zone 2, paragraph (a)(2); all navigable waters of the Anacostia River, from shoreline to shoreline, bounded to the north by the John Philip Sousa (Pennsylvania Avenue) Bridge, at mile 2.9, and bounded to the south by a line drawn from the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50′52.4″ N, 077°01′10.9″ W, including the waters of the Washington Channel.
- Security Zone 3 paragraph (a)(3); all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51′21.3″ N, 077°02′00.0″ W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, thence southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50′52.4″ N, 077°01′10.9″ W, and bounded to the south by the Woodrow Wilson Memorial (I–95/I–495) Bridge, at mile 103.8.

During the enforcement period, as specified in § 165.508(b), entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. Public vessels and vessels already at berth at the time the security zone is implemented do not have to depart the security zone. All vessels underway within the security zone at the time it is implemented are to depart the zone at the time the security zone is implemented. To seek permission to transit the zone, the Captain of the Port Maryland-National Capital Region can be contacted at telephone number (410) 576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing this zone can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard may be assisted by other Federal, state or local law enforcement agencies in enforcing this regulation. If the Captain of the Port or his designated on-scene patrol personnel determines the security zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to suspend enforcement and grant general permission to enter the security zone.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, and marine information broadcasts.

David E. O'Connell,

Captain, U.S. Coast Guard,Captain of the Port Maryland-National Capital Region.

[FR Doc. 2023–01706 Filed 1–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

RIN 1801–AA25

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. This adjustment is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). These final regulations provide the 2023 annual inflation adjustments being made to the penalty amounts in the Department's final regulations published in the **Federal Register** on April 20, 2022 (2022 final rule).

DATES: These regulations are effective January 30, 2023. The adjusted CMPs established by these regulations are applicable only to civil penalties assessed after January 30, 2023, whose associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Rhondalyn Primes Okoroma, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6C150, Washington, DC 20202–2241. Telephone: (202) 453–

6444. Email: *rhondalyn.okoroma@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.

SUPPLEMENTARY INFORMATION:

Background

A CMP is defined in the Inflation Adjustment Act (28 U.S.C. 2461 note) as any penalty, fine, or other 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 provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to its CMPs in the **Federal Register** on April 20, 2022 (87 FR 23450), and those adjustments became effective on the date of publication.

The 2015 Act (section 701 of Pub. L. 114–74) amended the Inflation Adjustment Act to improve the effectiveness of CMPs and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI–U. Annual inflation adjustments are based on the percentage change between the October CPI–U preceding the date of each statutory adjustment, and the prior year's October CPI–U.[1] The Department published an IFR with the initial ''catch-up'' penalty adjustment amounts on August 1, 2016 (81 FR 50321).

In these final regulations, based on the CPI–U for the month of October 2022, not seasonally adjusted, we are annually adjusting each CMP amount by a multiplier for 2023 of 1.07745, as directed by the Office of Management and Budget (OMB) Memorandum No. M–23–05 issued on December 15, 2022.

[1] If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

The Department's Civil Monetary Penalties

The following analysis calculates new CMPs for penalty statutes in the order in which they appear in 34 CFR 36.2. The penalty amounts are being adjusted up based on the multiplier of 1.07745 provided in OMB Memorandum No. M–23–05.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) (section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)), as last set out in statute in 1998 (Pub. L. 105–244, title I, section 101(a), October 7, 1998, 112 Stat. 1602), is a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics. In the 2022 final rule, we increased this amount to $42,163.

New Regulations: The new penalty for this section is $45,429.

Reason: Using the multiplier of 1.07745 from OMB Memorandum No. M–23–05, the new penalty is calculated as follows: $42,163 × 1.07745 = $45,428.52, which makes the adjusted penalty $45,429, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1022d(a)(3).

Current Regulations: The CMP for 20 U.S.C. 1022d(a)(3) (section 205(a)(3) of the HEA), as last set out in statute in 2008 (Pub. L. 110–315, title II, section 201(2), August 14, 2008, 122 Stat. 3147), is a fine of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs. In the 2022 final rule, we increased this amount to $35,119.

New Regulations: The new penalty for this section is $37,839.

Reason: Using the multiplier of 1.07745 from OMB Memorandum No. M–23–05, the new penalty is calculated as follows: $35,119 × 1.07745 = $37,838.96, which makes the adjusted penalty $37,839, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) (section 432(g) of the HEA), as last set out in statute in 1986 (Pub. L. 99–498, title IV, section 402(a), October 17, 1986, 100 Stat. 1401), is a fine of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program. In the 2022 final rule, we increased this amount to $62,689.

New Regulations: The new penalty for this section is $67,544.

Reason: Using the multiplier of 1.07745 from OMB Memorandum No. M–23–05, the new penalty is calculated as follows: $62,689 × 1.07745 = $67,544.26, which makes the adjusted penalty $67,544, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) (section 487(c)(3)(B) of the HEA), as set out in statute in 1986 (Pub. L. 99–498, title IV, section 407(a), October 17, 1986, 100 Stat. 1488), is a fine of up to $25,000 for an IHE's violation of title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance. In the 2022 final rule, we increased this amount to $62,689.

New Regulations: The new penalty for this section is $67,544.

Reason: Using the multiplier of 1.07745 from OMB Memorandum No. M–23–05, the new penalty is calculated as follows: $62,689 × 1.07745 = $67,544.26, which makes the adjusted penalty $67,544, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: The CMP for 20 U.S.C. 1228c(c)(2)(E) (section 429 of the General Education Provisions Act), as set out in statute in 1994 (Pub. L. 103–382, title II, section 238, October 20, 1994, 108 Stat. 3918), is a fine of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents. In the 2022 final rule, we increased this amount to $1,850.

New Regulations: The new penalty for this section is $1,993.

Reason: Using the multiplier of 1.07745 from OMB Memorandum No. M–23–05, the new penalty is calculated as follows: $1,850 × 1.07745 = $1,993.28, which makes the adjusted penalty $1,993, when rounded to the nearest dollar.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989 (Pub. L. 101–121, title III, section 319(a)(1), October 23, 1989, 103 Stat. 750), are a fine of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the executive branch with respect to the award of Government grants and contracts. In the 2022 final rule, we increased these amounts to $22,021 to $220,213.

New Regulations: The new penalties for these sections are $23,727 to $237,268.

Reason: Using the multiplier of 1.07745 from OMB Memorandum No. M–23–05, the new minimum penalty is calculated as follows: $22,021 × 1.07745 = $23,726.52, which makes the adjusted penalty $23,727, when rounded to the nearest dollar. The new maximum penalty is calculated as follows: $220,213 × 1.07745 = $237,268.49, which makes the adjusted penalty $237,268, when rounded to the nearest dollar.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. L. 99–509, title VI, section 6103(a), Oct. 21, 1986, 100 Stat. 1937), are a fine of up to $5,000 for false claims and statements made to the Government. In the 2022 final rule, we increased this amount to $12,537.

New Regulations: The new penalty for this section is $13,508.

Reason: Using the multiplier of 1.07745 from OMB Memorandum No. M–23–05, the new penalty is calculated as follows: $12,537 × 1.07745 = $13,507.99, which makes the adjusted penalty $13,508 when rounded to the nearest dollar.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 the Executive order.

We have determined that these final regulations: (1) exclusively implement the annual adjustment; (2) are consistent with OMB Memorandum No. M–23–05; and (3) have an annual impact of less than $100 million. Therefore, based on OMB Memorandum No. M–23–05, this is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, 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 a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

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.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations as required by statute and in accordance with OMB Memorandum No. M–23–05. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2023 penalty amounts notwithstanding the requirements of 5 U.S.C. 553. Therefore, the requirements of 5 U.S.C. 553 for notice and comment and delaying the effective date of a final rule do not apply here.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2023 penalty amounts without publishing a general notice of proposed rulemaking.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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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.

List of Subjects

34 CFR Part 36

Claims, Fraud, Penalties.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 36 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

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

Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by § 701 of Pub. Law 114–74, unless otherwise noted.

■ 2. Section 36.2 is amended by revising the table to the section to read as follows:

§ 36.2 Penalty adjustment.

* * * * *

TABLE 1 TO § 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as set by Congress in 1998, of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics.	$45,429
20 U.S.C. 1022d(a)(3) (section 205(a)(3) of the HEA).	Provides for a fine, as set by Congress in 2008, of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	37,839
20 U.S.C. 1082(g) (section 432(g) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for violations by lenders and guaranty agencies of title IV of the HEA, which authorizes the Federal Family Education Loan Program.	67,544
20 U.S.C. 1094(c)(3)(B) (section 487(c)(3)(B) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for an IHE's violation of title IV of the HEA, which authorizes various programs of student financial assistance.	67,544
20 U.S.C. 1228c(c)(2)(E) (section 429 of the General Education Provisions Act).	Provides for a civil penalty, as set by Congress in 1994, of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents.	1,993
31 U.S.C. 1352(c)(1) and (c)(2)(A)	Provides for a civil penalty, as set by Congress in 1989, of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the executive branch with respect to the award of Government grants and contracts.	23,727 to 237,268
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty, as set by Congress in 1986, of up to $5,000 for false claims and statements made to the Government.	13,508

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 continues to read in part as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

* * * * *

§ 668.84 [Amended]

■ 4. Section 668.84 is amended in paragraph (a)(1) introductory text by removing the number ''$62,689'' and adding, in its place, the number ''$67,544''.

[FR Doc. 2023–01596 Filed 1–27–23; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2021–0949; FRL–9532–03–R5]

Air Plan Approval; Ohio; Redesignation of the Ohio portion of the Cincinnati, Ohio-Kentucky Area to Attainment of the 2015 Ozone Standard; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in a table posted in the June 9, 2022, rule redesignating the Ohio portion of the Cincinnati, Ohio-Kentucky area to attainment of the 2015 ozone National Ambient Air Quality Standard (NAAQS). The table contained motor vehicle emissions budgets (Budgets) for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) for the Ohio portion of the Cincinnati OH–KY area. The Budgets table in that action conflicts with the Budgets submitted by Ohio and set forth in the proposed rule. Therefore, EPA is correcting the erroneous table.

DATES: This correction is effective on January 30, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2021–0949. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility 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. We recommend that you telephone Olivia Davidson, Environmental Scientist, at (312) 886–0266 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0266, *davidson.olivia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a final rule redesignating the Ohio portion of the Cincinnati area to attainment of the 2015 ozone NAAQS on June 9, 2022 (87 FR 35104). That rule also approved VOC and NO_X Budgets for the Ohio portion of the Cincinnati area for transportation conformity purposes. In that rule, EPA erroneously identified the 2015 ozone Budgets as 14.15 and 10.58 tons per day (tpd) for NO_X in 2026 and 2035, respectively, and 25.30 and 18.98 tpd for VOC in 2026 and 2035, respectively. The table in that action conflicts with the Budgets submitted by Ohio and set forth in the proposed rule. The Budgets submitted by Ohio are 14.15 and 10.58 tpd for VOC in 2026 and 2035, and 25.30 and 18.98 tpd in 2026 and 2035 for NO_X. Therefore, the table is being revised to reflect the correct Budgets.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

This action is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders (E.O.s) 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by E.O. 13132 (64 FR 43255, August 10, 1999). In addition, the State Implementation Plan (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 E.O. 13175 (65 FR 67249, November 9, 2000). This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action is also not subject to E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The action also does not involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994).

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of January 30, 2023. This correction to 40 CFR 52 for Ohio is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Correction

In FR Doc. 2022–12318, published in the **Federal Register** on June 9, 2022 (87 FR 35104), on page 35108, in first column, the table entitled ''**TABLE 2—2026 AND 2035 BUDGETS FOR THE OHIO PORTION FOR THE 2015 OZONE NAAQS MAINTENANCE AREA** [Tons per summer day, TPSD]'' is corrected to read:

TABLE 2—2026 AND 2035 BUDGETS FOR THE OHIO PORTION FOR THE 2015 OZONE NAAQS MAINTENANCE AREA

[Tons per summer day, TPSD]

Pollutant	2026 Budget	2035 Budget
NO_X	25.30	18.98
VOC	14.15	10.58

Dated: January 19, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–01505 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2020–0588; FRL–8582–03–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (21–1.5e); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of Friday, December 2, 2022, concerning significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs) and a Microbial Commercial Activity Notice (MCAN). This document corrects a typographical error in the

regulatory text for the chemical substance generically identified as hindered amine alkyl ester compounds (PMN P–16–167).

DATES: This correction is effective January 31, 2023.

FOR FURTHER INFORMATION CONTACT: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–25807 appearing on page 73941 in the **Federal Register** of Friday, December 2, 2022 (87 FR 73941; FRL–8582–01–OCSPP), the following correction is made to fix an inadvertent omission to designate paragraph (a)(1) in the regulatory text for the chemical substance generically identified as hindered amine alkyl ester compounds (PMN P–16–167) that is codified in 40 CFR 721.11571.

Federal Register Correction

§ 721.11571 [Corrected]

■ Effective January 31, 2023, in FR Doc. 2022–25807, on page 73947 in the **Federal Register** of Friday, December 2, 2022, in the second column, in amendatory instruction 4, § 721.11571 is corrected by designating the text following the paragraph (a) heading as paragraph (a)(1).

Dated: January 20, 2023.

Mark Hartman,

Deputy Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–01503 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

[Docket No. DOI–2022–0010; 223D0102DM; DS68200000; DMSN00000.000000; DX68201DAGENLAM]

RIN 1094–AA56

Practices Before the Department of the Interior

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Direct final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending department regulations to provide parties to a hearing or appeal the option of sending and receiving documents electronically; to specifically recognize the OHA Director's authority to issue Standing Orders to provide procedural information to parties and the public; and to make clear that OHA will communicate information on how and where to file and serve documents through OHA Standing Orders issued by the Director and posted on OHA's Department of the Interior website. This rule removes specific office addresses, some outdated, from the regulatory text and provides for up-to-date contact information to be provided in OHA Standing Orders on Contact Information. This rule further provides that OHA may issue Standing Orders to provide procedural information in an emergency or to address an immediate need, such as an office closure, natural disaster or other unanticipated event. This rule, and the associated Standing Orders, would not add to, change, or diminish any substantive rights of any parties or the public.

DATES: This rule is effective on March 16, 2023 without further notice, unless OHA receives significant adverse written comment by March 1, 2023 on the amendments. If significant adverse comments are received on the amendments, OHA will publish a timely withdrawal in the **Federal Register** clarifying which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: You may send comments, identified by Docket No. DOI–2022–0010 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* Office of Hearings and Appeals, 801 North Quincy Avenue, Suite 300, Arlington, VA 22203.
- *Hand/Courier Delivery:* Office of Hearings and Appeals, 801 North Quincy Avenue, Suite 300, Arlington, VA 22203. OHA's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include Docket No. DOI–2022–0010 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Rachel Lukens, Counsel to the Director, Office of Hearings and Appeals, *DIR@oha.doi.gov,* (703) 235–3810. 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: OHA is modernizing its practice and improving services to the parties who appear before OHA and the public. OHA is issuing this rule to update its regulations in 43 CFR part 4 to provide the option to send and receive documents electronically, obtain up-to-date contact information and procedural information through the use of Standing Orders, and to remove outdated or unnecessary references in the existing regulations. These revisions do not impose new obligations on parties or the public. For example, parties may still submit paper documents but will have the option under the revised regulations to submit documents electronically.

Because the rule does not diminish any substantive rights or require parties to alter their current procedural practices, we are publishing this rule without a prior proposal because of its noncontroversial nature. Nonetheless, this rule will not become effective until the date specified in **DATES** so that we may receive public comment on the rule. If we receive significant adverse comments by the comment due date specified in **DATES**, we will publish a document in the **Federal Register** withdrawing the rule, in whole or in part, before the rule goes into effect. Significant adverse comments are comments that provide strong justification as to why our rule should not be adopted or why it should be changed.

The backdrop for this Direct Final Rule is OHA's interest in providing electronic transmission options as an improved service as well as establishing how it will communicate new processes as they are developed. In March 2020, at the onset of the COVID–19 pandemic, OHA reviewed its options to use existing technology to quickly meet the needs of parties, the public, and its employees and posted this information on the OHA website. OHA offered, where possible, the option of using electronic mail to transmit documents to certain OHA units, allowing many cases to proceed without the need for trips to the office or post office. This was intended to serve as a limited short-term solution since electronic mail restricts the size of the files that may be transmitted and because OHA's regulations, in some subparts, utilized terms, such as references to paper, that potentially limited OHA's ability to offer an electronic transmission option.

As a long-term solution, OHA has acquired a comprehensive electronic filing and case docket management system and is presently working on its development and deployment. To accompany this effort, this rule removes potential regulatory constraints to fully offering electronic transmission options by providing for consistent language describing the available options to file, serve, and receive documents electronically under specified conditions. The rule does not remove paper or mail transmission options but using terms that are more inclusive to provide for the added option of electronic transmission.

OHA also considered how best to provide parties and the public with procedural information on how to file, serve, and transmit documents electronically, as well as provide them with other information such as up-to-date office addresses. Fixing in regulation this type of information creates potential problems for parties because the information can quickly become outdated. To address this problem, consistent with existing practice, OHA decided to use Standing Orders issued by the Director of OHA as the mechanism for communicating up-to-date information to the parties and the public. Using Standing Orders rather than some other type of guidance aligns with how OHA communicates to interested individuals or parties in an administrative adjudicative setting. A Standing Order issued by the OHA Director applies to all cases or appeals filed with OHA, and it is issued under the Director's authority to issue general notices pertaining to the functions assigned to OHA under 212 Departmental Manual (DM) 13.7. This rule amends the current regulations in 43 CFR part 4 to explicitly recognize the Director's authority to issue Standing Orders.

Standing Orders on Electronic Transmission will provide the options and procedures for electronic transmission of documents and will be updated as procedures under the electronic filing system are deployed, improved, and potentially expanded. Standing Orders on Contact Information will provide the contact information for Department offices that the rule removes from the regulatory text (some of which is outdated). By providing this information in a Standing Order, if an office moves to a new location or its contact information otherwise changes, updates may be made without the need to promulgate new regulations. And finally, if OHA has an emergency or immediate need, such as an unexpected closure of an office, the rule allows the OHA Director to issue Standing Orders to communicate to parties who have a pending appeal or a scheduled hearing or those members of the public seeking an appeal or hearing what processes are being used to address the particular situation. The OHA Director may issue more than one Standing Order on a topic.

The use of OHA Standing Orders will provide parties and the public with up-to-date information that is easily referenced and in a format that may be sent individually or as an attachment, in paper or electronically, when needed. OHA would otherwise post this information on the website directly.

This rule makes other miscellaneous corrections, such as revising outdated references, such as those to ''Examiners'' who no longer exist in the context of the regulation, and to the ''Board of Contract Appeals,'' which was abolished by Congress, effective January 6, 2007, with its functions transferred to a new Civilian Board of Contract Appeals (CBCA) within the General Services Administration. The rule corrects several inaccurate references. OHA is taking this action under its authority, at 5 U.S.C. 552, to publish regulations in the **Federal Register**.

Below are tables summarizing various changes:

OHA Standing Orders

Existing	Proposed language	Sections affected
None	Adds that the Director may issue OHA Standing Orders, to be available on the Department of the Interior OHA website.	§ 4.5(b).

Contact Information

Existing language	Proposed language	Sections affected
Indicates that Part 2 includes a list of field offices	Deletes reference to a list of field offices since Part 2 has been updated to refer to the FOIA website; Adds reference to the OHA Standing Orders on Contact Information.	§ 4.4.
Refers to addresses, city, or state	Removes address, city or state In some cases, specifically references the OHA Standing Orders on Contact Information.	§ 4.321, § 4.332, § 4.356, § 4.413, § 4.400, § 4.472, § 4.909, § 4.1107, § 4.1109, § 4.1129, § 4.1150, § 4.1161, § 4.1182, § 4.1190, § 4.1191, § 4.1200, § 4.1202, § 4.1203, § 4.1262, § 4.1303, § 4.1266, § 4.1271, § 4.1282, § 4.1283, § 4.1301, § 4.1352, § 4.1362, § 4.1367, § 4.1371, § 4.1376, § 4.1381, § 4.1386, § 4.1391, § 4.1604.

Electronic Transmission

Existing	Proposed language	Sections affected
None	New paragraph or language or cross reference concerning option for the Electronic Transmission of Documents.	§ 4.5(b), § 4.22(g), § 4.310 (b), § 4.310 (f), § 4.323(d), § 4.324(c)(4), § 4.333(b), § 4.401(c)(4); (d)(1), § 4.401(e), § 4.413(h), § 4.422(e), § 4.477, § 4.620(b), § 4.701, § 4.703(b), § 4.813(d), § 4.909(b)(1), § 4.909(g), § 4.1011(e), § 4.1012(e), § 4.1013(c), § 4.1107(a) § 4.1107(c), § 4.1107(f), § 4.1107(g), § 4.1107(h), § 4.1109(b), § 4.1109(c), § 4.1114(c).
Refers to ''Paper''	Replaces with ''document''	§ 4.22 § 4.24, § 4.450–4, § 4.450–6, § 4.480(a).

ELECTRONIC TRANSMISSION—Continued

Existing	Proposed language	Sections affected
Utilize terms ''compact disc'', ''facsimile'', ''telefax'', ''telegraphic''.	Replaces with term ''electronic transmission''	§ 4.401, § 4.909, § 4.1012, § 4.422, § 4.1114.

REMOVING OTHER OUTDATED OR INCORRECT REFERENCES AND CORRECTIONS

Existing language	Proposed language	Sections affected
Refers to ''Contract Board of Appeals''	Removes that reference as Contract Board Appeals no longer exists.	§ 4.5, § 4.602.
Refers to ''Examiner''	Replaces with Administrative Law Judge as Examiners are no longer used.	§ 4.26, § 4.432.
Outdated reference to ''Bureau of Ocean Energy Management, Regulation and Enforcement'' or makes no reference.	Replaces with references to the ''Bureau of Ocean Energy Management'' and the ''Bureau of Safety and Environmental Enforcement'', which were created since the regulations were promulgated.	§ 4.400.
Reference to § 4.410(b)	Corrects reference to § 4.410(e), (b) was redesignated as (e) in 2003.	§ 4.412.

Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

Executive Order (E.O.) 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 has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It does not add to, change, or diminish any substantive rights of any parties or the public. It provides parties to OHA proceedings the option to file documents electronically, removes outdated information and references, and authorizes the use of OHA Standing Orders as the means of communicating current information on contract information, electronic filing, and other procedural matters. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does 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.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. 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.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation under 43 CFR 46.210(i). We have also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation (Plain Language)

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish 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 by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

You may submit your comments and materials regarding this direct final rule by one of the methods listed in **ADDRESSES**. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you include with your comment.

Comments and materials we receive will be available for public inspection on the internet at *https://www.regulations.gov.* However, the comment will not be publicly viewable until we post it, which might not be immediate (see **FOR FURTHER INFORMATION CONTACT**).

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.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Claims, Equal access to justice.

Regulation Promulgation

For the reasons stated in the preamble, the Department of the Interior, Office of Hearings and Appeals, amends Part 4 in title 43 of the Code of Federal Regulations to read as follows:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

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

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9.

■ 2. In § 4.4, revise the second sentence to read as follows:

§ 4.4 Public records; locations of field offices.

* * * Contact information for offices referenced in part 4 is available in the OHA Standing Orders on Contact Information on the Department of the Interior OHA website.

■ 3. In § 4.5:

■ a. In paragraph (a) introductory text, remove the word ''him'' and add in its place ''the Secretary''.

■ b. In paragraph (a)(1), remove the phrase '', except a case before the Board of Contract Appeals which is subject to the Contract Disputes Act of 1978'';

■ c. In paragraph (a)(2), remove the phrase '', except a decision by the Board of Contract Appeals which is subject to the Contract Disputes Act of 1978''; and

■ d. Revise paragraph (b).

The revision reads as follows:

§ 4.5 Power of the Secretary and Director.

* * * * *

(b) Pursuant to his delegated authority from the Secretary, the Director may assume jurisdiction of any case before any board of the Office or review any decision of any board of the Office or direct reconsideration of any decision by any board of the Office. The Director may issue Standing Orders to convey current information to parties and the public. This includes, but is not limited to, the OHA Standing Orders on Contact Information and the OHA Standing Orders on Electronic Transmission to convey information related to electronic transmission, including filing and service. OHA Standing Orders may be issued related to emergency or other contingency. OHA Standing Orders are available on the Department of the Interior OHA website.

* * * * *

■ 4. In § 4.22:

■ a. Revise the section heading;

■ b. In paragraph (c), in the first sentence remove the word ''papers,''; and

■ c. Add paragraph (g).

The revision and addition read as follows:

§ 4.22 Documents; filing and service.

* * * * *

(g) *Electronic transmission of documents.* A document may be electronically transmitted under the terms of specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission, if that person or party has consented to such means.

§ 4.24 [Amended]

■ 5. In § 4.24, in paragraph (a)(1), remove the word ''papers'' and add in its place the word ''documents''.

§ 4.26 [Amended]

■ 6. In § 4.26, in paragraph (b), remove the word ''examiner'' and add in its place ''administrative law judge''.

§ 4.30 [Amended]

■ 7. In § 4.30, remove the words ''which he considers to be'' and add in their place ''considered''.

■ 8. In § 4.31, revise paragraph (c)(2) to read as follows:

§ 4.31 Request for limiting disclosure of confidential information.

* * * * *

(c) * * *

(2) Not to retain in any format, and to return all physical copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

* * * * *

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

■ 9. In § 4.201, add a definition in alphabetical order for ''OHA'' to read as follows:

§ 4.201 Definitions.

* * * * *

OHA means Office of Hearings and Appeals, Department of the Interior.

* * * * *

■ 10. In § 4.310:

■ a. Revise paragraph (a)(1);

■ b. Revise the heading of paragraph (b) and paragraph (b) introductory text;

■ c. Add paragraph (f).

The revisions and addition read as follows:

§ 4.310 Documents.

(a) * * *

(1) For most documents, the date of mailing, the date of personal delivery, or the date of electronic transmission to the Board in accordance with paragraph (f); or

* * * * *

(b) *Serving notices of appeal and other documents.* Any party filing a notice of appeal or other document before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery, mailing, or electronic transmission in accordance with paragraph (f).

* * * * *

(f) *Electronic transmission of documents.* A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission, if that person or party has consented to such means.

§ 4.321 [Amended]

■ 11. In § 4.321:

■ a. In paragraph (a), remove the words ''we have'' and add in their place ''the judge has'' and remove the word ''judge's''.

■ b. In paragraph (b), remove the phrase '', Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203''.

■ 12. In § 4.323, add paragraph (d) to read as follows:

§ 4.323 Who receives service of the notice of appeal?

* * * * *

(d) A notice of appeal may be electronically filed or served in accordance with § 4.310(f).

§ 4.324 [Amended]

■ 13. In § 4.324, in paragraph (c)(4), add the words '', electronic transmission in accordance with § 4.310(f),'' after ''certified mail''.

§ 4.333 [Amended]

■ 14. In § 4.333, in paragraph (b), add the words, ''or electronic transmission in accordance with § 4.310(f)'' after ''mailing''.

§ 4.356 [Amended]

■ 15. In § 4.356, in paragraph (a), remove the phrase, ''(address: Board of Indian Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203)''.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

■ 16. In § 4.400:

■ a. In the definition of ''Board,'' remove ''in the Office of Hearings and Appeals. The address of the Board is 801 N Quincy Street, Suite 300, Arlington, Virginia 22203. The telephone number is 703–235–3750, and the facsimile number is 703–235–8349''.

■ b. Remove the definition of ''BOEMRE'';

■ c. Add definitions in alphabetical order for ''BOEM'' and ''BSEE''; and

■ d. In the definition of ''Bureau or Office'', remove ''BOEMRE,'' and add in its place, ''BOEM, BSEE''.

The additions read as follows:

§ 4.400 Definitions.

* * * * *

BOEM means the Bureau of Ocean Energy Management.

BSEE means the Bureau of Safety and Environmental Enforcement.

* * * * *

■ 17. In § 4.401:

■ a. Revise the section heading;

■ b. In paragraphs (c)(4)(i)(D) and (c)(4)(ii)(D), remove the words '', means such as electronic mail or facsimile,'' wherever they appear and add in their place ''transmission'';

■ c. In paragraph (c)(6)(iii), remove the word ''means'' and add in its place ''transmission'';

■ d. In paragraph (d)(1) introductory text, add a sentence at the end of the paragraph; and

■ e. Add paragraph (e).

The revision and additions read as follows:

§ 4.401 Documents; filing and service.

* * * * *

(d) * * *

(1) * * * A document filed with the Board by electronic transmission in a case must also comply with the requirements established in the OHA Standing Orders on Electronic Transmission, and the following requirements apply to any pleading, motion, brief, or other document filed in a case under this subpart, other than an exhibit of the administrative record.

(e) *Electronic transmission of documents.* A document may be electronically transmitted under the terms specified in of OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission, if that person or party has consented to such means.

§ 4.412 [Amended]

■ 18. In § 4.412, in paragraph (b), remove ''§ 4.410(b)'' and add in its place ''§ 4.410(e)''.

■ 19. In § 4.413, revise paragraphs (c) through (e) to read as follows:

§ 4.413 Service of notice of appeal.

* * * * *

(c) The appellant must serve a copy of the notice of appeal on the Office of the Solicitor as identified in OHA Standing Orders on Contact Information.

(d) This paragraph (d) applies to any appeal taken from a decision of a BLM State Office, including all District, Field, and Area Offices within that State Office's jurisdiction. The appellant must serve documents on the Office of the Solicitor as identified in the OHA Standing Orders on Contact Information.

(e) A notice of appeal may be electronically filed or served in accordance with § 4.401(e).

* * * * *

■ 20. In § 4.422:

■ a. Revise the section heading;

■ b. In paragraph (c)(4), remove the words ''means, such as electronic mail or facsimile'' wherever they appear and add in their place ''transmission'';

■ c. In paragraph (c)(6), remove the word ''means'' and add in its place ''transmission''; and

■ d. Add paragraph (e).

The revision and addition read as follows:

§ 4.422 Documents; filing and service.

* * * * *

(e) *Electronic transmission of documents.* A document may be electronically transmitted under the terms of the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission if that person or party has consented to such means.

§ 4.432 [Amended]

■ 21. In § 4.432, in paragraph (b), remove the word ''examiner'' and add in its place ''administrative law judge''.

§ 4.450–4 [Amended]

■ 22. In § 4.450–4, in paragraph (a)(8), remove the word ''papers'' and add in its place the word ''documents''.

§ 4.450–6 [Amended]

■ 23. In § 4.450–6, remove the word ''papers'' and add in its place the word ''documents''.

§ 4.472 [Amended]

■ 24. In § 4.472, in paragraph (a), remove the phrase '', Salt Lake City, Utah''.

§ 4.477 [Amended]

■ 25. In § 4.477, in the last sentence, add the words ''or by electronic transmission if the parties consented to such means under the terms of OHA Standing Orders on Electronic Transmission'' after ''to all the parties''.

§ 4.480 [Amended]

■ 26. In § 4.480, in paragraph (a), remove the word ''papers'' and add in its place the word ''documents''.

Subpart F—Implementation of Equal Access to Justice Act in Agency Proceedings

§ 4.602 [Amended]

■ 27. In § 4.602, in the definition of ''Adversary adjudication,'' remove paragraph (2) and redesignate paragraphs (3) and (4) as paragraphs (2) and (3).

■ 28. In § 4.620, designate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 4.620 How must I file and serve documents?

* * * * *

(b) A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission if that person or party has consented to such means.

Subpart G—Special Rules Applicable to Other Appeals and Hearings

§ 4.701 [Amended]

■ 29. In § 4.701, add the words ''or electronically transmit under the terms of OHA Standing Orders'' before the words ''copy of the notice of appeal''.

■ 30. In § 4.703, revise the section heading, designate the existing text as paragraph (a), and add paragraph (b).

The revision and addition read as follows:

§ 4.703 Documents; filing and service.

* * * * *

(b) A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmission issued by the Director. When done in accordance with the Standing Orders, a document may be:

(1) Filed by electronic transmission; and

(2) Served on or transmitted to a person or party by electronic transmission if that person or party has consented to such means.

Subpart I—Special Procedural Rules Applicable to Practice and Procedure for Hearings, Decisions, and Administrative Review Under Part 17 of This Title—Nondiscrimination in Federally Assisted Programs of the Department of the Interior—Effectuation of Title VI of the Civil Rights Act of 1964

■ 31. In § 4.813, add paragraph (d) to read as follows:

§ 4.813 Filing and service.

* * * * *

(d) A document may be electronically transmitted under the terms specified in § 4.22, subpart B.

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties

■ 32. In § 4.903, add a definition in alphabetical order for ''OHA'' to read as follows:

§ 4.903 Definitions.

* * * * *

OHA means Office of Hearings and Appeals, Department of the Interior.

* * * * *

■ 33. In § 4.909:

■ a. In paragraph (b)(1):

■ i. Remove the words ''801 North Quincy Street, Arlington, Virginia 22203'';

■ ii. Remove the words ''telefax to (703) 235–8349'' and add in their place ''electronic transmission under the terms of OHA Standing Orders on Electronic Transmission''; and

■ b. Add paragraph (g).

The addition reads as follows:

§ 4.909 How do I request an extension of time?

* * * * *

(g) A document may be electronically transmitted under the terms specified in the OHA Standing Orders on Electronic Transmissions.

Subpart K—Hearing Process Concerning Acknowledgment of American Indian Tribes

■ 34. In § 4.1001, add a definition in alphabetical order for ''OHA'' to read as follows:

§ 4.1001 What terms are used in this subpart?

* * * * *

OHA means Office of Hearings and Appeals, Department of the Interior.

* * * * *

■ 35. In § 4.1012:

■ a. In paragraph (a), revise the second sentence;

■ b. In paragraph (b)(1)(ii), remove the word ''or'';

■ c. In paragraph (b)(2), add the phrase ''made under paragraphs (b)(1)(i) through (iii) of this section'' after ''any filing'' and remove the words ''on compact disc''; and

■ d. Add paragraph (e).

The revision and addition read as follows:

§ 4.1012 Where and how must documents be filed?

(a) * * * DCHD's contact information is identified in the OHA Standing Orders on Contact Information.

* * * * *

(e) A document may be electronically transmitted under the terms specified in OHA Standing Orders on Electronic Transmission.

■ 36. In § 4.1013:

■ a. In paragraph (c)(3)(iii), remove the period and add ''; or'' its place; and

■ b. Add paragraph (c)(4).

The addition reads as follows:

§ 4.1013 How must documents be served?

* * * * *

(c) * * *

(4) By transmitting the document electronically if there is electronic

confirmation that the transmission was successful and if under the terms specified in OHA Standing Orders.

* * * * *

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

■ 37. In § 4.1100:

■ a. Remove the paragraph designations; and

■ b. Add in alphabetical order a definition for ''Hearings Division''.

The addition reads as follows:

§ 4.1100 Definitions.

* * * * *

Hearings Division means the Departmental Cases Hearings Division, Office of Hearings and Appeals.

* * * * *

■ 38. In § 4.1107 revise paragraphs (a), (c), (d), (f), (g), and (h) to read as follows:

§ 4.1107 Filing of documents.

(a) Any initial pleadings in a proceeding to be conducted or being conducted by an administrative law judge under these rules shall be filed with the Hearings Division by hand or by mail under the terms specified in the Standing Orders on Contact Information or by electronic transmission under the terms specified in OHA Standing Orders on Electronic Transmission.

* * * * *

(c) Any notice of appeal, petition for review or other documents in a proceeding to be conducted or being conducted by the Board shall be filed with the Board of Land Appeals by hand or by mail under the terms specified in the OHA Standing Orders on Contact Information or by electronic transmission under the terms specified in OHA Standing Orders on Electronic Transmission.

(d) Any person filing initial pleadings with the Hearings Division or a notice of appeal with the Board by hand or by mail shall furnish an original and one copy. Any person filing other documents with OHA by hand or by mail shall furnish only an original.

* * * * *

(f) The effective filing date for documents initiating proceedings before the Hearings Division, OHA, Arlington, VA, shall be the date of receipt in that office, if filed by hand, or the date such document is postmarked, if filed by mail, or the date of electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission.

(g) The effective filing date for a notice of appeal or a petition for discretionary review filed with the Board shall be the date of mailing or the date of personal delivery or the date of electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission, except the effective filing date for a notice of appeal from a decision in an expedited review of a cessation order proceeding or from a decision in a suspension or revocation proceeding shall be the date of receipt of the document by the Board. The burden of establishing the date of mailing shall be on the person filing the document.

(h) The effective filing date for all other documents filed with an administrative law judge or with the Board shall be the date of mailing or personal delivery or electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission. The burden of establishing the date of mailing shall be on the person filing the document.

■ 39. In § 4.1109 revise paragraphs (a)(2), (b), and (c) to read as follows:

§ 4.1109 Service.

(a) * * *

(2) The jurisdictions, addresses, and telephone numbers of the applicable officers of the Office of the Solicitor to be served under paragraph (a)(1) of this section are identified in the OHA Standing Orders on Contact Information.

* * * * *

(b) Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested, or by electronic transmission under the terms of the OHA Standing Orders on Electronic Transmission. All subsequent documents shall be served personally or by first class mail or by electronic transmission under the terms of the OHA Standing Orders on Electronic Transmission.

(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail, upon receipt, or, if service is made by electronic transmission, at the time of transmission.

* * * * *

■ 40. In § 4.1114, revise paragraph (c) to read as follows:

§ 4.1114 Advancement of proceedings.

* * * * *

(c) Service of a motion under this section shall be accomplished by personal delivery or telephonic communication followed by mail or by electronic transmission under the terms specified in the OHA Standing Orders on Electronic Transmission. Service is complete upon mailing or, if service is made by electronic transmission, at the time of transmission.

* * * * *

§ 4.1129 [Amended]

■ 41. In § 4.1129, remove '', Arlington, Va''.

§ 4.1150 [Amended]

■ 42. In § 4.1161, remove the phrase '', 801 North Quincy Street, Arlington, Va. 22203''.

§ 4.1161 [Amended]

■ 43. In § 4.1161, remove the phrase '', 801 North Quincy Street, Arlington, Va. 22203''.

§ 4.1182 [Amended]

■ 44. In § 4.1182, remove the phrase '', 801 North Quincy Street, OHA, Arlington, Va. 22203''.

§ 4.1190 [Amended]

■ 45. In § 4.1190, in paragraph (a), remove the phrase ''801 N Quincy Street, Suite 300, Arlington, VA 22203,''.

§ 4.1191 [Amended]

■ 46. In § 4.1191, remove '', Arlington, Va''.

§ 4.1200 [Amended]

■ 47. In § 4.1200, in paragraph (a), remove the phrase '', 801 N Quincy Street, Suite 300, Arlington, VA 22203'' and remove the phrase '', Arlington, VA,''.

§ 4.1202 [Amended]

■ 48. In § 4.1202, in paragraph (a), remove '', Arlington, Va.,''.

§ 4.1203 [Amended]

■ 49. In § 4.1203, in paragraph (b), remove '', Arlington, Va''.

§ 4.1262 [Amended]

■ 50. In § 4.1262, remove the words ''801 N Quincy Street, Suite 300, Arlington, Va. 22203,''.

§ 4.1266 [Amended]

■ 51. In § 4.1266:

■ a. In paragraph (b)(1), remove the words ''§ 4.1109'' and add in their place, ''the OHA Standing Orders on Contact Information'';

■ b. In paragraph (b)(2) introductory text:

■ i. Remove the word ''telephone'' before the word ''notice'' in the first and second sentence;

■ ii. In the second sentence, remove the words ''telephone number'' and add in their place ''contact information'';

■ iii. Remove the phrase ''OSM's'' and add in its place, ''OSMRE's' field offices' contact information is provided in the OHA Standing Orders on Contact Information'';

■ iv. Remove the list of undesignated field offices following paragraph (b)(2); and

■ c. In paragraph (b)(3), remove ''OHA'' and add in its place ''the Hearings Division''.

§ 4.1282 [Amended]

■ 52. In § 4.1282, in paragraph (a), remove the words ''801 N Quincy Street, Arlington, Va. 22203,''.

§ 4.1301 [Amended]

■ 53. In § 4.1301, remove '', 801 North Quincy Street, Arlington, Virginia 22203. Phone: 703–235–3800'.

§ 4.1352 [Amended]

■ 54. In § 4.1352, in paragraph (b), remove ''801 N Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800),''.

§ 4.1362 [Amended]

■ 55. In § 4.1362, in paragraph (a), remove '', 801 North Quincy Street, Arlington, Virginia 22203 (phone 703–235–3800),''.

§ 4.1367 [Amended]

■ 56. In § 4.1367, in paragraph (b), remove '', 801 North Quincy Street, Arlington, Virginia 22203 (phone 703–235–3800),''.

§ 4.1371 [Amended]

■ 57. In § 4.1371, in paragraph (a), remove '', 801 N Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800)''.

§ 4.1376 [Amended]

■ 58. In § 4.1376, in paragraph (b), remove '', 801 North Quincy Street, Arlington, Virginia 22203 (Telephone 703–235–3800)''.

§ 4.1381 [Amended]

■ 59. In § 4.1381, in paragraph (a), remove '', 801 N Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800)''.

§ 4.1386 [Amended]

■ 60. In § 4.1386, in paragraph (b), remove '', 801 North Quincy Street, Arlington, Virginia 22203 (Telephone 703–235–3800)''.

§ 4.1391 [Amended]

■ 61. In § 4.1391, in paragraph (a), remove '', 801 N Quincy Street, Suite 300, Arlington, VA 22203 (telephone 703–235–3800)''.

Subpart M—Special Procedural Rules Applicable to Appeals of Decisions Made Under OMB Circular A–76

§ 4.1604 [Amended]

■ 62. In § 4.1604 remove the phrase '', 801 N Quincy Street, Arlington, VA 22203''.

This action is taken pursuant to delegated authority.

Joan M. Mooney,

Principal Deputy Assistant Secretary Policy, Management and Budget.

[FR Doc. 2023–00990 Filed 1–27–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 11

[Docket No. FWS–HQ–LE–2022–0176; FF09L00200–FX–LE12200900000]

RIN 1018–BG74

Civil Penalties; 2023 Inflation Adjustments for Civil Monetary Penalties

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is issuing this final rule, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and Office of Management and Budget (OMB) guidance, to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. We are required to adjust civil monetary penalties annually for inflation according to a formula specified in the Inflation Adjustment Act. This rule replaces the previously issued amounts with the updated amounts after using the 2023 inflation adjustment multiplier provided in the OMB guidance.

DATES: This rule is effective January 30, 2023.

ADDRESSES: This rule may be found on the internet at *https://www.regulations.gov* in Docket No. FWS–HQ–LE–2022–0176.

FOR FURTHER INFORMATION CONTACT: Douglas Ault, Special Agent in Charge, Headquarters Investigations Unit, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358–2290. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The regulations in title 50 of the Code of Federal Regulations at 50 CFR part 11 provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114–74) (Inflation Adjustment Act) required Federal agencies to adjust the level of civil monetary penalties with an initial ''catch up'' adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties (civil penalties) that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provided that the initial ''catch up adjustment'' take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the date specified above in **DATES**.

On June 28, 2016, the Service published in the **Federal Register** an interim rule that revised 50 CFR part 11 (81 FR 41862) to carry out the Inflation Adjustment Act. The Service subsequently published a final rule to that interim rule on December 23, 2016 (81 FR 94274). The Service has published final rules every year thereafter, further adjusting the civil penalty amounts in 50 CFR 11.33 per OMB guidance:

- 82 FR 6307, January 19, 2017;
- 83 FR 5950, February 12, 2018;
- 84 FR 15525, April 16, 2019;

- 85 FR 10310, February 24, 2020;
- 86 FR 15427, March 23, 2021; and
- 87 FR 13948, March 11, 2022.

This final rule adjusts the civil monetary penalty amounts that were listed in the 2022 final rule and subsequently codified at 50 CFR 11.33 by using the 2023 inflation multiplier provided to all Federal agencies by OMB (see below).

OMB issued a memorandum, M–23–05, entitled ''Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' which provides the cost-of-living adjustment multiplier for 2023: 1.07745. Therefore, we multiplied each penalty in the table in 50 CFR 11.33 by 1.07745 to obtain the 2023 annual adjustment. The new amounts are reflected in the table in the rule portion of this document and replace the current amounts in 50 CFR 11.33.

Required Determinations

In addition, in this final rule, we affirm the required determinations we made in the June 28, 2016, interim rule (81 FR 41862); for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see that rule:

- National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);
- Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*);
- Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*);
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

Administrative Procedure Act

As stated above, under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, Public Law 114–74, 129 Stat. 584 (2015), each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provided for an initial ''catch up adjustment'' to take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the effective date of this rule. To comply with the Inflation Adjustment Act, we are issuing these regulations as a final rule.

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for prior public comment. The Service finds that providing for public comment before issuing this rule is unnecessary as this rulemaking is a nondiscretionary action. The Service is required to publish this rule in order to update the civil penalty amounts by the specified formula described above. The Service has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Since this update to the March 11, 2022, final rule (87 FR 13948) is merely ministerial, we find that pre-publication notice and public comment with respect to the revisions set forth in this rule is unnecessary. We also believe that we have good cause under 5 U.S.C. 553(d) to make this rule effective upon publication to meet the statutory deadline imposed by the Inflation Adjustment Act.

List of Subjects in 50 CFR Part 11

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants, Transportation, Wildlife.

Regulation Promulgation

For the reasons described above, we amend part 11, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 11—CIVIL PROCEDURES

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

Authority: 16 U.S.C. 470aa–470mm, 470aaa–470aaa-11, 668–668d, 1361–1384, 1401–1407, 1531–1544, 3371–3378, 4201–4245, 4901–4916, 5201–5207, 5301–5306; 18 U.S.C. 42–43; 25 U.S.C. 3001–3013; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 2. Amend § 11.33 by revising paragraphs (a) through (h) in the table to read as follows:

§ 11.33 Adjustments to penalties.

* * * * *

Law	Citation	Type of violation	Maximum civil monetary penalty
(a) African Elephant Conservation Act	16 U.S.C. 4224(b)	Any violation	$12,397
(b) Bald and Golden Eagle Protection Act.	16 U.S.C. 668(b)	Any violation	15,662
(c) Endangered Species Act of 1973	16 U.S.C. 1540(a)(1)	(1) Knowing violation of section 1538	61,982
		(2) Other knowing violation	29,751
		(3) Any other violation	1,566
(d) Lacey Act Amendments of 1981	16 U.S.C. 3373(a)	(1) Violations referred to in 16 U.S.C. 3373(a)(1).	31,326
		(2) Violations referred to in 16 U.S.C. 3373(a)(2).	783
(e) Marine Mammal Protection Act of 1972.	16 U.S.C. 1375	Any violation	31,326
(f) Recreational Hunting Safety Act of 1994.	16 U.S.C. 5202(b)	(1) Violation involving use of force or violence or threatened use of force or violence.	19,933
		(2) Any other violation	9,966
(g) Rhinoceros and Tiger Conservation Act of 1998.	16 U.S.C. 5305a(b)(2)	Any violation	21,805

Law	Citation	Type of violation	Maximum civil monetary penalty
(h) Wild Bird Conservation Act	16 U.S.C. 4912(a)(1)	(1) Violation of section 4910(a)(1), section 4910(a)(2), or any permit issued under section 4911. (2) Violation of section 4910(a)(3) (3) Any other violation	52,540 25,218 1,052

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–01726 Filed 1–27–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC717]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the A season allowance of the 2023 total allowable catch of Pacific cod allocated to catcher vessels using trawl gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 28, 2023, through 2400 hours, A.l.t., December 31, 2023. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 14, 2023.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0094, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0094 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA on January 22, 2023 (88 FR 4089, January 24, 2023). NMFS has determined that as of January 24, 2023, approximately 1,300 metric tons of Pacific cod remain in the A season allowance of the 2023 Pacific cod apportionment for catcher vessels using trawl gear in the Western Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the A season allowance of the 2023 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using trawl gear in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

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 opening of directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 24, 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.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 14, 2023.

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

Dated: January 24, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–01767 Filed 1–25–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 19
Monday, January 30, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006, and 1007

[Docket No. 23–J–0019; AMS–DA–23–0003]

Milk in the Appalachian, Southeast, and Florida Areas; Notice of Hearing on Proposed Amendments to Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider and take evidence on proposals to amend the inter-market transportation credits in the Appalachian and Southeast Federal milk marketing orders (FMMOs) and adopt distributing plant delivery credits (intra-market transportation credits) in the Appalachian, Southeast, and Florida FMMOs.

DATES: The hearing will convene at 9 a.m. on Tuesday, February 28, 2023.

ADDRESSES: The hearing will be held at the Franklin Marriott Cool Springs Hotel, 700 Cool Springs Blvd., Franklin, Tennessee 37067. Telephone (615) 261–6100.

Copies of this notice of hearing and the respective orders may be procured from the Market Administrator of the Appalachian, Florida, and Southeast marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue SW, Washington, DC 20250–9200.

Copies of the transcript will be made available online at: *https://www.ams.usda.gov/rules-regulations/moa/dairy.*

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0225—Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0225, (202) 720–7311, email: *Erin.Taylor@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Jason Nierman, Market Administrator, a minimum of three days before the start of the hearing at (502) 499–0040 ext. 2222, or email: *nierman@malouisville.com.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of 5 U.S.C. 556 and 557 and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Franklin Marriott Cool Springs Hotel, Franklin, Tennessee, beginning at 9 a.m. on Tuesday, February 28, 2023, with respect to proposed amendments to the orders regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), and the applicable rules of practice and procedure governing amendments to marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the marketing orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Actions under the FMMO program are subject to the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a ''small business'' if it has an annual gross revenue of $3.75 million [1] or less, and a dairy products manufacturer is a ''small business'' if it has no more than the number of employees listed in the chart below (13 CFR 121.201):

NAICS code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,000
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	750

Most parties subject to a FMMO are considered a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen

[1] The Small Business Administration has issued a final rule, effective December 19, 2022, increasing the size of a small business dairy farm to an annual gross revenue of less than $3.75 million. See: *https://www.federalregister.gov/documents/2022/11/17/2022-24595/small-business-size-standards-adjustment-of-monetary-based-size-standards-disadvantage-thresholds.*

access to Government information and services, and for other purposes.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The Act provides that the United States District Court in any district in which the handler is an inhabitant or has its principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an appeal is filed not later than 20 days after the ruling is issued.

Interested parties who wish to introduce exhibits at the hearing should provide the Administrative Law Judge with (4) copies of such exhibits for the Official Record. Additional copies should be made available for use by other hearing participants. Any party that has submitted a proposal noticed herein, when participating as a witness, is required to make their testimony—if prepared as an exhibit—and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. If necessary, the schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the AMS-Dairy Programs website at: *https://www.ams.usda.gov/rulesregulations/moa/dairy.*

Testimony is invited on the following proposals or appropriate modifications to such proposals.

Proposal 1 (§§ 1005.81 Through 1005.83, Excluding § 1005.82(c)): Submitted by the Dairy Cooperative Marketing Association

This proposal seeks to update the transportation credit provisions in the Appalachian milk marketing order. Specifically, the proposal recommends increasing the maximum assessment rate on Class I milk, updating the components of the mileage rate calculation with current costs, revising the months of mandatory and discretionary payment, and revising the non-reimbursed mileage factor. These proposed changes would be mirrored in the Southeast milk marketing order (see Proposal 2).

Proposal 2 (§§ 1007.81 Through 1007.83, Excluding § 1005.82(c)): Submitted by the Dairy Cooperative Marketing Association

This proposal seeks to update the transportation credit provisions in the Southeast milk marketing order. Specifically, the proposal recommends increasing the maximum assessment rate on Class I milk, updating the components of the mileage rate calculation with current costs, revising the months of mandatory and discretionary payment, and revising the non-reimbursed mileage factor. These proposed changes would be mirrored in the Appalachian milk marketing order (see Proposal 1).

Proposal 3 (§§ 1005.30, 1005.32, and 1005.84): Submitted by the Dairy Cooperative Marketing Association

This proposal seeks to establish distributing plant delivery credits (intra-market transportation credits) in the Appalachian milk marketing order. Specifically, the proposal recommends establishing a Distributing Plant Delivery Credit Fund (DPDCF) and payment program, setting an initial and a maximum assessment rate for the DPDCF, granting the Market Administrator authority to adjust the assessment rate, establishing geographical eligibility criteria, establishing a reimbursement rate, establishing a range for the reimbursed portion of the farm to plant mileage, setting an initial reimbursed mileage percentage, and establishing monitoring requirements for the Market Administrator. These proposed changes would be mirrored in the Florida and Southeast milk marketing orders (see Proposals 4 and 5).

Proposal 4 (§§ 1006.30, 1006.32, and 1006.84): Submitted by the Dairy Cooperative Marketing Association

This proposal seeks to establish distributing plant delivery credits (intra-market transportation credits) in the Florida milk marketing order. Specifically, the proposal recommends establishing a Distributing Plant Delivery Credit Fund and payment program, setting an initial and a maximum assessment rate for the DPDCF, granting the Market Administrator authority to adjust the assessment rate, establishing geographical eligibility criteria, establishing a reimbursement rate, establishing a range for the reimbursed portion of the farm to plant mileage, setting an initial reimbursed mileage percentage, and establishing monitoring requirements for the Market Administrator. These proposed changes would be mirrored in the Appalachian and Southeast Milk marketing orders (see Proposals 3 and 5).

Proposal 5 (§§ 1007.30, 1007.32, and 1007.84): Submitted by the Dairy Marketing Cooperative Association

This proposal seeks to establish distributing plant delivery credits (intra-market transportation credits) in the Southeast milk marketing order. Specifically, the proposal recommends establishing a Distributing Plant Delivery Credit Fund and payment program, setting an initial and a maximum assessment rate for the DPDCF, granting the Market Administrator authority to adjust the assessment rate, establishing geographical eligibility criteria, establishing a reimbursement rate, establishing a range for the reimbursed portion of the farm to plant mileage, setting an initial reimbursed mileage percentage, and establishing monitoring requirements for the Market Administrator. These proposed changes would be mirrored in the Appalachian and Florida milk marketing orders (see Proposals 3 and 4).

Proposal 6 (§§ 1005.xx Through 1005.xx): Submitted by Prairie Farms Dairy, Inc.

This proposal seeks to establish an Assembly Performance Credit in the Appalachian milk marketing order. Specifically, the proposal recommends establishing an Assembly Performance Credit Fund (APCF) to provide assistance for the assembly, dispatch, and delivery of producer milk to fluid plants. The Assembly Performance Credit would be uniformly shared with all producer milk delivered to a pool distributing plant regulated by the Order. Distributing plants would contribute to the APCF based on Class I volume. Payment from the fund would be per hundredweight and would be the same for every pound of milk that delivered to the fluid plant. Similar credits are proposed to be adopted in the Florida and Southeast Milk marketing orders (see Proposals 7 and 8).

Proposal 7 (§§ 1006.xx Through 1006.xx): Submitted by Prairie Farms Dairy, Inc.

This proposal seeks to establish an Assembly Performance Credit in the Florida milk marketing order. Specifically, the proposal recommends:

establishing an Assembly Performance Credit Fund (APCF) to provide assistance for the assembly, dispatch, and delivery of producer milk to fluid plants. The Assembly Performance Credit would be uniformly shared with all producer milk delivered to a pool distributing plant regulated by the Order. Distributing plants would contribute to the APCF based on Class I volume. Payment from the fund would be per hundredweight and would be the same for every pound of milk that delivered to the fluid plant. Similar credits are proposed to be adopted in the Appalachian and Southeast milk marketing orders (see Proposals 6 and 8).

Proposal 8 (§§ 1007.xx Through 1007.xx): Submitted by Prairie Farms Dairy, Inc.

This proposal seeks to establish an Assembly Performance Credit in the Southeast milk marketing order. Specifically, the proposal recommends establishing an Assembly Performance Credit Fund (APCF) to provide assistance for the assembly, dispatch, and delivery of producer milk to fluid plants. The Assembly Performance Credit would be uniformly shared with all producer milk delivered to a pool distributing plant regulated by the Order. Distributing plants would contribute to the APCF based on Class I volume. Payment from the fund would be per hundredweight and would be the same for every pound of milk that delivered to the fluid plant. Similar credits are proposed in the Appalachian and Florida milk marketing orders (see Proposals 6 and 7).

Proposal 9 (§ 1005.82(c)(2)): Submitted by Prairie Farms Dairy, Inc.

This proposal seeks to amend the transportation credit provisions of the Appalachian milk marketing order. Specifically, the proposal recommends expanding geographic eligibility for transportation credits to milk produced inside the marketing area and expanding eligibility for transportation credits to a producer located outside the marketing area if more than 50 percent (50%) of their milk from March to May is delivered to a pool distributing plant within the Order, or if more than 45 days of that producer's milk is delivered to a pool distributing plant within the Order. These proposed changes would be mirrored in the Southeast milk marketing order (see Proposal 10).

Proposal 10 (§ 1007.82(c)(2)): Submitted by Prairie Farms Dairy, Inc.

This proposal seeks to amend the transportation credit provisions of the Southeast milk marketing order. Specifically, the proposal recommends: expanding geographic eligibility for transportation credits to inside the marketing area and expanding eligibility for transportation credits to a producer located outside the marketing area if more than 50% of their milk from March to May is delivered to a pool distributing plant within the Order, or if more than 45 days of that producer's milk is delivered to a pool distributing plant within the Order. These proposed changes would be mirrored in the Appalachian milk marketing order (see Proposal 9).

Proposal 11: Submitted by Michael P. Sumners, Dairy Farmer

This proposal seeks to prohibit the diversion of milk to nonpool plants from milk delivered to a pool distributing plant and receiving any form of transportation credits. The prohibition would apply in the Appalachian, Florida, and Southeast milk marketing orders.

Proposal 12: Submitted by Dairy Programs, Agricultural Marketing Service

Make such changes as may be necessary to make the respective marketing orders conform with any amendments thereto that may result from this hearing.

As referenced in each of the above proposals, the regulatory text pertaining to each proposal is provided sequentially by marketing order in the section below and will be addressed individually by proposal at the hearing.

Copies of this notice of hearing and the respective orders may be procured from the Market Administrator of the Appalachian, Florida, and Southeast marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue SW, Washington, DC 20250–9200.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing. Copies of the transcript will also be made available online at: *https://www.ams.usda.gov/rules-regulations/moa/dairy*.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, USDA employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Program, Agricultural Marketing Service (Washington, DC, Office and the Offices of all Market Administrators)

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Parts 1005, 1006, and 1007

Milk marketing orders.

The proposed amendments to 7 CFR parts 1005, 1006, and 1007, as set forth below, have not received the approval of the USDA.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 2. Amend § 1005.30 by:
■ a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11);
■ b. Adding new paragraphs (a)(5) and (6);
■ c. Redesignating paragraph (c)(3) as (c)(4) and revising it; and
■ d. Adding new paragraph (c)(3).

The additions and revision read as follows:

§ 1005.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1005.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1005.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information

required in paragraphs (a)(7) through (9) of this section.

* * * * *

■ 3. Revise § 1005.32 (a) to read as follows:

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1005.30(a)(5) and (6), and any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(7), (8), and (9).

* * * * *

■ 4. Amend § 1005.81 by revising the first sentence of paragraph (a) to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period. * * *

* * * * *

■ 5. Amend § 1005.82 by:

■ a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraphs (c)(2) and (d)(3)(iii); and

■ b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each of the months of January, and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. * * *

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.,* the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. * * *

(c) * * *

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants.

(d) * * *

(3) * * *

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

* * * * *

(viii) The market administrator may revise the factor described in paragraph (d)(3)(iii) of this section (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percent (10%) up to twenty-five percent (25%) or decrease it by as much as ten percent (10%), to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that a revision is being considered and invite written data, views, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

■ 6. Amend § 1005.83 by revising paragraphs (a)(2) through (5) to read as follows:

§ 1005.83 Mileage rate for the transportation credit balancing fund.

(a) * * *

(2) From the result in paragraph (a)(1) of this section subtract $2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $3.67;

(5) Divide the result in paragraph (a)(4) of this section by 497;

* * * * *

■ 7. Add § 1005.84 to read as follows:

§ 1005.84 Distributing plant delivery credits.

(a) *The Distributing Plant Delivery Credit Fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1005.84(b) and out of which shall be made the payments due handlers pursuant to § 1005.84(d). Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.84 by a per hundredweight assessment rate of $0.55 and thereafter not greater than $0.60 as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) Payments from the distributing plant delivery credit fund. Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant, a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The Market Administrator shall provide monthly, to producers who are not members of a qualified cooperative association, a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing areas of Federal Orders 5 and 7; in the following counties in the Commonwealth of Virginia: Albemarle, Amelia, Appomattox, Charlotte, Clarke, Culpeper, Cumberland, Fauquier, Frederick, Goochland, Greene, Hanover, James City, King and Queen, King William, Madison, Nottoway, Orange, Page, Prince Edward, and Shenandoah; and in the counties of Berkeley and Monroe in the state of West Virginia. The Market Administrator may add Virginia and West Virginia counties (not in a federal order marketing area) to this list upon the request of a pool handler and provision of proof satisfactory that the county is a source of regular supply of milk to order distributing plants. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1005.7(c) or (d) to a pool distributing plant regulated pursuant to § 1005.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(3) The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and that the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations, the market administrator will include in the evaluation the general supply and demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered, and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

(f) Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%).

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in paragraph (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to § 1005.84(h).

(iv) Subtract any positive difference in Class I prices computed in paragraph(f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of an adjustment rate not greater than ninety-five percent (95%) and not less than seventy-five percent (75%); and

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to § 1005.84(h);

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(2)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section.

(g) The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1) and (6) of this section to the actual miles used for computing pool distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) Mileage rate for the distributing plant delivery credit fund. The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1005.83.

(i) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

■ 8. Add § 1005.xx to read as follows:

§ 1005.xx Assembly performance credit fund.

The market administrator shall maintain a separate fund known as the Assembly Performance Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1005.xx and out of which shall be made the payments due handlers pursuant to § 1005.xx. Payments due a handler shall be offset against payments due from the handler.

■ 9. Add § 1005.xx to read as follows:

§ 1005.xx Payments to the assembly performance credit fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator an assembly performance credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.50 per hundredweight.

(b) The market administrator may increase or decrease by up to $0.20 the payment rate specified in paragraph (a) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable payment rate must be issued in writing at least fifteen days before the effective date.

■ 10. Add § 1005.xx to read as follows:

§ 1005.xx Payments from the assembly performance credit fund.

(a) Payments from the assembly performance credit fund to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90), the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section.

(2) The market administrator shall distribute the balance available in the assembly performance credit fund to all producer milk delivered to pool distributing plants on a pro rata basis using the rate derived by dividing the balance in the fund by the total producer milk delivered to pool distributing plants regulated under the Order.

(3) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the assembly performance credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Assembly performance credits shall apply to bulk milk received directly from the farms of dairy farmers at pool distributing plants.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 11. The authority citation for part 1006 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 12. Amend § 1006.30 by:

■ a. Redesignating paragraphs (a)(5) through (9) as (a)(7) through (11);

■ b. Adding new paragraphs (a)(5) and (6); and

■ c. Adding paragraph (c)(3).

§ 1006.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1006.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1006.84, all of the information required in paragraphs (a)(5) and (6) of this section.

* * * * *

■ 13. Revise § 1006.32 to read as follows:

§ 1006.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1006.30(a)(5) and (6).

(b) In addition to the reports required pursuant to §§ 1006.30, 1006.31, and 1006.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

■ 14. Add § 1006.84 to read as follows:

§ 1006.84 Distributing plant delivery credits.

(a) The Distributing Plant Delivery Credit Fund. The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to paragraph (d) of this section. Payments due a handler shall be offset against payments due from the handler.

(b) Payments to the distributing plant delivery credit fund. On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1006.44 by a per hundredweight assessment rate of $0.80 and thereafter not greater than $0.85 as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) Payments from the distributing plant delivery credit fund. Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1006.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant, a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1006.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1006.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The Market Administrator shall provide monthly to producers who are not members of a qualified cooperative association a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing area; or located within the Georgia counties of Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brooks, Calhoun, Charlton, Chattahoochee, Clay, Clinch, Coffee, Cook, Colquitt, Crisp, Decatur, Dodge, Dooley, Doughtery, Early, Echols, Grady, Irwin, Lanier, Lee, Lowndes, Jeff Davis, Macon, Marion, Miller, Mitchell, Pierce, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Telfair, Terrel, Thomas, Tift, Turner, Ware, Webster, Wilcox, and Worth, and received at pool distributing plants. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1006.7(c) or (d) to a pool distributing plant regulated pursuant to § 1006.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(3) The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market

administrator shall give the handler on such milk sufficient notice that an investigation is being considered, and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

(f) Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%).

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to § 1006.84(h).

(iv) Subtract the difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to § 1006.84(h);

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(2)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section.

(g) The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1) and (2) to of this section the actual miles used for computing pool distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) Mileage rate for the distributing plant delivery credit fund. The market administrator shall compute a mileage rate factor each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent four (4) weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (h)(1) of this section subtract $2.26 per gallon;

(3) Divide the result in paragraph (h)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (h)(3) of this section to $3.67;

(5) Divide the result in paragraph (h)(4) of this section by 497;

(6) Round the result in paragraph (h)(5) of this section down to five decimal places to compute the mileage rate.

(i) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

■ 15. Add § 1006.xx to read as follows:

§ 1006.xx Assembly performance credit fund.

The market administrator shall maintain a separate fund known as the Assembly Performance Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1006.xx and out of which shall be made the payments due handlers pursuant to § 1006.xx. Payments due a handler shall be offset against payments due from the handler.

■ 16. Add § 1006.xx to read as follows:

§ 1006.xx Payments to the assembly performance credit fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator an assembly performance credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1006.44 by $0.50 per hundredweight.

(b) The market administrator may increase or decrease by up to $0.20 the payment rate specified in paragraph (a) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable payment rate must be issued in writing at least fifteen days before the effective date.

■ 17. Add § 1006.xx to read as follows:

§ 1006.xx Payments from the assembly performance credit fund.

(a) Payments from the assembly performance credit fund to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90), the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section;

(2) The market administrator shall distribute the balance available in the assembly performance credit fund to all producer milk delivered to pool distributing plants on a pro rata basis using the rate derived by dividing the balance in the fund by the total producer milk delivered to pool distributing plants regulated under the Order.

(3) In the event that a qualified cooperative association is the

responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1006.30(c)(3) prior to the date payment is due, the assembly performance credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Assembly performance credits shall apply to bulk milk received directly from the farms of dairy farmers at pool distributing plants.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 18. The authority citation for part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 19. Amend § 1007.30 by:
■ a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11);
■ b. Adding new paragraphs (a)(5) and (6);
■ c. Redesignating paragraph (c)(3) as (c)(4) and revising it; and
■ d. Adding new paragraph (c)(3).

The revisions and additions read as follows.

§ 1007.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1007.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1007.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(7), (8), and (9) of this section.

* * * * *

■ 20. Revise § 1007.32(a) to read as follows:

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1007.30(a)(5) and (6).

* * * * *

■ 21. Amend § 1007.81 by revising the first sentence of paragraph (a) to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.60 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June through February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June through February period. * * *

* * * * *

■ 22. Amend § 1007.82 by:
■ a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraph s (c)(2) and (d)(3)(iii); and
■ b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each of the months of January, and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. * * *

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.,* the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use.

* * *

(c) * * *

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants.

(d) * * *

(3) * * *

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

* * * * *

(viii) The market administrator may revise the factor described in (d)(3)(iii) of this paragraph (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percent (10%) up to twenty-five percent (25%) or decrease it by as much as ten percent (10%), to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that a revision is being considered and invite written data, views, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

■ 23. Amend § 1007.83 by revising paragraphs (a)(2) through (5) to read as follows:

§ 1007.83 Mileage rate for the transportation credit balancing fund.

(a) * * *

(2) From the result in paragraph (a)(1) of this section subtract $2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $3.67;

(5) Divide the result in paragraph (a)(4) of this section by 497;

* * * * *

■ 24. Add § 1007.84 to read as follows:

§ 1007.84 Distributing plant delivery credits.

(a) The Distributing Plant Delivery Credit Fund. The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1007.84(b) and out of which shall be made the payments due handlers pursuant to § 1007.84(d). Payments due a handler shall be offset against payments due from the handler.

(b) Payments to the distributing plant delivery credit fund. On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by a per hundredweight assessment rate of $0.45 and thereafter not greater than $0.50 as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) Payments from the distributing plant delivery credit fund. Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant, a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The Market Administrator shall provide monthly to producers who are not members of a qualified cooperative association a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing areas defined in 7 CFR 1005.2 and 1007.2. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool supply plant regulated pursuant to § 1007.7(c) or (d) to a pool distributing plant regulated pursuant to § 1007.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(3) The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered, and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements

prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

(f) Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Determine the absolute value of the per hundredweight difference between the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located and the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in (f)(1) of this section by the monthly mileage rate factor for the month computed pursuant to § 1007.84(h).

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to § 1005.84(h);

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(3)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section.

(g) The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to (f)(1) and (2) of this section to the actual miles used for computing pool distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) Mileage rate for the distributing plant delivery credit fund. The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1007.83.

(i) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

■ 25. Add § 1007.xx to read as follows:

§ 1007.xx Assembly performance credit fund.

The market administrator shall maintain a separate fund known as the Assembly Performance Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1007.xx and out of which shall be made the payments due handlers pursuant to § 1007.xx. Payments due a handler shall be offset against payments due from the handler.

■ 26. Add § 1007.xx to read as follows:

§ 1007.xx Payments to the assembly performance credit fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator an assembly performance credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.50 per hundredweight.

(b) The market administrator may increase or decrease by up to $0.20 the payment rate specified in paragraph (a) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable payment rate must be issued in writing at least fifteen days before the effective date.

■ 27. Add § 1007.xx to read as follows:

§ 1007.xx Payments from the assembly performance credit fund.

(a) Payments from the assembly performance credit fund to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter), the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section;

(2) The market administrator shall distribute the balance available in the assembly performance credit fund to all producer milk delivered to pool distributing plants on a pro rata basis using the rate derived by dividing the balance in the fund by the total producer milk delivered to pool distributing plants regulated under the Order.

(3) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the assembly performance credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Assembly performance credits shall apply to bulk milk received directly from the farms of dairy farmers at pool distributing plants.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

[Docket No. PRM–34–6; NRC–2017–0022; NRC–2008–0173]

Industrial Radiographic Operations and Training

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking and denial of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is responding to public comments on an interpretation of its requirements for industrial radiographic operations and Agreement State Compatibility Category change for these requirements published in the **Federal Register** on June 1, 2021. As a result of these actions, the NRC is discontinuing a planned rulemaking activity and is denying an associated petition for rulemaking, PRM–34–6.

DATES: The docket for the planned rulemaking activity is closed on January 30, 2023.

ADDRESSES: Please refer to Docket ID NRC–2017–0022 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–2017–0022. 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, at 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. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6244, email: *Gregory.Trussell@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 2021, the NRC published a notification of interpretation and request for comment in the **Federal Register** (86 FR 29173). Under the new interpretation, the NRC's requirements at § 34.41 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Conducting industrial radiographic operations,'' are met if the additional qualified individual, who is to observe the operation and be capable of providing immediate assistance to prevent unauthorized entry, is in sufficiently close proximity to the operation and is sufficiently aware of the ongoing activities to provide assistance or take charge when necessary. The second individual may perform other tasks nearby, provided that the individual is cognizant of the site-specific circumstances when radiographic operations are in progress.

The NRC held a public meeting on August 26, 2021, during which the NRC provided background on the ''two-person'' requirement, its relationship with other industrial radiography surveillance requirements, and an overview of the new interpretation. The NRC answered questions from participants and clarified the NRC's reinterpretation of the requirements. Participants questioned the necessity and feasibility of the interpretation and requested more realistic examples of how a licensee could implement the new interpretation. The meeting summary is available under ADAMS Accession No. ML21218A156.

II. Public Comments

The NRC received written comments on the notification of interpretation from: a private citizen, the Organization of Agreement States (OAS), the State of Oklahoma (Oklahoma), and the State of Arkansas (Arkansas) (ADAMS Accession Nos. ML21155A124, ML21182A320, ML21172A130, and ML21182A362). The comments were binned into three categories.

The NRC met with the Agreement States on April 6, 2022, to discuss the NRC's responses to the comments submitted on the June 1, 2021, notice of interpretation. This section provides a summary of the comments and the NRC's responses.

Request for clarification and additional guidance. Commenters requested additional guidance to clarify the interpretation and requested that the guidance include multiple examples of acceptable surveillance practices. Specifically, comments from the OAS, Oklahoma, and Arkansas asked for clarification on how the interpretation relates to other requirements, how close ''sufficient proximity'' is, and what tools can be used to maintain awareness.

Response: The NRC agrees with these comments. The NRC will issue revised guidance to provide greater detail and to clarify the issues raised by the comments, and is providing the following statements to clarify specific issues raised by the comments:

- The interpretation only affects radiographic operations in limited circumstances; for example, in situations where the radiographer has clear view of the entire operation.
- The interpretation focuses on the performance requirements for the second individual to maintain sufficient awareness to provide immediate assistance and perform radiographic operations and to prevent unauthorized entry. Licensees may use any appropriate tools that allow the second individual to perform these functions. In the notification of interpretation, the NRC mentioned the option of video surveillance. The NRC recognizes that the use of video surveillance may be rare but could allow the second individual to meet the requirement. Other tools that could work include an open radio channel or cell phone.
- Future technology may provide additional tools for meeting this performance-based requirement.

Safety and security: Comments from the OAS, Oklahoma, and Arkansas questioned the overall safety of the new interpretation, suggesting that the second individual would not have sufficient awareness and proximity to the radiographic operation to perform required functions and that direct observation is necessary. These comments also assert that the interpretation would reduce the use and number of alarming rate meters, dosimetry, and survey instruments. In addition, the comment from Oklahoma questioned the security impact of the interpretation.

Response: The NRC disagrees with these comments. The NRC disagrees

with the comment that direct observation is necessary by the second individual. Direct observation by the second individual is not necessary under the limited circumstances allowed by the interpretation to ensure safety because a second individual is available to provide immediate assistance. For example, it may be acceptable for the second individual to have less awareness of the operations or to be located further away when the radiographer has a clear view of the entire operation because the radiographer is able to observe all points of entry and alert the second qualified individual of a potential unauthorized entry. The new interpretation provides flexibility when the situation allows it and does not compromise radiation safety and security. Section 34.41(a) provides the minimum requirements for the number of personnel at every temporary jobsite; it does not address security, dosimetry requirements, or the use and number of survey instruments. Other regulations or circumstances may apply as described in NUREG–1556, Volume 2, Revision 1, ''Program-Specific Guidance About Industrial Radiography Licenses,'' that require a licensee to have more than two individuals present at a temporary jobsite; for example, in situations where there are multiple access points to the restricted area that need to be controlled.

The performance-based aspects of the regulations require the second individual to be sufficiently aware of the operation to be able to provide immediate assistance. Therefore, if the second individual does not have sufficient awareness and proximity to the radiographic operation to perform these functions, then the requirement is not met. For example, if the second individual is in the darkroom and is not able to hear or see the radiographic operations, then the second individual is not meeting the requirements as the NRC has interpretated them.

Reciprocity and consistency: Comments from the OAS and Oklahoma expressed concern that the interpretation, combined with the compatibility category change from B to C, may cause reciprocity and consistency issues.

Response: The NRC disagrees with these comments. In the June 1, 2021, notification (86 FR 29173), the NRC, with the benefit of over 20 years of experience with Agreement States implementing the two-person rule differently, determined that essentially identical implementation is not necessary to provide an orderly pattern of regulation. The essential objective of § 34.41(a) is to have a second qualified individual maintain awareness of the radiographic operations, maintain direct communications with the radiographer, and be capable of providing immediate assistance to the radiographer or taking charge when necessary, and to prevent unauthorized entry into a restricted area. Despite differences in implementation of the two-person rule, the NRC is not aware of any cross-jurisdictional boundary issues for the National Materials Program from these different interpretations. Further, other requirements in 10 CFR part 34 that apply to radiography at temporary jobsites are designated as Compatibility Category C, such as the survey requirement in § 34.49(b), and have not resulted in cross-jurisdictional boundary issues. Therefore, the NRC has no reason to believe this compatibility change will cause reciprocity or consistency issues.

III. Interpretation and Agreement State Compatibility

This document completes the NRC's actions on the interpretation and the change in Agreement State Compatibility Category published in the **Federal Register** on June 1, 2021 (86 FR 29173). The issues raised by the comments are not new and were considered by the NRC before publishing the new interpretation. The NRC recognizes that currently there are limited circumstances where the interpretation would be applicable, and that more guidance is needed. The NRC finds that the new interpretation provides the flexibility to accommodate emerging technologies for the surveillance of radiographic operations. This approach allows Agreement States the flexibility to align their programs with the NRC's proposed interpretation, continue their current interpretation of requiring two individuals to observe the restricted area, or adopt another more restrictive approach.

The NRC intends to develop an addendum to the current version of NUREG–1556, Volume 2, Revision 1, and to revise Inspection Procedure 87121, ''Industrial Radiography Programs,'' to address the interpretation of the surveillance requirements.

IV. Discontinuation of the Rulemaking and Denial of the Associated Petition

The new interpretation resolves the issues raised in PRM–34–6 related to the two-person rule. The interpretation makes § 34.41(a) consistent with the requirement in § 34.51 that at least one of the two individuals present at a temporary jobsite must ''maintain direct observation of the operation.''

In addition, the NRC reviewed the petition regarding training requirements and concluded, based on associated operational experience since 1997, that the current training requirements in § 34.43(c) are sufficient to ensure safe radiographic operations. Specifically, the second qualified individual must receive training on radiographic devices, sources, associated equipment, radiation survey equipment, and the daily inspection requirements on the equipment. The training requirements in 10 CFR part 34 prepare individuals conducting radiographic operations with sufficient knowledge and understanding of the regulations and safety requirements and familiarity with the equipment that they will use in the performance of their work.

Based on the NRC's review and lack of comments warranting a change to the new interpretation, the NRC has concluded that conducting rulemaking to amend its requirements for industrial radiographic operations and training is not necessary and, therefore, is discontinuing the rulemaking activity. The NRC is denying PRM–34–6 pursuant to § 2.803(i)(2).

V. Conclusion

This document provides the NRC's responses to public comments on an interpretation and corresponding Agreement State Compatibility Category change. The NRC is not revising the interpretation or changing the Compatibility Category in response to comments. The NRC is discontinuing the planned rulemaking that would have amended its requirements for industrial radiographic operations and training and is denying PRM–34–6 for the reasons discussed in this document.

Dated: January 20, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Acting Secretary of the Commission.

[FR Doc. 2023–01487 Filed 1–27–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 5, 21, 91, 119, 121, and 135

[Docket No.: FAA–2021–0419; Notice No. 23–05]

RIN 2120–AL60

Safety Management Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM titled ''Safety Management Systems'' that was published on January 11, 2023. In that document, the FAA proposed to update and expand the requirements for safety management systems (SMS) and require certain certificate holders and commercial air tour operators to develop and implement an SMS. The FAA is extending the comment period closing date to allow commenters additional time to analyze the proposed rule and prepare a response.

DATES: The comment period for the NPRM published on January 11, 2023 at 88 FR 1932, and scheduled to close on March 13, 2023, is extended until April 11, 2023.

ADDRESSES: Send comments identified by docket number FAA–2021–0419 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Scott Van Buren, Office of Accident Investigation and Prevention, AVP–4, Federal Aviation Administration, 800 Independence Avenue SW, Room 300 East, Washington, DC 20591, telephone (202) 494–8417; email *Scott.VanBuren@faa.gov.*

SUPPLEMENTARY INFORMATION:

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal at *www.regulations.gov;*
2. Visiting the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's web page at *www.GovInfo.com.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

Background

On January 11, 2023, the FAA published an NPRM titled ''Safety Management Systems'' in the **Federal Register** (88 FR 1932; Notice No. 23–05). In the NPRM, the FAA proposes to update and expand the requirements for safety management systems (SMS) and require certain certificate holders and commercial air tour operators to develop and implement an SMS. The proposed rule would extend the requirement for an SMS to all certificate holders operating under the rules for commuter and on-demand operations, commercial air tour operators, production certificate (PC) holders that are holders or licensees of a type certificate (TC) for the same product, and holders of a TC who license that TC for production. The proposed rule is intended to improve aviation safety by requiring organizations to implement a proactive approach to managing safety. Commenters were instructed to provide comments on or before March 13, 2023 (*i.e.,* 60 days from the date of publication of the NPRM).

Since publication, the FAA has received two requests to extend the comment period by an additional sixty (60) days and a third request for an extension of an additional ninety (90) days. The commenters requested more time to review the proposed rule and develop comments and recommendations.

The FAA grants the petitioners' request for an extension of the comment period. The FAA recognizes the importance of the proposed rule and that an extension would help commenters craft complete and thoughtful responses. However, the FAA believes that an additional thirty (30) days provides sufficient opportunity to review the NPRM and provide comments. With this extension, the comment period will now close on April 11, 2023. This will provide the public with a total of ninety (90) days to conduct its review and submit comments to the docket.

The FAA will not grant any additional requests to further extend the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petitions for extension of the comment period for this notice. The petitioners have shown a substantive interest in the proposed policy and good cause for the extension of the comment period. The FAA has determined that an extension of the comment period for an additional thirty

(30) days to April 11, 2023 is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 23–05 is extended until April 11, 2023.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Kimberly R. Pyle,

Executive Director, Office of Accident Investigation and Prevention, Federal Aviation Administration.

[FR Doc. 2023–01788 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0028; Project Identifier MCAI–2022–01164–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) 2022–03–12, which applies to all Airbus SAS Model A330–200, –300, –800, and –900 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. AD 2022–03–12 requires replacing the doghouse door lock placard with an improved instruction placard. Since the FAA issued AD 2022–03–12, it has been determined that additional parts need to be modified. This proposed AD would continue to require the actions in AD 2022–03–12 and would expand the list of affected parts, 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 affected parts under certain conditions. 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 March 16, 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–2023–0028; 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–2023–0028.
- 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 and fax 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–2023–0028; Project Identifier MCAI–2022–01164–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 and fax 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 2022–03–12, Amendment 39–21929 (87 FR 8169, February 14, 2022) (AD 2022–03–12), for all Airbus SAS Model A330–200, –300, –800, and –900 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. AD 2022–03–12 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0136, dated June 4, 2021 (EASA AD 2021–0136), to correct an unsafe condition.

AD 2022–03–12 requires replacing the doghouse door lock placard with an improved instruction placard. AD 2022–03–12 also prohibits the installation of affected parts under certain conditions. The FAA issued AD 2022–03–12 to address possible incorrect operation of the doghouse door lock due to unclear and incomplete handling instructions on the door placard installed near the lock. This condition, if not addressed, could lead to failure of the latch, which could block the door in the closed position and prevent access to the emergency equipment inside the doghouse.

Actions Since AD 2022–03–12 Was Issued

Since the FAA issued AD 2022–03–12, EASA superseded EASA AD 2021–0136, and issued AD 2022–0179, dated August 26, 2022 (EASA AD 2022–0179) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS A330–201, A330–202, A330–203, A330–223, A330–243, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–841, A330–941, A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, A340–542, A340–642, and A340–643 airplanes. Model A340–542 and A340–643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The MCAI states that the instructions on the doghouse door lock placard are unclear and incomplete, and could lead to incorrect operation of the lock. This condition, if not corrected, could lead to failure of the latch, blocking the door in the closed position and preventing access to emergency equipment, possibly resulting in injury to airplane occupants. Since EASA AD 2021–0136 was issued, it has been determined that additional parts need to be modified.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0028.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2022–03–12, this proposed AD would retain all of the requirements of AD 2022–03–12. Those requirements are referenced in EASA AD 2022–0179, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0179 specifies procedures for replacing the doghouse door lock placard with an improved instruction placard. EASA AD 2022–0179 also prohibits the installation of doghouses with incorrect instruction placards. 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 and service information 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 2022–03–12. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0179 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also prohibit the installation of affected parts under certain conditions.

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 2022–0179 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0179 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 2022–0179 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 2022–0179. Service information required by EASA AD 2022–0179 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0028 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 62 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.	Up to $95 per placard	Up to $265 per placard	Up to $16,430.*

* Assuming one placard per product. The number of placards on an airplane depends on the passenger configuration and varies from operator to operator.

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) 2022–03–12, Amendment 39–21929 (87 FR 8169, February 14, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–0028; Project Identifier MCAI–2022–01164–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 16, 2023.

(b) Affected ADs

This AD replaces AD 2022–03–12, Amendment 39–21929 (87 FR 8169, February 14, 2022) (AD 2022–03–12).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, as identified in paragraphs (c)(1) through (8) of this AD.

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

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

(3) Model A330–841 airplanes.

(4) Model A330–941 airplanes.

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

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

(7) Model A340–541 airplanes.

(8) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports that the instructions on the doghouse door lock placard are unclear and incomplete, and by a determination that additional parts need to be modified. The FAA is issuing this AD to address possible incorrect operation of the doghouse door lock due to unclear and incomplete handling instructions on the door placard installed near the lock. The unsafe condition, if not addressed, could result in failure of the latch, which could block the door in the closed position and prevent access to the emergency equipment inside the doghouse.

(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 2022–0179, dated August 26, 2022 (EASA AD 2022–0179).

(h) Exceptions to EASA AD 2022–0179

(1) Where EASA AD 2022–0179 refers to June 18, 2021 (the effective date of EASA AD 2021–0136), this AD requires using March 21, 2022 (the effective date of AD 2022–03–12).

(2) Where EASA AD 2022–0179 refers to its effective date, this AD requires using the effective date of this AD.

(3) Although EASA AD 2022–0179 specifies to ''remove the placard and install an improved handling instructions placard on each affected part,'' this AD requires replacing the placard on each affected part with an improved handling instructions placard.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0179.

(i) Additional FAA 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 (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or 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 (i)(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.

(j) 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 and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0179, dated August 26, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0179, 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 25, 2023.

Christina Underwood,

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

[FR Doc. 2023–01835 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0026; Project Identifier MCAI–2022–01210–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 certain Airbus SAS Model A319–151N, –153N and –171N airplanes; Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. This proposed AD was prompted by a safety review of the airplane fuel system, which identified that the electrical harness routing of the engine low pressure shut off valve (LPSOV) is not adequately protected against uncontained engine rotor failure (UERF). This proposed AD would require modification of the LPSOV electrical harness routing on either the left-hand engine or the right-hand engine, 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 March 16, 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–2023–0026; 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–2023–0026.
- 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: Hye Yoon Jang, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 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–2023–0026; Project Identifier MCAI–2022–01210–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 Hye Yoon 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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0185, dated September 5, 2022 (EASA AD 2022–0185) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A319–151N, –153N and –171N airplanes; Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–251N, –252N, –253N, –271N,–272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. The MCAI states during a safety review of the airplane fuel system, it was identified that the electrical harness routing of the engine LPSOV is not adequately protected against UERF. This condition, if not addressed, could lead to loss of engine fuel isolation capability in case of UERF, possibly resulting in an uncontrolled fire.

The unsafe condition may exist on airplanes with two different types of engines installed. Depending on the type of engine installed on an airplane, this proposed AD would require modification of the LPSOV electrical harness routing on the left-hand engine (for airplanes with LEAP–1A series engines installed) or the right-hand engine (for airplanes with PW1100 series engines installed).

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–2023–0026.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0185 specifies procedures for modification of the

LPSOV electrical harness routing on either the left-hand engine (for airplanes with LEAP–1A series engines installed) or the right-hand engine (for airplanes with PW1100 series engines installed). 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 2022–0185 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 2022–0185 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0185 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 2022–0185 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 2022–0185. Service information required by EASA AD 2022–0185 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0026 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 323 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 13 work-hours × $85 per hour = $1,105	Up to $2,800	Up to $3,905	Up to $1,261,315.

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]

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

Airbus SAS: Docket No. FAA–2023–0026; Project Identifier MCAI–2022–01210–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 16, 2023.

(b) Affected ADs

None.

(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 2022–0185, dated September 5, 2022 (EASA AD 2022–0185).

(1) Model A319–151N, –153N and –171N airplanes.

(2) Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(3) Model A321–251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a safety review of the airplane fuel system, which identified that the electrical harness routing of the engine low pressure shut off valve (LPSOV) is not adequately protected against uncontained engine rotor failure (UERF). The FAA is issuing this AD to address inadequate protection of the LPSOV against UERF. The unsafe condition, if not addressed, could result in loss of engine fuel isolation capability in case of UERF, possibly resulting in an uncontrolled fire

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0185.

(h) Exceptions to EASA AD 2022–0185

(1) Where EASA AD 2022–0185 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 2022–0185.

(3) Where EASA AD 2022–0185 specifies to modify ''in accordance with the instructions of the SB, or contact Airbus for approved instructions whenever necessary,'' this AD requires obtaining instructions before further flight using the procedures specified in paragraph (i)(2) of this AD if any actions cannot be done in accordance with the instructions of the SB.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or 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 (i)(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.

(j) Additional Information

For more information about this AD, contact Hye Yoon Jang, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 817–222–5584; email *Hye.Yoon.Jang@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0185, dated September 5, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0185, 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 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–01702 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0025; Project Identifier MCAI–2022–00804–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 CL–600–2B16 (604 Variant) airplanes. This proposed AD was prompted by reports of oxygen leaks caused by cracked, brittle, or broken oxygen hoses that were found during scheduled maintenance tests of the airplane oxygen system. This proposed AD would require replacing oxygen system hoses having any part number in the O2C20T1 and O2C20T14 series. This AD also would prohibit installation of affected oxygen hoses. 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 March 16, 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–2023–0025; 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; fax 516–794–5531; 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–2023–0025; Project Identifier MCAI–2022–00804–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; fax 516–794–5531; 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–2022–34, dated June 20, 2022 (Transport Canada AD CF–2022–34) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. The MCAI states oxygen leaks were caused by cracked, brittle, or broken oxygen hoses that were found during scheduled maintenance tests of the airplane oxygen system. A leak in the oxygen system may result in failure to provide oxygen to passengers and crew and result in an oxygen-enriched atmosphere creating a fire risk on the airplane. See the MCAI for additional background information.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0025.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 605–35–006, Revision 01, dated January 28, 2022. This service information specifies procedures for replacing oxygen system hoses having any part number in the O2C20T1 and O2C20T14 series.

The FAA also reviewed Bombardier Service Bulletin 650–35–002, Revision 01, dated January 28, 2022. This service information specifies procedures for replacing oxygen system hoses having any part number in the O2C20T1 series. The service information also specifies optional mitigating actions for certain airplanes (repetitive testing until affected parts are replaced).

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. This proposed AD would also prohibit installation of affected oxygen hoses.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 42 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
3 work-hours × $85 per hour = $255	$100	$355	$14,910

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$85	$85

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$100	$355

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:

Bombardier, Inc.: Docket No. FAA–2023–0025; Project Identifier MCAI–2022–00804–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 16, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes, certificated in any category, serial numbers 5701 through 5990 inclusive, and 6050 through 6162 inclusive, with an interior modified in accordance with Supplemental Type Certificate (STC) ST02355NY.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by reports of oxygen leaks caused by cracked, brittle or broken oxygen hoses that were found during scheduled maintenance tests of the airplane oxygen system. The FAA is issuing this AD to address a leak in the oxygen system. The unsafe condition, if not addressed, could result in failure to provide oxygen to passengers and crew and result in an oxygen enriched atmosphere creating a fire risk on the airplane.

(f) Compliance

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

(g) Replacement

At the applicable compliance times specified in paragraphs (g)(1) and (2) of this AD: Replace oxygen system hoses having any part number in the O2C20T1 series, and, as applicable, the O2C20T14 series, in accordance with the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD.

(1) For airplanes having, as of the effective date of this AD, 6 years or less from the completion of the interior modification specified in STC ST02355NY: Within 31 months after the effective date of this AD, or no later than 12 months after the completion of the interior modification specified in STC ST02355NY, whichever occurs first.

(2) For airplanes having, as of the effective date of this AD, more than 6 years from the completion of the interior modification specified in STC T02355NY: Within 7 months after the effective date of this AD.

Figure 1 to paragraph (g) – *Service Information*

Bombardier Airplane Model–	Bombardier Service Bulletin–
CL-600-2B16 (604 Variant) Challenger 605	605-35-006, Revision 01, dated January 28, 2022
CL-600-2B16 (604 Variant) Challenger 650	650-35-002, Revision 01, dated January 28, 2022

(h) Optional Mitigation for Certain Airplanes

For airplanes identified Bombardier Service Bulletin 650–35–002, Revision 01, dated January 28, 2022, having, as of the effective date of this AD, less than 6 years from the completion of the interior modification specified in STC ST02355NY: In lieu of accomplishing the oxygen system hose replacement required by paragraph (g) of this AD, comply with all conditions specified in paragraphs (h)(1) through (3) of this AD.

(1) The passenger oxygen system is tested within 6 months after the effective date of this AD, and thereafter at intervals not to exceed 36 months, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 650–35–002, Revision 01, dated January 28, 2022.

(2) If, during a test specified in paragraph (h)(2) of this AD, any leak is found on any hose, all oxygen system hoses having a part number in the O2C20T1 series must be replaced before further flight in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 650–35–002, Revision 01, dated January 28, 2022. Doing this replacement terminates the tests specified in paragraph (h)(1) of this AD.

(3) Except as specified by paragraph (h)(2) of this AD, all oxygen system hoses having a part number in the O2C20T1 series must be replaced within 6 years from the completion of the interior modification specified in STC ST02355NY. Doing this replacement terminates the tests specified in paragraph (h)(1) of this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install any oxygen system hose having a part number in the O2C20T1 and O2C20T14 series on any airplane.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 605–35–006, dated August 23, 2021; or Bombardier Service Bulletin 650–35–002, dated August 23, 2021; as applicable.

(2) This paragraph provides credit for actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 650–35–002, dated August 23, 2021.

(k) 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 (k)(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.

(l) Additional Information

(1) Refer to Transport Canada AD CF–2022–34, dated June 20, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0025.

(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; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (4) of this AD.

(m) 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) Bombardier Service Bulletin 605–35–006, Revision 01, dated January 28, 2022.

(ii) Bombardier Service Bulletin 650–35–002, Revision 01, dated January 28, 2022.

(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 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–01673 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1796; Airspace Docket No. 22–AAL–30]

RIN 2120–AA66

Proposed Revocation of Colored Federal Airway Red 39 (R–39); Bethel, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airway Red 39 (R–39) in the vicinity of Bethel, AK, due to the pending decommissioning of the Oscarville (OSE) Non-directional Beacon (NDB), Takotna River NDB (VTR), and Ice Pool NDB (ICW) in Alaska.

DATES: Comments must be received on or before March 16, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–1796; Airspace Docket No. 22–AAL–30 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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: Steven Roff, 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 would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–1796; Airspace Docket No. 22–AAL–30) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1796; Airspace Docket No. 22–AAL–30.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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.

Background

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from the dependency on NDBs. Advances in technology have allowed for alternate navigation methods to support decommissioning of high-cost ground-based navigation equipment. The FAA conducted a non-rulemaking study in accordance with FAA Order JO 7400.2, Procedures for Handling Airspace Matters in 2020 and 2021 on OSE, VTR, and ICW due to the ongoing high cost of maintenance and repairs. Interested parties were invited to participate in this effort by submitting comments on the proposal. As a result of the study, there were no objections received. The FAA added OSE, VTR, and ICW to the schedule to be decommissioned.

Colored Federal airway R–39 extends between OSE and ICW. The decommissioning of OSE and ICW would render this route unusable. This proposal would revoke R–39 in its entirety. The mitigation to the loss of R–39 is currently in place with Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airway V–480 and United States Navigational (RNAV) route T–222 overlying or paralleling the entire route.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airway R–39 in the vicinity of Bethel, AK due to the decommissioning of the OSE, VTR, ICW NDBs. R–39 currently navigates between OSE and ICW. The FAA proposes to revoke R–39 in its entirety.

Colored Federal airways are published in paragraph 6009(d) 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 Colored Federal airway listed in this document would be removed subsequently in FAA Order JO 7400.11.

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 proposed 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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, and effective September 15, 2022, is amended as follows:

Paragraph 6009(b) Colored Federal Airways.

* * * * *

R–39 [Remove]

* * * * *

Issued in Washington, DC, on January 24, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–01791 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0978]

RIN 1625–AA00

Safety Zone; Restricted Visibility in Tampa Bay; Tampa Bay, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise an existing safety zone regulation in Tampa Bay within the geographic boundaries of the Captain of the Port (COTP) St. Petersburg Zone. The proposed change is designed to align the coordinates in the regulation with the coordinates needed to properly control traffic in cases of restricted visibility in Tampa Bay. The current coordinates do not reflect the safety zones that the Coast Guard intended to put in place. The Coast Guard invites your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 1, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0978 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Regina L. Cuevas, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Regina.L.Cuevas@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, Purpose, and Legal Basis

On June 26, 2015, the Coast Guard published a final rule entitled, ''Safety Zones, St. Petersburg Captain of the Port Zone.[1] '' This action was taken to establish safety zones that restrict port operations in the event of reduced or restricted visibility, or during natural disasters, *e.g.* hurricanes, and establish safety zones around firework platforms, structures or barges during the storage, preparation, and launching of fireworks. This final rule established seven zones that could be used to direct vessel movement in times of restricted visibility. In 2022, it was brought to the attention of the Seventh Coast Guard District that the safety zones listed in 33 CFR 165.782(a)(4) and (a)(5) did not reflect the zones that were needed for the Captain of the Port (COTP) to properly control vessel movement in times of reduced visibility. More specifically, the errors were discovered in the first coordinate of zone 4 in § 165.782(a)(4) and the second coordinate of zone 5 in § 165.782(a)(5). With this proposed rule, the Coast Guard is correcting the points needed by the COTP to ensure safety amongst all port users, particularly in time of reduced visibility. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

This rule is proposing to modify zones 4 and 5 listed in § 165.782(a)(4) and (a)(5) to align with the zones that were intended by the COTP, and are

[1] 80 FR 36716.

necessary to control vessel movement during times of reduced visibility. The proposed rule would to make the following changes in §§ 165.782(a)(4) and (a)(5): move the first coordinate in zone 4, from 27°46′34″ N, 82°34′04″ W, to 27°46′36″ N; 82°24′04″ W, and move the second coordinate in zone 5 from 27°58′59″ N, 82°40′34″ W, to 27°38′59″ N, 82°40′35″ W.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on four specific factors: (1) these zones will only be activated in times of restricted visibility; (2) the zones will only be activated for short periods of time; (3) persons and vessels may operate within the security zone when authorized by Captain of the Port of St. Petersburg or a designated representative; and (4) the zones are already in place, this regulatory action only represents a minor change in the boundaries.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule only involves correction of coordinates identifying the reduced visibility of safety zones 4 and 5 that had already been established for several years. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you

submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0978 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

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

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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. In § 165.782, revise paragraphs (a)(4) and (a)(5) to read as follows:

§ 165.782 Safety Zone; restricted visibility in Tampa Bay.

(a) * * *

(4) Zone 4 (Middle Tampa Bay) means all navigable waters within a box marked by the following coordinates: 27°46′36″ N; 82°24′04″ W; thence to 27°38′40″ N, 82°31′54″ W; thence to 27°44′38″ N, 82°40′44″ W; thence to 27°46′15″ N, 82°40′46″ W. This zone encompasses all navigable waterways between Cut ''6F'' (LLNR 22830) Channel to Tampa Bay ''1C'' (LLNR 22590).

(5) Zone 5 (Lower Tampa Bay/Manatee) means all navigable waters within a box marked by the following coordinates: 27°44′33″ N, 82°40′37″ W; thence to 27°38′59″ N, 82°40′35″ W; thence to 27°36′18″ N, 82°38′57″ W; thence to 27°34′10″ N, 82°34′50″ W; thence to 27°37′56″ N, 82°31′15″ W. This zone encompasses all navigable waterways between Tampa Bay ''1C'' (LLNR 22590) to Sunshine Skyway Bridge.

* * * * *

Dated: January 23, 2023.

Micheal P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg.

[FR Doc. 2023–01755 Filed 1–27–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0427; FRL–10165–01–R9]

Air Plan Approval and Limited Approval-Limited Disapproval; California; Antelope Valley Air Quality Management District; Stationary Source Permits; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval, and a limited approval and limited disapproval of a revision to the Antelope Valley Air Quality Management District (AVAQMD or ''District'') portion of the California State Implementation Plan (SIP). The EPA is proposing to take action on nine rules submitted on August 3, 2021. We are proposing approval of three rules, and limited approval and limited disapproval of six rules. These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under part D of title I of the Clean Air Act (CAA or ''Act''). If finalized, this action will update the AVAQMD's current SIP with nine revised rules. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before March 1, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0427 at *https://www.regulations.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.* 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.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, Permits Office (Air–3–1), U.S. Environmental Protection Agency, Region IX, (415) 947–4156, *kelly.shaheerah@epa.gov.*

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

Table of Contents

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word or initials *AVAQMD* or *District* mean or refer to the Antelope Valley Air Quality Management District.

(ii) The word or initials *CAA* or *Act* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(iii) The word or initials *CARB* mean or refer to the California Air Resources Board.

(iv) The initials *CFR* mean or refer to Code of Federal Regulations.

(v) The initials or words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(vi) The initials *NA* mean or refer to nonattainment.

(vii) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(viii) The initials *NSR* mean or refer to New Source Review.

(ix) The initials *NNSR* mean or refer to nonattainment New Source Review.

(x) The initials *SIP* mean or refer to State Implementation Plan.

(xi) The word *State* means or refers to the State of California.

(xii) The word *TSD* means or refers to the Technical Support Document.

I. The State's Submittal

A. What rules are in the current SIP?

Table 1 lists the rules in the current SIP with the dates they were adopted or amended by AVAQMD, submitted by the California Air Resources Board (CARB), the governor's designee for California SIP submittals, and approved by the EPA.

TABLE 1—CURRENT SIP RULES

Rule	Rule title	Amendment or adoption date	Submittal date	EPA action date	FR citation
Regulation II (Permits)					
Rule 206	Posting of Permit to Operate	2/21/1976	4/21/1976	11/9/1978	43 FR 52237.
Rule 219	Equipment Not Requiring a Written Permit Pursuant to Regulation II.	9/4/1981	10/23/1981	7/6/1982	47 FR 29231.
Regulation XIII (New Source Review)					
Rule 1301	General	12/7/1995	8/28/1996	12/4/1996	61 FR 64291.
Rule 1302	Definitions	12/7/1995	8/28/1996	12/4/1996	61 FR 64291.
Rule 1303	Requirements	5/10/1996	8/28/1996	12/4/1996	61 FR 64291.
Rule 1304	Exemptions	6/14/1996	8/28/1996	12/4/1996	61 FR 64291.
Rule 1306	Emission Calculations	6/14/1996	8/28/1996	12/4/1996	61 FR 64291.
Rule 1309	Emission reduction Credits	12/7/1995	8/28/1996	12/4/1996	61 FR 64291.
Rule 1309.1	Priority Reserve	12/7/1995	8/28/1996	12/4/1996	61 FR 64291.
Rule 1310	Analysis and Reporting	12/7/1995	8/28/1996	12/4/1996	61 FR 64291.
Rule 1311	Power Plants	2/25/1980	4/3/1980	1/21/1981	46 FR 5965.
Rule 1313	Permits to Operate	12/7/1995	8/28/1996	12/4/1996	61 FR 64291.

B. What rules did the State submit?

The CARB provided submittals to the EPA on October 30, 2001, April 22, 2020, and August 3, 2021 (hereafter referred to as the ''2001 Submittal,'' ''2020 Submittal,'' and ''2021 Submittal,'' respectively), for revisions to the AVAQMD's NSR permitting program in the California SIP.

The CARB's 2021 Submittal provided the amended NSR permitting program rules listed in Table 2 that were adopted by the AVAQMD and submitted by the CARB for inclusion in the SIP. The submitted rules listed in Table 2 would replace the current EPA-approved SIP rules that are listed in Table 1. The rule subsections 1302(C)(5) and 1302(C)(7)(c) are not submitted for inclusion in the California SIP because they are requirements for regulating toxic air contaminants (TAC) and hazardous air pollutants (HAP) under the AVAQMD Rule 1401 (New Source Review for Toxic Air Contaminants).[1]

[1] Subsections 1302(C)(5)(d) and 1302(C)(7)(c)(iii) of Rule 1302 specifically state that subsections 1302(C)(5) and 1302(C)(7)(c) are not submitted to the EPA and are not intended to be included as part of the California SIP.

TABLE 2—SUBMITTED RULES

Rule	Rule title	Adoption or amendment date	Submittal date [a]
Regulation II (Permits)			
Rule 219	Equipment not Requiring a Permit	6/15/2021	8/3/2021
Regulation XIII (New Source Review)			
Rule 1300	New Source Review General	7/20/2021	8/3/2021
Rule 1301	New Source Review Definitions	7/20/2021	8/3/2021
Rule 1302 (except 1302(C)(5) and 1302(C)(7)(c)).	New Source Review Procedure	7/20/2021	8/3/2021
Rule 1303	New Source Review Requirements	7/20/2021	8/3/2021
Rule 1304	New Source Review Emissions Calculations	7/20/2021	8/3/2021
Rule 1305	New Source Review Emissions Offsets	7/20/2021	8/3/2021
Rule 1306	New Source Review for Electric Energy Generating Facilities	7/20/2021	8/3/2021
Rule 1309	Emission Reduction Credit Banking	7/20/2021	8/3/2021

[a] The submittal for Rules 219, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1309, and 1700 was transmitted to the EPA via a letter from CARB dated August 3, 2021.

The CARB's 2001 and 2020 Submittals requested removal of the rules listed in Table 3 from the District's portion of the California SIP because they were locally rescinded.

TABLE 3—RESCINDED RULES

Rule	Rule title	EPA approval date (FR citation)	Rescission date	Submittal date
Regulation II (Permits)				
Rule 206	Posting of Permit to Operate	11/9/1978 (43 FR 52237)	1/21/2020	4/22/2020
Regulation XIII (New Source Review)				
Rule 1309.1	Priority Reserve	12/4/1996 (61 FR 64291)	3/20/2001	10/30/2001
Rule 1310	Analysis and Reporting	12/4/1996 (61 FR 64291)	3/20/2001	10/30/2001
Rule 1311 [a]	Power Plants	1/21/1981 (46 FR 5965)	3/20/2001	10/30/2001
Rule 1313	Permits to Operate	12/4/1996 (61 FR 64291)	3/20/2001	10/30/2001

[a] Rule 1311 was rescinded by South Coast AQMD on June 28, 1990 and submitted to the EPA for removal from the SIP on January 28, 1992 (see 64 FR 71660, December 22, 1999). Rule 1311 was rescinded by AVAQMD on March 20, 2001 and submitted to the EPA for removal from the SIP on October 30, 2001.

The CARB's 2021 Submittal also requested that all previous versions of Rule 219 and the rules under Regulation XIII codified in 40 CFR 52.220 prior to July 1, 1997, as listed in Table 4, which are in effect within the jurisdiction of the AVAQMD be removed from the California SIP. These rules will be superseded by the submitted versions of Rule 219 as amended on June 15, 2021, and Rules 1300 through 1306, and 1309 as amended on July 20, 2021, upon the EPA's approval of these rules into the California SIP.

The District was officially formed on July 1, 1997, as the agency with jurisdiction over the Los Angeles County portion of the Mojave Desert Air Basin. Prior to that time, the jurisdiction of the Antelope Valley area was part of the Los Angeles County Air Pollution Control District (APCD), the Southern California APCD, and the South Coast AQMD.

TABLE 4—CODIFIED RULES IN 40 CFR 52.220 PRIOR TO JULY 1, 1997

Rule	Submittal agency	Submittal date	EPA approval date (FR citation)
Regulation II (Permits)			
Rule 11 (Exemptions)	Los Angeles County APCD	6/30/1972	9/22/1972 (37 FR 19812).
Rule 219	Southern California APCD	4/21/1976	11/9/1978 (43 FR 52237).
Rule 219	Southern California APCD	8/2/1976	11/9/1978 (43 FR 52237).
Rule 219	Los Angeles County APCD	6/6/1977	11/9/1978 (43 FR 52237).
Rule 219	South Coast AQMD	10/23/1981	7/6/1982 (47 FR 29231).

TABLE 4—CODIFIED RULES IN 40 CFR 52.220 PRIOR TO JULY 1, 1997—Continued

Rule	Submittal agency	Submittal date	EPA approval date (FR citation)
Regulation XIII (New Source Review)			
Rules 1301, 1303, 1304, 1305, 1306, 1307, 1310, 1311, and 1313.	South Coast AQMD	4/3/1980	1/21/1981 (46 FR 5965).
Rules 1302 and 1308	South Coast AQMD	8/15/1980	1/21/1981 (46 FR 5965).
Rules 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311, and 1313.	Los Angeles County APCD	9/5/1980	6/9/1982 (47 FR 25013).
Rules 1301, 1302, 1309, 1309.1, 1310, and 1313, adopted on 12/7/1995; Rule 1303 adopted on 5/10/1996; and Rules 1304 and 1306 adopted on 6/14/1996.	South Coast AQMD	8/28/1996	12/4/1996 (61 FR 64291).

On February 3, 2021, the amended Rules 219, 1300, 1301, 1302 (except 1302(C)(5) and 1302(C)(7)(c)), 1303, 1304, 1305, 1306, and 1309 were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. Additionally, on October 22, 2020, rescinded Rule 206 was deemed complete by operation of law, and on April 30, 2002, rescinded Rules 1309.1, 1310, 1311, and 1313 were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V.

C. What is the purpose of the submitted rule revisions?

The rules listed in Table 2 are intended to replace the rules currently in the SIP as listed in Table 1. The submitted rules are also intended to satisfy the minor NSR and nonattainment NSR (NNSR) requirements of section 110(a)(2)(C) and part D of title I of the Act, and the EPA's implementing regulations at title 40 of the Code of Federal Regulations (CFR) part 51.[2] Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only in areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). The AVAQMD is currently designated Severe nonattainment for the 2015 ozone NAAQS. See 40 CFR 81.305. Therefore, the designation of AVAQMD as a federal ozone nonattainment area triggered the requirement for the District to develop and submit an NNSR program to the EPA for approval into the California SIP.

[2] The CARB also submitted a PSD rule for SIP inclusion (AVAQMD Rule 1700, 'Prevention of Significant Deterioration (PSD)'). We intend to take action on the District's PSD rule in a subsequent rulemaking.

II. The EPA's Evaluation

A. What is the background for this proposal?

Section 110(a) of the CAA requires states to submit regulations that include a pre-construction permit program for new or modified stationary sources of pollutants, including a permit program as required by part D of title I of the CAA.

On October 26, 2015, the EPA finalized a revised 8-hour NAAQS for ozone, which was lowered from 0.75 parts per billion (ppb) to 0.70 ppb.[3] On June 4, 2018, the Los Angeles County portion of the Mojave Desert Air Basin, under the jurisdiction of the AVAQMD, was designated as nonattainment for 2015 8-hour ozone NAAQS and classified Severe-15.[4] [5] (40 CFR 81.305.) This designation became effective on August 3, 2018. On December 6, 2018, the EPA finalized the implementation rule for the 2015 ozone NAAQS, which required the AVAQMD to submit an NSR certification to the EPA by August 3, 2021 (83 FR 62998). On August 3, 2021, the CARB submitted to the EPA the amended NSR rules listed in Table 2 and requested to remove the rescinded rules listed in Table 3 and the rules listed in Table 4. The 2021 Submittal from the CARB is intended to satisfy this NSR requirement.

The NSR rules contain the District's preconstruction permit program for new and modified major stationary sources for areas designated nonattainment for at least one NAAQS. They also include the District's minor NSR permit program. We provide a more detailed analysis in our technical support document (TSD), which is available in the docket for this proposed action.

B. How is the EPA evaluating the rules?

The EPA has reviewed the AVAQMD rules listed in Table 2 for compliance with the CAA requirements as follows: (1) the general SIP requirements as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i); (2) the stationary source preconstruction permitting program requirements as set forth in CAA part D of title I, including CAA sections 172(c)(5), 173, and 182; (3) the requirements for the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in Severe ozone nonattainment areas; (4) the requirements for the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I federal area in accordance with 40 CFR 51.307; (5) the SIP revision requirements as set forth in CAA sections 110(l) and 193; and (6) the provisions of CAA section 302(z).

Sections 110(a)(2) and 110(l) of the Act require that each SIP or revision to a SIP submitted by the State must be adopted after reasonable notice and public hearing. In addition, section 110 of the Act requires that SIP rules be enforceable. Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. Section 110(a)(2)(E)(i) of the Act requires that each SIP provide necessary assurances that the state will have

[3] 80 FR 65291 (October 26, 2015).

[4] 83 FR 25776 (June 4, 2018). A classification of Severe-15 under the 2015 ozone NAAQS is an area with a design value of 0.105 ppm up to but not including 0.111 ppm.

[5] 40 CFR 51.1105 provides anti-backsliding requirements for areas that were nonattainment for standards that were revoked. The AVAQMD has the same designation of Severe for the 1997 8-hour, 2008 8-hour, and the 2015 8-hour ozone NAAQS. Therefore, the nonattainment NSR requirements are the same, and have not changed.

adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan.

Part D of title I of the Act contains the general requirements for areas designated nonattainment for a NAAQS (section 172), referred to as nonattainment NSR (NNSR), including preconstruction permit requirements for new major sources and major modifications proposing to construct in nonattainment areas (section 173) and the de minimis SIP requirements for Severe nonattainment areas (sections 182(c)(6) and 182(d)).

The EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement the statutory mandate under section 110(a)(2)(C) of the Act that is commonly referred to as the ''general'' or ''minor'' NSR program. These NSR program regulations impose requirements for approval of state and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for NSR permitting programs under part D of title I of the Act.

The EPA's regulations at 40 CFR 51.165 set forth the EPA's regulatory requirements for SIP-approval of a nonattainment NSR permit program. Our review also evaluated the submittal for compliance with the NNSR requirements applicable to Severe ozone nonattainment areas and ensured that the submittal addressed the NNSR requirements for the 2015 ozone NAAQS.

The EPA's regulations at 40 CFR 51.307 set forth the protection of visibility requirements that apply to NSR programs. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification may have an impact on visibility in any mandatory Federal Class I Area.

Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA.

Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

Section 302(z) of the Act defines the term ''Stationary Source'' as generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in title II of the Act.

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of the approval criteria.

C. Do the rules meet the evaluation criteria?

The EPA has reviewed the submitted rules listed in Table 2 in accordance with the rule evaluation criteria described in Section II.B of this notice.

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require SIP revisions to be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the 2021 Submittal for the amended rules listed in Table 2 and included in the 2001 and 2020 Submittals for the rescinded rules listed in Tables 3 and 4, we find that the AVAQMD has provided sufficient evidence of public notice, opportunity for comment, and a public hearing prior to the adoption, rescission, and submittal of these rules to the EPA.

We have determined that while the submitted rules mostly satisfy the statutory and regulatory requirements in parts C and D of the Act (including sections 172, 173, 182(c)(6) and 182(d)), section 110(a)(2) (including 110(a)(2)(A) and 110(a)(2)(E)(i)) and 302(z) of the Act, and 40 CFR 51.160–51.165 and 51.307, and strengthen the SIP, they also contain deficiencies that prevent full approval. We describe these identified deficiencies in Section II.D of this notice. Our TSD contains a more detailed evaluation of the deficiencies, as well as recommendations for program improvements.

D. What are the rule deficiencies?

The EPA identified the following deficiencies in the rules proposed for inclusion in the SIP. Our TSD, which can be found in the docket for this proposed action, contains a more detailed discussion for our proposed action.

1. Simultaneous Emission Reductions (SERs) Calculation Methodology

SERs, as defined in 1301(UUU), are a ''Federally Enforceable reduction in the emissions of an existing Emissions Unit(s), calculated pursuant to the provisions of District Rule 1304(C).'' As the name suggests, these are emission reductions that are proposed to occur in conjunction with emission increases from a proposed project. SERs calculated pursuant to 1304(C)(2)(d) are required to be based on real emissions reductions pursuant to 1301(A), 1301(LLL), and 1304(C)(1).[6] SERs are used for the following purposes under the District's NSR rules: (1) as Offsets pursuant to 1301(AAA) and 1305(C)(2),[7] (2) to determine the Net Emission Increase (NEI) for determining whether a project at a Modified Major Facility is a Major Modification pursuant to 1301(UU) and the related provisions in 1301(MM), 1301(RR), 1301(TTT), and 1304(B)(2);[8] and (3) to determine the amount of Offsets required at a new or Modified Facility pursuant to 1302(C)(3) and 1303(B)(1).[9]

The EPA has identified deficiencies in how the District calculates and applies SERs. Rule 1304(C)(2)(d) allows SERs to be calculated using a potential-to-emit (PTE)-to-PTE calculation method rather than an actuals-to-PTE calculation method. Specifically, 1304(C)(2)(d) states that, in the case of a Modified Major Facility, the historic actual emissions (HAE) for a specific Emission Unit may in some circumstances be equal to the Potential to Emit for that Emission Unit if the particular Emission Unit has been previously offset in a documented prior permitting action.

CAA section 173(c)(1) requires that the SIP must contain provisions to assure that emission increases from new or modified major stationary sources are offset by real reductions in actual emissions. In addition, 40 CFR 51.165(a)(3)(i) specifies that the baseline for determining credit for emissions reductions shall be the ''actual'' emissions of the source from which the offset credit is obtained where the demonstration of reasonable further progress (RFP) and attainment of the NAAQS is based upon the actual emissions of sources located within the nonattainment area. The District's attainment plan and demonstration of RFP are based on actual emissions. SERs

[6] Rule 1301(A) is the definition for Actual Emissions, 1301(LLL) is the definition for Real, and 1304(C)(1) states that ''SERs as defined in District Rule 1301(UUU) may result from the Modification or shut down of Existing Emission Unit(s) so long as the resulting reductions are Federally Enforceable, Real, Surplus, Permanent, Quantifiable and Enforceable, and are reductions in of the Emissions Unit(s).''

[7] Rule 1301(AAA) is the definition of Offset Emission Reductions (Offsets), and 1305(C)(2) provides the eligibility requirements for SERs used as offsets.

[8] Rule 1301(MM) is the definition for Major Modification, 1301(RR) is the definition for Modification (Modified), 1301(TTT) is the definition for Significant, and 1304(B)(2) provides the NEI calculation procedures.

[9] Rule 1302(C)(3) provides the District's procedures for the determination of offsets, and Rule 1303(B)(1) states the District's procedures for determining the amount of offsets required.

calculated pursuant to 1304(C)(2)(d) and used as offsets pursuant to 1301(AAA) and 1305(C)(2) may not be real reductions in actual emissions as required by CAA section 173(c)(1) because the provision allows an Emission Unit's potential to emit, rather than historic actual emissions to be used as the baseline for the calculations. Calculating emissions decreases using a potential emissions baseline allows reductions ''on paper'' that do not represent real emissions reductions. Under the CAA, such paper reductions cannot be used to offset actual emission increases. Moreover, since SERs calculated using a potential to emit baseline are not based on real reductions in actual emissions as required in CAA section 173(c)(1), it makes offsets that rely on the use of such SERs deficient.

As discussed in the preceding paragraph, SERs calculated pursuant to 1304(C)(2)(d) may not represent real reductions in actual emissions because the provision allows an Emission Unit's potential to emit, rather than historic actual emissions, to be used as the baseline for calculating emission decreases. This provision is inconsistent with the plain language of the definition of ''net emissions increase'' (NEI) found in 40 CFR 51.165(a)(1)(vi)(E)(1), which states that: ''A decrease in actual emissions is creditable only to the extent that the old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions.'' Therefore, we find the definition of NEI in 1301(UU) and all related provisions in 1301(MM), 1301(RR), 1301(TTT), and 1304(B)(2) are deficient.

40 CFR 51.165(a)(3)(ii)(J) requires that the increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173(c)(1) of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. SERs calculated pursuant to 1304(C)(2)(d) and used to determine the quantity of offsets required at a new or Modified Facility pursuant to 1303(B)(1) may not be based on the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit as required by 40 CFR 51.165(a)(3)(ii)(J). Therefore, because 1303(B)(1) allows SERs to be used to calculate the quantity of offsets required, we find this provision to be deficient, as well as 1302(C)(3).

These three deficiencies identified in the preceding paragraphs make portions of Rules 1301, 1302, 1303, 1304, and 1305 not fully approvable. Deviations from federal definitions and requirements are generally approvable only if a state specifically demonstrates that the submitted provisions are more stringent, or at least as stringent, in all respects as the corresponding federal provisions and definitions. See 40 CFR 51.165(a)(1) and 51.165(a)(2)(ii). These deficiencies may be corrected by revising 1304(C)(2)(d) to require HAE or actual emissions, rather than PTE, to always be used when calculating SERs, regardless of whether ''the particular Emissions Unit ha[s] been previously offset'' in a past NSR permit action. The District may also correct the deficiencies by providing a revised calculation method that meets or is at least as stringent as the requirements in CAA section 173(c)(1), 40 CFR 51.165(a)(3)(i), 40 CFR 51.165(a)(1)(vi)(E)(1), and 40 CFR 51.165(a)(3)(ii)(J).

2. Calculation Method for Determining HAE

Rule 1304(E)(2) defines the calculation method for determining the HAE as it relates to emission changes at a Facility pursuant to 1304. Rule 1304(E)(2) states that HAE, in pounds per year, is the actual emissions of an emission unit, ''(i) . . . averaged from the 2-year period which immediately proceeds the date of application and which is representative of Facility operations; or (ii) averaged for any 2 years of the 5-year period which immediately precedes the date of application which the APCO has determined is more representative of Facility operations. . . .''

The provision contains a typographical error making the provision deficient. The actual emissions must be based on emissions emitted preceding the date of application. This deficiency may be corrected by replacing the word ''proceeds'' with ''precedes'' in Rule 1304(E)(2)(i).

3. Use of Contracts

The District rule provisions 1302(D)(6)(a)(iii), 1304(C)(4)(c), 1309(D)(3)(c), and 1309(E)(6) are used to meet requirements in CAA section 173(c)(1), and 40 CFR 51.165(a)(3)(ii)(G) and 40 CFR 51.165(a)(3)(ii)(J). The provisions allow an owner and/or operator to obtain a valid District permit or ''contract'' enforceable by the District. The terms ''Authority to Construct (ATC)'' and ''Permit to Operate (PTO)'' are defined in Rule 1301(H) and 1301(CCC), respectively. SIP-approved Rules 201, 203, and 204 provide additional requirements for ATCs and PTOs. However, neither the NSR rules submitted for approval nor any other SIP-approved NSR rules define the term ''contract'' or provide requirements for how a contract is an enforceable mechanism that may be used in the same way as an ATC or PTO. For this reason, rule sections 1302(D)(6)(a)(iii), 1304(C)(4)(c), 1309(D)(3)(c), and 1309(E)(6) are deficient and therefore are not fully approvable. This deficiency may be corrected by either removing the term ''contract'' or adding provisions that define and delineate how a contract is a federally enforceable mechanism that may be used in the same way as an ATC or a PTO.

4. Interprecursor Trading

Rule 1305(C)(6) allows interprecursor trading (IPT) between nonattainment pollutants and their precursors on a case-by-case basis. A footnote to this section states: ''Use of this subsection [is] subject to the Ruling in *Sierra Club* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021) and subsequent guidance as issued by USEPA.'' This footnote appears to reference the D.C. Circuit Court of Appeals decision issued on January 29, 2021,[10] vacating the provisions of the 2018 Implementation Rule that allowed IPT for the ozone precursors volatile organic compounds (VOCs) and nitrogen oxides (NO_X).[11] On July 19, 2021, the EPA issued a final rulemaking that removed the IPT provisions found in 40 CFR 51.165(a)(11) pertaining to ozone precursors, consistent with the D.C. Circuit Court decision.[12] Therefore, the provision in Rule 1305(C)(6) allowing IPT for ozone precursors is no longer permissible under EPA regulations. Accordingly, we find Rule 1305 deficient in this regard. We acknowledge the District's attempt to address the D.C. Circuit Court decision, but with the EPA's revisions to the NSR regulations, the District must revise Rule 1305(C)(6) to make clear that IPT is not permissible for ozone precursors.

5. De Minimis Rule

Pursuant to section 182(c) and (d) of the CAA, the SIP requirements for Severe nonattainment areas must include all the provisions under section 182(c) for Serious nonattainment areas as well as the SIP requirements in section 182(d) for Severe ozone nonattainment areas. CAA section 182(c)(6) requires that the NSR provisions in the SIP ''shall ensure

[10] *Sierra Club* v. *EPA,* 21 F.4th 815 (D.C. Cir. 2021). This is the same D.C. Circuit Court decision cited in Rule 1305; the Court simply updated the citation.

[11] 83 FR 62998 (December 6, 2018).

[12] 86 FR 37918 (July 19, 2021).

increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this Act unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.'' The de minimis SIP requirements in CAA section 182(c)(6) are not provided in AVAQMD's submitted nonattainment NSR rules. Therefore, the District rules are deficient and not fully approvable with respect to CAA section 182(c)(6) or purposes of determining the applicability of the NSR permit requirements. This deficiency may be corrected by incorporating the de minimis SIP requirements in CAA section 182(c)(6) in the Regulation XIII nonattainment NSR rules.

Our TSD, which can be found in the docket for this proposed action, contains a more detailed discussion of the rule deficiencies as well as a complete analysis of the District's submitted rules that form the basis for our proposed action.

III. Proposed Action and Public Comment

The EPA is proposing approval of AVAQMD Rules 219, 1300, and 1306 as authorized in section 110(k)(3) of the Act. If a portion of a plan revision meets all the applicable CAA requirements, CAA sections 110(k)(3) and 301(a) authorize the EPA to approve the plan revision in part and disapprove the plan revision in part. The EPA is proposing a limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, 1305, and 1309 as authorized in sections 110(k)(3) and 301(a) of the Act because although they fulfill most of the relevant CAA requirements and strengthen the SIP, they also contain six deficiencies as discussed in Section II.D of this notice.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our proposed action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because it will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement. In addition, our proposed action will not relax any pre-November 15, 1990 requirement in the SIP, therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its precursors in the District. Accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220 (Identification of plan—in part). This action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of Rules 1301, 1302, 1303, 1304, 1305, and 1309 under CAA sections 110(k)(3) and 301(a).

In conjunction with our SIP approval of the District's visibility provisions for major sources subject to review under the NNSR program, we also propose to revise 40 CFR 52.281(d) regarding applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California. Approval of the District's visibility provisions under 40 CFR 51.307 would mean that this FIP is not needed to satisfy the CAA visibility requirements at 40 CFR 51.307 for sources subject to the District's NNSR program. This revision will clarify the application of this FIP in California following our final action.

If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a FIP unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, because the deficiencies relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the AVAQMD's jurisdiction 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Section 179 sanctions will not be imposed under the CAA if the State submits, and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

We will accept comments from the public on this proposal until March 1, 2023.

IV. 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 AVAQMD rules listed in Table 2 of this preamble, which contain the District's NSR permitting program for new and modified sources of air pollution under part D of title I of the CAA. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

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

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 19, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–01500 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0682; FRL–10126–01–R9]

Air Plan Approval; California; San Diego County Air Pollution Control District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) from boilers, process heaters, and steam generators. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the ''Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before March 1, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0682 at *https://www.regulations.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*. 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.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3245 or by email at *evans.lakenya@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the SDCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SDCAPCD	69.2.2	Medium Boilers, Process Heaters, and Steam Generators	09/09/21	03/09/22

On September 9, 2022, the submittal for SDCAPCD Rule 69.2.2 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 69.2.2 in the SIP. The SDCAPCD adopted an earlier version of this rule on July 8, 2020, which was submitted to the EPA on September 21, 2020 (''2020 submittal''). The EPA provided comments for rule revisions to SDCAPCD without acting on the 2020 submittal, and the SDCAPCD subsequently amended the rule. Rule 69.2.2 was re-submitted to the EPA on March 9, 2022 (''2022 submittal''), but the background information for Rule 69.2.2 was not included. In a letter to the EPA Region IX Regional Administrator dated November 22, 2022, CARB withdrew the 2020 submittal. The EPA will use the background information in the Staff Report from the 2020 submittal to proceed with our action on the 2022 submittal, as SDCAPCD's September 21, 2022 withdrawal request letter to CARB clarifies.

C. What is the purpose of the submitted rule?

Emissions of NO_X contribute to the production of ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Rule 69.2.2 regulates boilers, process heaters, and steam generators (units) with a heat input rating greater than 2 million British thermal unit (Btu) per hour to less than 5 million Btu per hour that are manufactured, sold, offered for sale or distributed, or installed for use within San Diego County. New units that operate on gaseous fuel have a NO_X emission limit of 30 parts per million by volume (ppmv) and new units that operate on liquid fuel have a NO_X emission limit of 40 ppmv. Units that operate on a mixture of liquid and gaseous fuels must calculate their heat-input weighted average to comply with the NO_X emission limits of the rule. The rule also gives a CO emission limit of 400 ppmv for new units. All emission limits are calculated at 3 percent oxygen (O_2). Existing or relocated units, along with new units, are required to have a tune-up once a year. New units are required to monitor the burning of liquid and gaseous fuel through a non-resettable, totalizing meter to measure either the mass flow rate or volumetric flow rate, temperature, and pressure of each fuel to the unit. Manufacturers of units without a permit to operate that are sold in San Diego County must apply for certification. Facility operators or owners of these units must apply for an authority to construct/permit to operate or must register the unit to demonstrate that the unit complies with the emission limits of Rule 69.2.2. Test methods are provided in Rule 69.2.2 for new unit compliance testing and certification for sale in San Diego County. Test methods are also provided for new units certifying their higher heating value of a fuel if not provided by a third party provider.

The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each major source of NO_X in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). The SDCAPCD regulates an ozone nonattainment area classified as Severe for both the 2008 and 2015 8-hour National Ambient Air Quality Standards NAAQS (40 CFR 81.305). Therefore, this rule must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. EPA, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' May 25, 1988 (the Bluebook, revised January 11, 1990).
2. EPA Region IX, ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' August 21, 2001 (the Little Bluebook).
3. EPA Region V, ''NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' March 1994.
4. CARB, ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' July 18, 1991.

B. Does the rule meet the evaluation criteria?

This rule meets CAA requirements and is consistent with relevant guidance regarding enforceability and SIP revisions. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD also includes recommendations for the next time the SDCAPCD modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until March 1, 2023. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. 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 San Diego County Air Pollution Control District Rule 69.2.2, adopted on September 9, 2021, which regulates operations and emissions of certain boilers, process heaters, and steam generators, as discussed in section I. of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: January 16, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–01124 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0926; FRL–10482–01–R9]

Clean Air Plans; 2015 8-Hour Ozone Nonattainment Area Requirements; Clean Fuels or Advanced Control Technology for Boilers; San Joaquin Valley and Los Angeles—South Coast Air Basin, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the California State Implementation Plan (SIP) concerning the provisions for clean fuels or advanced control technology for boilers for the 2015 ozone national ambient air quality standards (''2015 ozone NAAQS'') in the San Joaquin Valley and Los Angeles—South Coast Air Basin, California (''South Coast'') ozone nonattainment areas. The SIP revisions include the ''Certification that the San Joaquin Valley Unified Air Pollution Control District's Current Rules Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-hour Ozone Standard'' for San Joaquin Valley (''2021 San Joaquin Valley Certification'') and the ''Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin'' for South Coast (''2021 South Coast Certification''), both submitted on August 3, 2021. We are proposing to approve these revisions under the Clean Air Act (CAA or ''the Act''), which establishes clean fuels or advanced control technology for boilers requirements for ''Extreme'' ozone nonattainment areas.

DATES: Written comments must arrive on or before March 1, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0926 at *https://www.regulations.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.* 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.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Khoi Nguyen, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, or by email at *nguyen.khoi@epa.gov.*

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

Table of Contents

I. Background

On October 26, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).[1] In accordance with section 107(d) of the CAA, the EPA must designate an area ''nonattainment'' if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area.

The EPA designated 21 areas in California as nonattainment for the 2015 ozone NAAQS, effective August 3, 2018.[2] Amador County, Calaveras County, Butte County, Imperial County, Mariposa County, San Francisco Bay Area, San Luis Obispo (Eastern part), Sutter Buttes, Tuolumne County, and Tuscan Buttes nonattainment areas (NAAs) were classified as Marginal nonattainment. Kern County (Eastern Kern), Nevada County (Western part), Sacramento Metro, and San Diego County NAAs were classified as Moderate nonattainment. The EPA classified the Ventura County NAA as Serious nonattainment. The EPA classified the Los Angeles-San Bernardino Counties (West Mojave Desert) and Riverside County (Coachella Valley) NAAs as Severe-15 nonattainment. The EPA classified both the San Joaquin Valley and the Los Angeles-South Coast Air Basin (''South Coast'') NAAs as Extreme nonattainment. The EPA designated the lands of the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation and the Morongo Band of Mission Indians as separate NAAs and classified them as Marginal and Serious nonattainment, respectively. The State of California does not have regulatory authority on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

Section 182(e)(3) of the CAA provides that SIPs for Extreme ozone nonattainment areas such as the San Joaquin Valley and South Coast require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tons per year (tpy) of NO_X to either burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low-polluting fuel), or use advanced control technology, such as catalytic control technologies or other comparably effective control methods. Section 182(e)(3) also requires submittal of a plan revision addressing this requirement to the EPA within three years of the effective date of nonattainment designation.

On August 3, 2021, the California Air Resources Board (CARB) submitted SIP revisions to the EPA for multiple nonattainment areas to fulfill requirements under section 173 of the CAA for new source review programs (NSR) and for section 182(e)(3) of the CAA requiring clean fuels for boilers for Extreme NAAs.[3] In this action, we are evaluating and proposing action on the portion of the submittal related to clean fuels for boilers for the San Joaquin Valley and South Coast Extreme NAAs (''2021 Clean Fuels Submittal'').[4]

II. Statutory and Regulatory Requirements

A. Procedural Requirements for Adoption and Submittal of SIP Revisions

CAA sections 110(a)(1) and 110(l) and 40 CFR 51.102 require states to provide reasonable notice and an opportunity for a public hearing prior to adoption of SIP revisions. Section 110(k)(1)(B) requires the EPA to determine whether a SIP submittal is complete within 60 days of receipt. Any plan that the EPA does not affirmatively determine to be complete or incomplete will become complete six months after the day of submittal by operation of law. A finding of completeness does not approve the submittal as part of the SIP, nor does it indicate that the submittal is approvable. It does start a 12-month clock for the EPA to act on the SIP submittal (see CAA section 110(k)(2)).

B. Requirements for Clean Fuels or Advanced Control Technology for Boilers

As described in Section I of this document, CAA section 182(e)(3) provides that SIPs for Extreme nonattainment areas require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_X to either burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low-polluting fuel), or use advanced control technology, such as catalytic control technologies or other comparably effective control methods.

The EPA provided additional guidance regarding the applicability of this requirement in a **Federal Register** action titled ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble'').[5] According to the General Preamble, a boiler should generally be considered as any combustion equipment used to produce steam and generally does not include a process heater that transfers heat from combustion gases to process streams.[6] In addition, boilers with rated heat inputs less than 15 million British Thermal Units (MMBtu) per hour that are oil- or gas-fired may generally be considered de minimis and exempt from these requirements because it is unlikely that they will exceed the 25 tpy NO_X emission threshold.[7]

III. Summary of the State's Submittal

A. Adoption and Submittal of SIP Revisions

The 2021 Clean Fuels Submittal contains two certifications that existing programs of the South Coast Air Quality Management District (SCAQMD) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) meet the clean fuels for boilers requirements for the 2015 ozone NAAQS. Table 1 of this document lists the certifications addressed by this proposal action.

[1] 80 FR 65292 (October 26, 2015).

[2] 83 FR 25776 (June 4, 2018).

[3] Letter dated August 3, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX (submitted electronically August 3, 2021).

[4] CARB's submittal included NSR certifications for various nonattainment areas in California. The EPA proposed action on the NSR certifications in a separate rulemaking. See 87 FR 22163 (April 14, 2022).

[5] 57 FR 13498 (April 16, 1992).

[6] 57 FR 13498, 13523 (April 16, 1992).

[7] Id. at 13524.

TABLE 1—CLEAN FUELS FOR BOILERS CERTIFICATIONS SUBMITTED AS REVISIONS TO THE CALIFORNIA SIP

District	Nonattainment area	Date adopted	Title
San Joaquin Valley Air Pollution Control District.	San Joaquin Valley	June 17, 2021	Certification that the San Joaquin Valley Unified Air Pollution Control District's Current Rules Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-Hour Ozone Standard.
South Coast Air Quality Management District.	South Coast Air Basin ...	June 4, 2021	Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin.[8]

The CARB submittal includes a cover letter to the EPA dated August 3, 2021, a signed Executive Order S–21–014 dated August 3, 2021, demonstrating that CARB adopted the relevant certifications identified in Table 1, and Attachment A to the Executive Order listing the relevant district actions. The documentation of the public review process prior to submittal to the EPA by each relevant district, as well as information on the relevant certifications, are identified in sections III.B and III.C of this document.

B. 2021 San Joaquin Valley Certification

The 2021 Clean Fuels Submittal documents the public review process followed prior to its submittal to the EPA as a revision to the SIP for the 2021 San Joaquin Valley Certification. The 2021 San Joaquin Valley Certification includes a transmittal letter from the SJVUAPCD to CARB,[9] a copy of a notice of public hearing on June 17, 2021, to consider the approval of the certification,[10] a memorandum from the SJVUAPCD Executive Director/Air Pollution Control Officer and Project Coordinator recommending that the Governing Board adopt the certification,[11] a signed resolution adopting the certification,[12] and a SIP Completeness Checklist indicating that no members of the public commented during the notice period or at the hearing.[13]

In the 2021 San Joaquin Valley Certification, the SJVUAPCD states that SJVUAPCD Rules 4305, 4306, 4320, and 4352 address NO_X emissions limits for boilers and that these rules meet the requirements of the CAA. Specifically, the SJVUAPCD indicates that most of the boilers under SJVUAPCD Rules 4305 and 4306 are fired on natural gas and, as such, meet the requirements of CAA section 182(e)(3)(A) for those boilers subject to those rules. The SJVUAPCD also indicates that SJVUAPCD Rule 4320 establishes more stringent NO_X emissions limits for units in this source category through the use of advanced technology, while also providing advanced emissions reduction options, therefore satisfying the requirements of CAA section 182(e)(3)(A) and (B). Liquid fuel-fired boilers are also addressed by SJVUAPCD Rules 4305, 4306, and 4320, and the SJVUAPCD concludes that the applicable NO_X emissions in the rules necessitate use of advanced technology, therefore meeting the requirements of CAA section 182(e)(3)(B). The SJVUAPCD concludes likewise for solid fuel-fired boilers addressed by SJVUAPCD Rule 4352. Table 2 of this document provides the list of the relevant rules and information on the SIP-approved version of the rules.

TABLE 2—SIP-APPROVED SJVUAPCD RULES SUPPORTING THE 2021 SAN JOAQUIN VALLEY CERTIFICATION

Rule No.	Rule title	Adoption date for SIP-approved rule	Citation for EPA approval into SIP
4305	Boilers, Steam Generators, and Process Heaters—Phase 2	August 21, 2003	69 FR 28061 (May 18, 2004).
4306	Boilers, Steam Generators, and Process Heaters—Phase 3	October 16, 2008	75 FR 1715 (January 13, 2010).
4320	Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater than 5.0 MMBtu/hr.	October 16, 2008	76 FR 16696 (March 25, 2011).
4352	Solid Fuel Boilers, Steam Generators, and Process Heaters	December 15, 2011	77 FR 66548 (November 6, 2012).

C. 2021 South Coast Certification

The 2021 Clean Fuels Submittal documents the public review process followed prior to its submittal to the EPA as a revision to the SIP for the 2021 South Coast Certification. The 2021 South Coast Certification includes a transmittal letter from the SCAQMD to CARB,[14] copies of notices of the public hearing on June 4, 2021, to consider the

[8] The ''Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin'' is part of the document titled ''Final Certification of Nonattainment New Source Review and Clean Fuels for Boilers Compliance Demonstration for 2015 8-hour Ozone Standard.'' The latter document consists of two demonstrations: (1) Nonattainment NSR Compliance Demonstration for the South Coast Air Basin and the Coachella Valley and (2) Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin. In this action, we are evaluating and proposing action on the ''Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin.'' The EPA has proposed to approve the ''Nonattainment NSR Compliance Demonstration for the South Coast Air Basin and the Coachella Valley'' in a separate rulemaking. 87 FR 22163 (April 14, 2022).

[9] Letter dated June 17, 2021, from Jonathan Klassen, Director Air Quality Science and Planning, SJVUAPCD, to Richard W. Corey, Executive Officer, CARB.

[10] Email dated May 18, 2021, from *ozone_plans@lists.valleyair.org* to Stephanie Ng, SJVUAPCD, Subject: ''Notice of Public Hearing to Adopt Proposed SJVAPCD Certification of Clean Fuels for Boilers Requirements for 2015 Ozone Standard.''

[11] Memorandum dated June 17, 2021, from Samir Sheikh, Executive Director/APCO and Jonathan Klassen, Project Coordinator, to the SJVUAPCD Governing Board, Subject: ''Item Number 27: Adopt Certification to Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-Hour Ozone Standard.''

[12] SJVUAPCD Governing Board, Resolution 21–06–27, ''In the Matter of: Adopting the Certification to Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-Hour Ozone Standard,'' June 17, 2021.

[13] SIP Completeness Checklist for ''Certification that the San Joaquin Valley Unified Air Pollution Control District's Current Rules Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-hour Ozone Standard.''

[14] Letter dated June 11, 2021, from Wayne Nastri, Executive Officer, SCAQMD, to Richard W. Corey, Executive Officer, CARB.

approval of the certification,[15] a signed resolution adopting the certification,[16] and a meeting summary of the public hearing held on June 4, 2021.[17]

The 2021 South Coast Certification includes a discussion regarding compliance with the requirements of CAA section 182(e)(3) by reference to SCAQMD Rules 2002, 2004, 1146, and 1303. Information regarding these rules, including dates of adoption and EPA approval, is listed in Table 3 of this document.

With respect to sources subject to the SCAQMD's Regulation XX (''Regional Clean Air Incentives Market'' or ''RECLAIM''), compliance with CAA section 182(e)(3) is provided through SCAQMD Rule 2004 (''Requirements''), which requires each new, modified, and existing electric utility and industrial and commercial boiler emitting more than 25 tpy of NO_X to burn clean fuel or use advanced control technology. SCAQMD Rule 2002 establishes the methodology for calculating facility allocations and adjustments to RECLAIM Trading Credits holdings for NO_X.

SCAQMD Rule 1146 regulates large boilers not covered in the RECLAIM program. Rule 1146 requires that Group I boilers, using natural gas equal to or greater than 75 MMBtu per hour, have a NO_X limit of 5 ppm. Group II boilers, using natural gas equal to or greater than 20 MMBtu per hour but lower than 75 MMBtu per hour, are required to have a NO_X limit of 9 ppm depending on compliance schedule. Group III boilers, using natural gas equal to or greater than 5 MMBtu per hour but lower than 20 MMBtu per hour, are required to meet a NO_X limit of 9 ppm. Rule 1146 also allows for combustion of fuel that may not necessarily be natural gas, methanol, ethanol, or other comparably low polluting fuel. The emissions limits for these other fuels, including units fired on digester or landfill gas, are 15 ppm and 25 ppm, respectively. The SCAQMD indicates that according to the most recent Annual Emissions Reports, aside from the refinery boilers currently regulated under the RECLAIM program, there was only one unit emitting more than 25 tpy of NO_X using other fuels: the Los Angeles County Sanitation District Landfill in Puente Hills. This facility is currently subject to the 25 ppm NO_X emissions limits in Rule 1146, and the boiler at this facility combusts recovered landfill gas as the primary fuel and is equipped with flue gas recirculation. The certification notes that a Best Available Retrofit Control Technology (BARCT) assessment was conducted that showed that the emissions limit of 25 ppm reflects BARCT for boilers using landfill gas in the South Coast Air Basin.[18] The certification also indicates that this emissions limit is consistent with Rule 1146.[19]

Lastly, the SCAQMD also notes in the certification that under SCAQMD Rule 1303, a new or modified boiler emitting at least 10 tpy of NO_X or VOC is required to employ best available control technology (BACT), which, under the SCAQMD's rule, must be at least as stringent as the lowest achievable emission rate (LAER) as defined in CAA section 171(3).

TABLE 3—SIP-APPROVED SCAQMD RULES SUPPORTING THE 2021 SOUTH COAST CERTIFICATION

Rule No.	Rule title	Adoption date for SIP-approved rule	Citation for EPA approval into SIP
2002	Allocations for NO_X and SO_X	October 7, 2016	82 FR 43176 (September 14, 2017).
2004	Requirements for RECLAIM	April 6, 2007	73 FR 38122 (July 3, 2008).
1146	Emissions of NO_X from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	November 1, 2013	79 FR 57442 (September 25, 2014).
1303	Requirements for NSR	May 10, 1996	61 FR 64291 (December 4, 1996).

IV. The EPA's Evaluation of the State's Submittal

A. Evaluation of Procedural Requirements

Based on the documentation included in CARB's submittal, the EPA finds that the submittal satisfies the procedural requirements of sections 110(a)(1) and 110(l) of the Act requiring states to provide reasonable notice and an opportunity for public hearing prior to adoption of SIP revisions. CARB's submittal became complete by operation of law on February 3, 2022, pursuant to section 110(k)(1)(B) of the Act.

B. Evaluation of Requirements for Clean Fuels or Advanced Control Technology for Boilers

1. 2021 San Joaquin Valley Certification

SJVUAPCD Rules 4305, 4306, and 4320 apply to any gaseous fuel- or liquid fuel-fired boiler, steam generator, or process heater with a rated heat input greater than 5 MMBtu per hour. SJVUAPCD Rule 4305, as amended on August 21, 2003, was approved by the EPA in 2004, and SJVUAPCD Rules 4306 and 4320, as revised on October 16, 2008, were approved by the EPA in 2010 and 2011, respectively.[20] SJVUAPCD Rule 4305 limits emissions of NO_X from boilers, steam generators, and process heaters. SJVUAPCD Rule 4306 applies to the same units listed

[15] Proof of publications from the Los Angeles Daily Journal (May 3, 2021); Orange County Reporter (May 3, 2021); Inland Valley Daily Bulletin/LA (May 3, 2021); the Press-Enterprise (May 3, 2021); San Bernardino County Sun (May 3, 2021).

[16] Resolution 21–25, ''A Resolution of the Governing Board of the South Coast Air Quality Management District (South Coast AQMD) certifying the Nonattainment New Source Review (NSR) and Clean Fuels for Boilers Compliance Demonstration for 2015 8-hour Ozone Standard for the South Coast Air Basin (Basin) and the Coachella Valley'' and ''A Resolution of the South Coast AQMD Governing Board directing staff to forward the Certification of Nonattainment NSR and Clean Fuels for Boilers Compliance Demonstration for 2015 8-hour Ozone Standard to CARB for its approval and subsequent submission to U.S. EPA for inclusion in the State Implementation Plan (SIP).'' June 4, 2021.

[17] South Coast Air Quality Management District, Governing Board Meeting Held on: June 4, 2021, Meeting Summary.

[18] See Final Staff Report for Proposed Rule 1150.3—Emissions of Oxides of Nitrogen from Combustion Equipment at Landfills, February 2021, included in the docket for this rulemaking action.

[19] Further, the certification also states that a lower NO_X limit of 9 ppm was established in SCAQMD Rule 1150.3 (Emissions of Oxides of Nitrogen from Combustion Equipment at Landfills) after a cost-effectiveness analysis, which will apply to this facility with a compliance date of January 1, 2031. CARB has submitted SCAQMD Rule 1150.3 for inclusion in the SIP, but it is not currently SIP-approved. The EPA will take action on SCAQMD Rule 1150.3 in a separate rulemaking action.

[20] 69 FR 28061 (May 18, 2004) (approval of Rule 4305); 75 FR 1715 (January 13, 2010) (approval of Rule 4306); 76 FR 16696 (March 25, 2011) (approval of Rule 4320). The EPA will be taking action on the latest versions of Rules 4306 and 4320, as amended December 17, 2020, in a separate rulemaking action.

under Rule 4305 but establishes requirements that are more stringent. The emissions limits in SJVUAPCD Rule 4306 (5 ppm to 30 ppm for gaseous fuels and 40 ppm for liquid fuels) cannot be achieved without the use of advanced control technologies.[21] All units subject to SJVUAPCD Rule 4306 were required to comply with the limits in the rule no later than December 1, 2008. SJVUAPCD Rule 4320 is a complementary rule to SJVUAPCD Rule 4306 and establishes more stringent NO_X limits for units in this source category.

SJVUAPCD Rule 4352 was last approved by the EPA on November 6, 2012.[22] SJVUAPCD Rule 4352 applies to any boiler, steam generator, or process heater fired on solid fuel at a source that has the potential to emit more than 10 tpy of NO_X or VOC. All units subject to SJVUAPCD Rule 4352 were required to comply with the rule's most stringent limits no later than January 1, 2013. In an EPA action on an earlier version of SJVUAPCD Rule 4352, we determined that all of the NO_X emissions limits in SJVUAPCD Rule 4352 effectively require operation of selective noncatalytic reduction control technology, which, for the affected sources, is comparably effective to selective catalytic reduction, and comparable to the combustion of clean fuels at these types of boilers. Therefore, we concluded that SJVUAPCD Rule 4352 satisfied the requirements of section 182(e)(3) for solid fuel-fired boilers in the San Joaquin Valley.[23]

In addition, though not mentioned in the certification, new and modified boilers that will emit or have the potential to emit 25 tpy or more of NO_X are subject to the SJVUAPCD's new source permitting rule, SJVUAPCD Rule 2201, titled ''New and Modified Stationary Source Review.'' This rule requires new and modified sources to install and operate LAER technology. The EPA last approved SJVUAPCD Rule 2201 in 2014.[24]

Finally, in a previous action to approve SIP revisions submitted by CARB to meet CAA requirements for the 2008 8-hour ozone NAAQS in the San Joaquin Valley ozone nonattainment area, the EPA reviewed the SJVUAPCD rules, and concluded that the rules satisfy the requirements for clean fuel or advanced control technology for boilers in CAA section 182(e)(3).[25] Based on our analysis, we find that the emissions limitations in the SJVUAPCD's rules continue to meet the clean fuel or advanced control technology for boilers requirement in CAA section 182(e)(3), and thus, we propose to approve the 2021 San Joaquin Valley Certification portion of CARB's 2021 Clean Fuels Submittal.

2. 2021 South Coast Certification

Currently, within the South Coast, boilers that are subject to the requirements of CAA section 182(e)(3) fall into two broad categories: (1) boilers that are subject to the SCAQMD's RECLAIM regulation, and (2) boilers that are not subject to RECLAIM. Boilers that are subject to RECLAIM must comply with SCAQMD Rule 2004, paragraph (h), that sets forth requirements that essentially mirror those set forth in CAA section 182(e)(3). Thus, we agree with the SCAQMD that SCAQMD Rule 2004(h) satisfies the SIP requirement in CAA section 182(e)(3) with respect to boilers included in the RECLAIM program. We most recently approved SCAQMD Rule 2004 into the SIP on July 3, 2008.[26]

As to boilers that are not subject to RECLAIM, for the following reasons, we agree with the SCAQMD that the requirements are met through implementation of SCAQMD Rule 1146 for existing boilers and through implementation of SCAQMD Regulation XIII (''New Source Review''), specifically, SCAQMD Rule 1303, for new and modified boilers. We approved SCAQMD Rules 1146 and 1303 into the SIP on September 25, 2014, and December 4, 1996, respectively.[27]

First, we have reviewed SCAQMD Rule 1146 and find that it applies to boilers of equal to or greater than 5 MMBtu per hour heat rate input capacity used in all industrial, institutional, and commercial operations with the exception of RECLAIM facilities.[28] That is, it regulates large boilers in the South Coast not participating in the RECLAIM program. SCAQMD Rule 1146 requires compliance with specified numeric limits that are based on the type of unit, and it allows for combustion of fuel that may not necessarily be natural gas, methanol, ethanol, or other comparably low polluting fuel. The emissions limits for these other fuels, including digester or landfill gas, are 15 ppm by volume and 25 ppm by volume, respectively. According to the SCAQMD's analysis, the only unit firing these fuels that also must comply with the requirements of CAA section 182(e)(3) is the Los Angeles County Sanitation District Landfill in Puente Hills, which combusts recovered landfill gas. Because the Los Angeles County Sanitation District Landfill must achieve the limits for landfill gas-fired units as required in SCAQMD Rule 1146, we find that the relevant requirements in CAA section 182(e)(3) are met.[29]

Second, we have reviewed SCAQMD Rule 1303 and find that it provides for denial of a permit to construct for any new or modified source that results in an emissions increase of any nonattainment pollutants unless BACT is employed for the new or modified source.[30] The SCAQMD defines BACT in essentially the same way as the CAA section 171(3) defines LAER.[31] SCAQMD Rule 1303 thus ensures that new or modified boilers in the South Coast that are not subject to RECLAIM comply with the requirements in CAA section 182(e)(3).

In the EPA's previous action on the 2008 8-hour ozone NAAQS, the EPA reviewed the SCAQMD rules, and concluded that the rules satisfy the requirements for clean fuel or advanced control technology for boilers in CAA section 182(e)(3).[32] Based on our analysis, we find that the emissions limitations in the SCAQMD's rules continue to meet the clean fuel or advanced control technology for boilers requirement in CAA section 182(e)(3), and thus, we propose to approve the

[21] ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional Boilers,'' EPA, March 1994. For additional information, see 76 FR 57846, 57864–57865 (September 16, 2011) and 77 FR 12652, 12670 (March 1, 2012).

[22] 77 FR 66548 (November 6, 2012).

[23] 74 FR 65042 (December 9, 2009) (proposed limited approval and limited disapproval of Rule 4352) and 75 FR 60623 (October 1, 2010) (final limited approval and limited disapproval of Rule 4352).

[24] 79 FR 55637 (September 17, 2014). The EPA also recently proposed a limited approval and limited disapproval of an amended version of Rule 2201. 87 FR 45730 (July 29, 2022). The portion of the amended rule that we proposed to disapprove does not affect the clean fuels for boilers certification.

[25] 84 FR 11198 (March 25, 2019).

[26] 73 FR 38122.

[27] 79 FR 57442; 61 FR 64291.

[28] We note that the applicability section of SCAQMD Rule 1146 lists certain categories of sources that are not subject to its requirements in addition to RECLAIM facilities, such as boilers used by electric utilities to generate electricity and large boilers used in petroleum refineries. However, the types of boilers that are categorically exempted by SCAQMD Rule 1146 are in fact included in the RECLAIM program in the South Coast and thus are subject to SCAQMD Rule 2004(h), which provides for compliance with CAA section 182(e)(3).

[29] We also acknowledge that though the boiler at the landfill boiler already meets the relevant CAA requirements, the SCAQMD is further establishing more stringent limits for this facility in SCAQMD Rule 1150.3.

[30] SCAQMD Rule 1303(a).

[31] SCAQMD Rule 1302 (''Definitions''), paragraph (f) (''Best Available Control Technology'').

[32] 84 FR 52005 (October 1, 2019).

2021 South Coast Certification portion of CARB's 2021 Clean Fuels Submittal.

V. Proposed Action

For the reasons discussed in Section IV of this document, under CAA section 110(k)(3), the EPA is proposing to approve as a revision to the California SIP the 2021 Clean Fuels Submittal, which contains the 2021 San Joaquin Valley Certification and the 2021 South Coast Certification. Specifically, the elements we are proposing to approve are:

- Provisions in the San Joaquin Valley for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1302 based on the 2021 San Joaquin Valley Certification; and
- Provisions in the South Coast for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1302 based on the 2021 South Coast Certification.

VI. Statutory and Executive Order Reviews

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

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 19, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–01504 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0581; FRL–10168–01–R5]

Air Plan Approval; Wisconsin; VOC RACT for Miscellaneous Industrial Adhesives and Miscellaneous Metal and Plastic Parts Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions related to the volatile organic compound (VOC) reasonably available control technology (RACT), submitted by the Wisconsin Department of Natural Resources (''Wisconsin'' or ''WDNR'') on June 28, 2022. The proposed SIP revisions consist of several additions, corrections, and clarifications within the Wisconsin Administrative Code (WAC) NR 400 series and update the VOC RACT requirements for the Miscellaneous Industrial Adhesives and Miscellaneous Metal and Plastic Parts Coatings Control Techniques Guidelines (CTG) source categories. Also, EPA is proposing to approve Wisconsin's August 10, 2022, request to remove three previously approved Administrative Orders from the SIP. The request to remove these Administrative Orders includes a 110(l) demonstration highlighting that the revisions to Wisconsin's rules do not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Clean Air Act (CAA) because this SIP revision is a direct replacement for the previously approved orders. These SIP revisions apply to nonattainment areas in Wisconsin classified as moderate or above under the 2008 or later ozone National Ambient Air Quality Standards (''NAAQS'' or ''standard''). These revisions are consistent with the CTG documents issued by EPA in 2008 and are approvable because they serve as SIP strengthening measures.

DATES: Comments must be received on or before March 1, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0581 at *https://www.regulations.gov,* or via email to *arra.sarah@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: Katie Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, *mullen.kathleen@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 is EPA proposing?

EPA is proposing to approve SIP revisions adopted in Board Order AM–20–18 submitted by Wisconsin on June 28,2022 consisting of additions, corrections, and clarifications to WAC chapters 400, 419, 421, 422, 423, 425, 439, and 484. Specifically, these revisions include adding definitions to ensure consistency with the CTGs, correcting inadvertent errors from past rulemakings, clarifying ''once in, always in'' requirements for rules in WAC chapter NR 422, modifying chapters to ensure compatibility with new and existing rules, and incorporating updated VOC RACT requirements for the Miscellaneous Industrial Adhesives and Miscellaneous Metal and Plastic Parts Coatings CTG source categories. EPA is proposing to approve Wisconsin's request for the removal of the previously approved Administrative Orders AM–20–01, AM–20–02, and AM–20–03, submitted in a letter from WDNR on August 10, 2022. When EPA approves this action, it concurrently removes these three Administrative Orders from the Wisconsin SIP, since Board Order AM–20–18 replaces AM–20–01, AM–20–02, and AM–20–03. These SIP revisions apply to nonattainment areas in Wisconsin that have been classified as moderate or above under the 2008 or later 8-hour ozone NAAQS. These revisions correspond to and are consistent with the source categories and control recommendations in the CTGs issued by EPA in 2008.

II. What is the background for this action?

VOCs contribute to the production of ground-level ozone, or smog, which harms human health and the environment. RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762). Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in ozone nonattainment areas classified as moderate and higher. Specifically, these areas are required to implement RACT for all VOC sources covered by the latest CTGs. A CTG is a document issued by EPA that establishes a ''presumptive norm'' for RACT for a specific VOC source category.

Administrative orders AM–20–01, AM–20–02, and AM–20–03 were issued to meet RACT requirements under CAA section 182(b)(2)(A) for three sources of VOC emissions located in ozone nonattainment areas classified as moderate for the 2008 ozone NAAQS. EPA approved Administrative Order AM–20–01, issued to the Insinkerator facility, in the Wisconsin SIP on September 16, 2020 (85 FR 5772). The facility was located in the Kenosha County, Wisconsin portion of the tri-state Chicago-Naperville (IL-IN-WI) area which had been previously designated nonattainment for the 2008 ozone NAAQS. On April 11, 2022, EPA redesignated the Kenosha nonattainment area under the 2008 ozone standard (87 FR 21027). This facility ceased operations in July 2021, and WDNR has confirmed closure.

EPA approved Administrative Orders AM–20–02, issued to Kieffer & Co. Inc (Kieffer), and Administrative Order AM–20–03, issued to Kohler Power Systems (Kohler), on July 10, 2020 (85 FR 41405). The Kieffer and Kohler facilities are both located in the Shoreline Sheboygan County area previously designated nonattainment under the 2008 ozone NAAQS. On July 10, 2020, EPA redesignated Shoreline Sheboygan nonattainment area under the 2008 ozone standard (85 FR 41405). When these administrative orders were issued in 2020, the three sources conducted operations covered by EPA's CTG for Miscellaneous Metal and Plastic Parts Coatings. Also, at the time of issuance, Wisconsin was in the process of developing Board Order AM–20–18, which incorporates VOC RACT regulations for the Miscellaneous Metal and Plastic Parts Coatings CTG source category. The purposes of the administrative orders were to make the CTG for Miscellaneous Metal and Plastic Parts Coatings federally enforceable for applicable sources and to meet VOC RACT requirements for Wisconsin's Kenosha and Shoreline Sheboygan nonattainment areas under the 2008 ozone NAAQS until Board Order AM–20–18 was approved in the Wisconsin SIP.

Wisconsin has revised its existing VOC RACT regulations to reflect the Miscellaneous Metal and Plastic Parts Coatings and Miscellaneous Industrial Adhesives CTG source categories issued by EPA in 2008. Wisconsin's existing VOC RACT rules (referred to as ''Part I'' rules) for these source categories will continue to apply in the state. The updated VOC RACT requirements (''Part II'' rules) apply in the state's ozone nonattainment areas that have been classified as moderate or above for any national ozone standard promulgated in or after 2008.

The rule changes are primarily associated with the addition of the Part II rules, which incorporate the CTGs' VOC content limits for specific types of coatings and adhesives. Also, Wisconsin's submittal contains several additions, corrections, and clarifications within Chapter NR 422 of the WAC that affect current rule language for these source categories.

Overall, the primary purpose of these revisions is to remove Administrative Orders AM–20–01, AM–20–02, and AM–20–03 from the SIP and replace them with these SIP revisions which are consistent with the Miscellaneous Metal and Plastic Parts Coatings and Miscellaneous Industrial Adhesives CTG source categories issued by EPA in 2008. These revisions also serve as SIP strengthening measures for the Miscellaneous Metal and Plastic Parts Coatings and Miscellaneous Industrial Adhesives VOC source categories.

III. What is EPA's evaluation of Wisconsin's VOC RACT submittal?

EPA has reviewed Wisconsin's revised VOC rules for the Miscellaneous Metal and Plastic Parts Coatings and Miscellaneous Industrial Adhesives CTG source categories, which include: adding definitions to ensure consistency with the CTGs, correcting inadvertent errors from past rulemakings, clarifying ''once in, always in'' requirements for rules in Ch. NR 422, WAC, modifications to ensure compatibility of existing and new rules, and incorporation of new miscellaneous metal and plastic parts coatings and industrial adhesive requirements.

The proposed revisions are consistent with the latest Miscellaneous Metal and

Plastic Parts Coatings and Miscellaneous Industrial Adhesives CTGs published by EPA in 2008 A brief discussion of these revisions follows.

A. Clarification of Existing Rule Language

Language in WAC Chapter NR 422.01(3), (4), and (Note) explain that once a source becomes subject to a VOC RACT rule in Ch. NR 422, it remains subject to the rule regardless of future reductions in emissions (''once in, always in''), unless an approved federally enforceable permit or SIP revision permanently restricts the source's production, capacity utilization, or the hours of operation so that the source's maximum theoretical emissions are below the applicability threshold(s) in Chapter NR 422. This clarification meets the applicable federal VOC RACT exemption requirements identified in EPA's August 23, 1990 memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, entitled ''Once-in/Always-in' Requirement for Applicability.'' In addition, changes to NR 422.03, 422.05 (1m), 422.06 (1m), 422.08 (1m), 422.14 (1m), and 422.145 (1m) include eliminating the redundancy of the ''once in, always in'' language in these chapters.

B. Definitions

Definitions in the following sections of the WAC are approvable, because they are consistent with the Miscellaneous Metal and Plastics Parts Coatings and Miscellaneous Industrial Adhesives CTGs:

- NR 422.02 (1d), (1h), (3g) (3r), (4g), (4r), (10m) and (Note), (12o), (12q),(15m), (19f), (19v), (19x), (20q), (20u), (20y), (21d) (21j), (25g), (25r), (32m), (34d), (34v),(36m), (38m), (41e), (41m), (41s), (42d), (42h) and (Note), (42s), (45s),(53j), (53k), (54a),(54b), (54c), (54d), (54e), (54f) and (Note), (54g), (54h), (54i) and (Note), (54j), (54k), (54L), (54o), (54y) and (Note), (57s), (58m), (61s), (63m), (64g), (64q), (64u), (65e), (65m), (65s), (66m), (74m) and (Note), (75m), (80f) and (Note), (86e), (86m), (86s), (87d), (87h), (87L), (93m), (95s), (100m), (104m), (106s), and (109s)
- NR 422.084(2)(a), (2)(b), (2)(c), (2)(d), (2)(e)
- NR 422.151(2)(a), (2)(b), (2)(c), (2)(d), (2)(e)

C. Adoption of CTGs as ''Part II'' Rules

The following Part II rules apply to sources that meet the applicability threshold in areas of the state that have been classified as moderate or higher for any national ozone standard promulgated in or after 2008 and are consistent with the Miscellaneous Metal and Plastics Parts Coatings and Miscellaneous Industrial Adhesives CTGs.

- NR 422.084 is a regulation that incorporates the Miscellaneous Metal and Plastic Parts Coatings CTG's VOC control measures for plastic parts coatings.
- NR 422.128 is a regulation that incorporates the Miscellaneous Industrial Adhesives CTG's VOC control measures for adhesive use.
- NR 422.151 is a regulation that incorporates the Miscellaneous Metal and Plastic Parts Coatings CTG's VOC control measures for miscellaneous metal parts and products coatings.

D. Updates To Ensure Consistency With Part II Rules

- Revisions to NR 422.04(1)(a) update current Methods of Compliance to include references to the Part II rules.
- Revisions to NR 423.035(2)(a)(1) and NR 423.037(2)(a)(1) update current *Industrial cleaning operations—part 1 and part II* to include references to the Part II rules.
- Revisions to NR 425.04(3)(a) update *Exceptions and non-ozone season allowances* language include references to the Part II rules.
- Revisions to NR 439.04(4) (intro.), (4)(a), (4)(b), (4)(c), (4)(d), (4)(e), (4)(f), (4)(g), (5)(a) (intro.), (5)(a)(2), (5)(a)(2) (intro.), (5)(a)(2)(b), and (5)(f)(intro.) update *Recordkeeping* language to include references to the Part II rules.

E. Corrections

- Revisions to NR 422.03 (intro.) and (7) eliminate conflicts between current language in NR 422.03(7), which establishes exemptions from Chapter NR 422 limits for facilities using 55 gallons or less of a coating, and current exemption language in NR 422.095. The changes also avoid a conflict with NR 422.084 *Plastic parts coating—Part II* exemption language.
- Revisions to NR 422.15(1)(am)(2) and NR 422.15(10) correct previous rulemaking language to include the counties of Kewaunee, Manitowoc, and Walworth in the *Miscellaneous metal parts and products—Part I* rule.
- Revisions to NR 422.083(1)(a) (Note) and NR 422.083(1)(b) (Note) remove two notes describing the maximum theoretical emission calculation from the *Plastic parts coating—Part I* rule since the information in the notes are provided elsewhere in Chapter NR 422.
- Revisions to NR 422.083(1)(a) and NR 422.083(1)(b) update the types of VOC emissions that should be excluded from a source's maximum theoretical emissions in section NR 422.083 *Plastic parts coatings—part I* and update references to sections of Chapter NR 422.

F. Removal of Administrative Orders

In 2020, EPA approved Administrative orders AM–20–01, AM–20–02, and AM–20–03 to meet RACT requirements under CAA section 182(b)(2)(A) for three sources of VOC emissions located in ozone nonattainment areas classified as moderate for the 2008 ozone NAAQS. Specifically, the administrative orders incorporate EPA's CTG for Miscellaneous Metal and Plastic Parts Coatings. EPA is proposing to approve Wisconsin's request for the removal of previously approved Administrative Orders AM–20–01, AM–20–02, and AM–20–03 submitted in a letter from WDNR on August 10, 2022. When EPA approves this action, it concurrently removes these three Administrative Orders from the Wisconsin SIP. As required under section 110(l) of the CAA, Wisconsin certifies that the removal of Administrative Orders AM–20–01, AM–20–02 and AM–20–03 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement governing air pollution prevention and control in the CAA. Wisconsin's Board Order AM–20–18 incorporating EPA's CTG for Miscellaneous Metal and Plastic Parts Coatings effectively replaces the three administrative orders. Additionally, AM–20–01 was issued to the Insinkerator facility, which is no longer operational as of July 2021.

IV. What action is EPA taking?

EPA is proposing to approve in the Wisconsin SIP additions, corrections, and clarifications related to rules in WAC Chapters 400, 419, 421, 422, 423, 425, 439, and 484. These revisions are consistent with the Miscellaneous Industrial Adhesives and Miscellaneous Metal and Plastic Parts Coatings CTGs issued by EPA in 2008. These revisions are approvable because they serve as SIP strengthening measures for Wisconsin's VOC rules. Also, EPA is proposing to approve Wisconsin's request for the removal of the previously approved Administrative Orders AM–20–01, AM–20–02, and AM–20–03, submitted in a letter from WDNR on August 10, 2022. When EPA approves this action, it concurrently removes these three Administrative Orders from the Wisconsin SIP, because the SIP revisions under Board Order AM–20–18

replace AM–20–01, AM–20–02, and AM–20–03.

V. 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 Wisconsin Administrative Code rules NR 400, NR 419, NR 421, NR 422, NR 423, NR 425, NR 439, and NR 484 as published in the Wisconsin Register #797B on May 31, 2022, effective June 1, 2022, discussed in section III 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).

VI. 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, Ozone, Volatile organic compounds.

Dated: January 24, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–01723 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2022–0030]

RIN 0750–AL67

Defense Federal Acquisition Regulation Supplement: Update of Challenge Period for Validation of Asserted Restrictions on Technical Data and Computer Software (DFARS Case 2022–D016); Extension of Comment Period

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: DoD published an advance notice of proposed rulemaking on December 16, 2022, seeking public input on a potential revision to the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012 that addresses the validation of proprietary data restrictions. The deadline for submitting comments is being extended to provide additional time for interested parties to provide comments.

DATES: The comment period for the advance notice of proposed rulemaking published December 16, 2022, at 87 FR 77055, is extended. Comments on the advance notice of proposed rulemaking should be submitted in writing to the address shown in **ADDRESSES** on or before March 16, 2023, to be considered in the formation of a proposed rule.

ADDRESSES: Submit comments identified by DFARS Case 2022–D016, using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2022–D016.'' Select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2022–D016'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2022–D016 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION: On December 16, 2022, DoD published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** at 87 FR 77055 seeking public input on potential DFARS changes to implement section 815(b) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Section 815(b) amended 10 U.S.C. 2321 (currently 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction. The comment period for the ANPR is extended to March 16, 2023, to provide additional time for interested parties to comment on the potential DFARS changes.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–01814 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2023–0001]

Federal Motor Vehicle Safety Standards; Rear Impact Guards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA) requesting that NHTSA amend Federal Motor Vehicle Safety Standard (FMVSS) No. 223, ''Rear Impact Guards,'' to remove the certification label requirement in S5.3 of the standard. The agency is denying the petition because the requested amendment would compromise the enforcement of the rear impact guard standard. Limiting the ability to identify noncompliant products would reduce the effectiveness of the standard and increase the safety risk to the motoring public.

DATES: January 30, 2023.

ADDRESSES: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Ms. Lina Valivullah, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) 202–366–8786, (email) *Lina.Valivullah@dot.gov.*

For legal issues: Ms. Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) 202–366–2992, (email) *Callie.Roach@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Rear impact guards for trailers reduce the risk to passenger vehicle occupants in crashes in which a passenger vehicle impacts the rear end of a trailer or semitrailer. Rear impact guards must be certified as meeting applicable safety standards. S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224 include the requirements relevant to this petition.

The regulation at 49 CFR 571.223, S5.3, provides that each guard shall be permanently labeled with the information specified in S5.3(a) through (c) of FMVSS No. 223. The information shall be in English and in letters that are at least 2.5 mm high. The label shall be placed on the forward- or rearward-facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection. The specified information includes: (a) the guard manufacturer's name and address, (b) the statement: ''Manufactured in ____'' (inserting the month and year of guard manufacture), and (c) the letters ''DOT,'' constituting a certification by the guard manufacturer that the guard conforms to all requirements of this standard. The regulation at 49 CFR 571.224, S5.1, requires that each vehicle shall be equipped with a rear impact guard certified as meeting FMVSS No. 223.

The Petition

NHTSA received a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA) [1] on March 12, 2019, requesting NHTSA to initiate a rulemaking proceeding to amend FMVSS No. 223, ''Rear Impact Guards,'' by removing the certification label requirement in S5.3 of the standard. CVSA provided the following justification for its petition for rulemaking regarding the certification label requirement.

1. CVSA states that the certification label requirement ''is resulting in the citation of rear impact guards that otherwise meet the physical requirements and have no negative impact on safety.'' CVSA states that they are also petitioning the Federal Motor Carrier Safety Administration (FMCSA) to remove the certification label requirement in the Federal Motor Carrier Safety Regulations (FMCSR) and that amending the FMVSS would assist with that change.

2. CVSA claims that ''certification labels frequently wear, fade or are removed during repair'' and that ''motor carriers are unable to obtain new certification labels from the original trailer manufacturers because they can no longer guarantee that the rear impact guard meets the FMVSS manufacturing standard.'' CVSA says that ''there are no reasonable options to meet the certification requirements'' as a result.

3. CVSA believes removing the certification label requirement would ''eliminate confusion and inconsistency in enforcement,'' which CVSA states would be beneficial, ''while not negatively impacting safety as the physical components of the guard will still be inspected to the same standard during a roadside inspection.''

Analysis of the Petition

NHTSA believes that the petitioner's requested amendment to FMVSS No. 223 could reduce the safety provided by rear impact guards on trailers and semitrailers. Under 49 U.S.C. 30112(a) (Section 30112(a) of the National Traffic and Motor Vehicle Safety Act), there is a general prohibition against manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United States any motor vehicle or item of motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard is in effect unless the vehicle or equipment both complies with the standard and is covered by a certification issued under section 30115. Section 30115 requires manufacturers of vehicles and manufacturers of motor vehicle equipment subject to motor vehicle safety standards to certify that the vehicle or equipment complies with all applicable FMVSS. Section 30115 further specifies that certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered. Pursuant to these authorities, NHTSA issued the certification labeling requirements for rear impact guards.

In issuing FMVSS No. 223 and FMVSS No. 224, NHTSA specifically accounted for the burden on small trailer manufacturers. In order to lessen to the extent reasonable the burden associated with compliance testing on small manufacturers, NHTSA issued two standards. FMVSS No. 223 establishes the strength and certification requirements for rear impact guards and FMVSS No. 224 establishes requirements for certain trailers to be

[1] CVSA describes itself as a nonprofit association comprised of local, state, provincial, territorial, and federal commercial motor vehicle safety officials and industry representatives. CVSA aims to achieve uniformity, compatibility, and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety throughout Canada, Mexico, and the United States. *https://www.cvsa.org/about-cvsa/.*

equipped with certified rear impact guards. A trailer manufacturer has the option to either manufacture their own rear impact guards that comply with the equipment standard or may purchase and install guards from a guard manufacturer that has certified the guards as complying with FMVSS No. 223.

In the January 1996 final rule (61 FR 2004) that established FMVSS No. 223, NHTSA described its rationale for requiring each rear impact guard to be labeled. This rationale was provided in response to a request that trailer manufacturers not be required to affix a certification to rear impact guards that they manufacture and install on trailers they produce. The commenters asked that the trailer's certification label be allowed to serve as the certification label for the rear impact guard. As NHTSA explained in the final rule, allowing some guard manufacturers to omit the label would be impractical from an enforcement standpoint. If all of the guards were not labeled, vehicle inspectors would not be able to tell whether the guard was certified by the guard/vehicle manufacturer as part of the vehicle or whether the vehicle manufacturer installed a guard purchased from a guard manufacturer that neglected to make the required certification.[2] This would reduce the likelihood of non-compliant guards being identified, which would increase the safety risk to the motoring public. Additionally, without the labeling requirement, it would be more difficult for NHTSA to identify trends that may indicate a particular rear impact guard contains a safety related defect. If a rear impact guard were to be involved in a crash, it may be difficult to know who the certifying entity was if there were no permanent labeling on it. This would inhibit the ability of the investigators to determine a potential safety trend involved with the subject equipment item. Accordingly, NHTSA maintains its long-standing position [3] that removing a labeling requirement from the FMVSS limits the ability to identify products that do not meet all applicable Federal motor vehicle safety standards and compromises the enforceability of those standards.

NHTSA has considered the assertion that compliance labels ''wear, fade or are removed during repair,'' and does not believe that this indicates a current compliance issue with the requirements in FMVSS No. 223. FMVSS No. 223 specifies permanent labeling of the rear impact guard on the forward- or rearward-facing surface of the horizontal member of the guard. NHTSA does not specify a particular means (*i.e.,* labeling, etching, branding, stamping, or embossing) by which the manufacturer must achieve permanency. Thus, for NHTSA compliance purposes, the guard label is considered permanent if it satisfies the certification requirements specified in 49 CFR part 567. Section 567.4(b) specifies, ''The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.'' The means of achieving permanence and the exact placement of the label are left to the discretion of the manufacturer. NHTSA does not believe that the wearing or fading of labels that meet this requirement for permanency would result in a significant impairment of NHTSA's enforcement capabilities.

Conclusion

NHTSA has reviewed the petition for rulemaking submitted by CVSA requesting that NHTSA amend FMVSS No. 223 by removing the labeling requirement for rear impact guards on trailers and semitrailers. The agency is denying the request because removing the labeling requirement for rear impact guards would compromise the enforceability of FMVSS No. 223 and thereby increase the safety risk to the motoring public.

In accordance with 49 U.S.C. 30162 and 49 CFR part 552, the petition for rulemaking from CVSA is hereby denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2023–01523 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–59–P

[2] January 24, 1996, 61 FR 2001.

[3] *See, e.g.,* April 18, 2022 notice announcing the denial of Great Dane's petition for a decision that a noncompliance involving missing FMVSS No. 223 certification labels is inconsequential as it relates to motor vehicle safety (87 FR 23018).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BL71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 34

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

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) submitted Amendment 34 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (CMP FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 34 to the CMP FMP would revise the acceptable biological catch (ABC), the annual optimum yield (OY), sector allocations, the stock and sector annual catch limits (ACL), recreational annual catch target (ACT), and the recreational bag and possession limits off the east coast of Florida for Atlantic migratory group king mackerel (Atlantic king mackerel). For both Atlantic king mackerel and Atlantic migratory group Spanish mackerel (Atlantic Spanish mackerel), Amendment 34 would revise the landing fish intact provisions for the recreational sector. The purpose of Amendment 34 is to revise the catch limits based on a recent stock assessment and revise sector allocations for Atlantic king mackerel based on the best scientific information available, and to revise management measures for Atlantic king mackerel and Atlantic Spanish mackerel.

DATES: Written comments must be received on or before March 31, 2023.

ADDRESSES: You may submit comments on Amendment 34, identified by ''NOAA–NMFS–2022–0108,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter ''NOAA–NMFS–2022–0108'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Mary Vara, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information

submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 34, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-34-catch-level-and-allocation-adjustments-and-management-measures-atlantic-king.*

FOR FURTHER INFORMATION CONTACT: Mary Vara, telephone: 727–824–5305, or email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The South Atlantic Council and Gulf of Mexico Fishery Management Council (Gulf Council) prepared the CMP FMP that is being revised by Amendment 34. If approved, Amendment 34 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Under the CMP FMP, the South Atlantic and Gulf Councils jointly manage fishing for king mackerel and Spanish mackerel in Federal waters from Texas through New York (to the intersection point of Connecticut, Rhode Island, and New York). Atlantic king mackerel and Atlantic Spanish mackerel are managed under the CMP FMP in Federal waters of the Atlantic from New York to the Miami-Dade/Monroe County, Florida, boundary. The Atlantic migratory groups of king mackerel and Spanish mackerel are further divided into the northern and southern zones separated by a line extending from the North Carolina/South Carolina border.

The Magnuson-Stevens Act requires NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights in this notice are in round and eviscerated weight combined, unless otherwise specified.

The most recent Southeast Data, Assessment and Review (SEDAR) stock assessment for Atlantic king mackerel was completed in April 2020 (SEDAR 38 Update 2020). The fishing year for Atlantic king mackerel is from March through February. The assessment update incorporated 5 years of additional data through the 2017–2018 fishing year (March 2017 through February 2018), and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program Fishing Effort Survey (MRIP FES). The South Atlantic Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 38 Update (2020) at their April 2020 meeting and determined that the assessment was conducted using the best scientific information available and was adequate for determining stock status and supporting fishing level recommendations. The findings of the SEDAR 38 Update (2020) indicated that Atlantic king mackerel was not overfished or undergoing overfishing.

Additionally, the findings of SEDAR 38 Update (2020) showed that recreational and commercial landings, and catch per unit effort, all showed an increasing trend in biomass. Based on the results of the SEDAR 38 Update (2020), the South Atlantic Council's SSC updated their Atlantic king mackerel catch level recommendations to increase harvest. The South Atlantic Council developed Amendment 34 in response to the results of SEDAR 38 Update (2020). However, as discussed further below, the current and proposed overfishing limits (OFL), ABCs, and ACLs, are not directly comparable because they are based on different assessments and the updated assessment includes changes in the recreational catch estimates based on new MRIP–FES methodology.

The South Atlantic Council intends that Amendment 34 would ensure catch limits are based on the best scientific information available such that overfishing does not occur for Atlantic king mackerel in the CMP fishery, while increasing social and economic benefits through sustainable and profitable harvest of Atlantic king mackerel and Atlantic Spanish mackerel.

Actions Contained in Amendment 34

For Atlantic king mackerel, Amendment 34 would revise the OFL, ABC, OY, stock ACL, sector ACLs, and the recreational ACT. Amendment 34 would also revise the recreational bag and possession limits for Atlantic king mackerel in the Exclusive Economic Zone (EEZ) off the east coast of Florida. In addition, Amendment 34 would modify the recreational requirement for Atlantic king mackerel and Atlantic Spanish mackerel to be landed with heads and fins intact.

Atlantic King Mackerel OFL and ABC

As implemented through Amendment 26 to the CMP FMP (82 FR 17387, May 11, 2017), the current OFL and ABC for Atlantic king mackerel are 15,200,000 lb (6,894,604 kg) and 12,700,000 lb (5,760,623 kg), respectively. The South Atlantic Council's choice of these catch limits are based on the recommendations of their SSC from the SEDAR 38 stock assessment (2014). The recreational landings estimates used in SEDAR 38 (2014) were generated using the Marine Recreational Fishery Statistics Survey (MRFSS) estimation methods and the MRIP-Coastal Household Telephone Survey (CHTS).

In April 2020, the South Atlantic Council's SSC reviewed the latest stock assessment SEDAR 38 Update (2020) and recommended new OFL and ABC levels based on the SEDAR 38 Update (2020). The assessment and associated OFL and ABC recommendations from the SSC incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the CHTS with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the MRFSS. As explained in Amendment 34, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. Compared to MRIP CHTS, MRIP FES is considered a more reliable estimate of recreational fishing effort and more robust by the South Atlantic Council and Gulf Councils (Councils), their SSCs, and NMFS. The new OFL and ABC recommendations within Amendment 34 also represent the best scientific information available as determined by the South Atlantic Council's SSC and NMFS.

The OFL would be 33,900,000 lb (15,376,781 kg) for 2022–2023; 29,400,000 lb (13,335,616 kg) for 2023–2024; 26,300,000 lb (11,929,479 kg) for

2024–2025; 24,200,000 lb (10,976,935 kg) for 2025–2026; and 22,800,000 lb (10,341,906 kg) for 2026–2027 and subsequent years. The ABC would be 32,800,000 lb (14,877,830 kg) for 2022–2023; 28,400,000 lb (12,882,023 kg) for 2023–2024; 25,400,000 lb (11,521,246 kg) for 2024–2025; 23,300,000 lb (10,568,702 kg) for 2025–2026; and 21,800,000 lb (9,888,314 kg) for 2026–2027 and subsequent years.

Atlantic King Mackerel Annual OY and Stock ACL

As implemented through Amendment 26 to the CMP FMP (82 FR 17387, May 11, 2017), the current stock ACL (total ACL) and OY for Atlantic king mackerel are equal to the ABC of 12,700,000 lb (5,760,623 kg). In Amendment 34, the South Atlantic Council chose to specify OY for Atlantic king mackerel on an annual basis and set it equal to the stock ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv), and set these values equal to 95 percent of the ABC.

The revised annual OY and stock ACL would be 31,160,000 lb (14,133,938 kg) for the 2022–2023 fishing year; 26,980,000 lb (12,237,922 kg) for the 2023–2024 fishing year; 24,130,000 lb (10,945,184 kg) for the 2024–2025 fishing year; 22,135,000 lb (10,040,267 kg) for the 2025–2026 fishing year; and 20,710,000 lb (9,393,898 kg) for the 2026–2027 fishing year and subsequent fishing years.

Atlantic King Mackerel Sector Allocations and ACLs

Amendment 34 would revise the recreational and commercial allocations for Atlantic king mackerel. The Atlantic king mackerel stock ACL is allocated at 62.9 percent to the recreational sector and 37.1 percent to the commercial sector. This allocation was established in 1985 through Amendment 1 to the CMP FMP, using the average proportion of landings for the longest time series where both recreational and commercial landings data were available (50 FR 34840, August 28, 1985). Applying this allocation to the current stock ACL for Atlantic king mackerel of 12,700,000 lb (5,760,623 kg) results in 8,000,000 lb (3,628,739 kg) to the recreational sector (recreational ACL) and 4,700,000 lb (2,131,884 kg) to the commercial sector (commercial ACL). In Amendment 34, the South Atlantic Council decided to retain the same sector allocation percentages of 62.9 percent for the recreational sector and 37.1 percent for the commercial sector and apply this allocation to the new stock ACL, which incorporates the revised MRIP–FES estimates for recreational catch. The Council determined that this allocation would be fair and equitable to both the recreational and commercial sectors because it would allow both sectors room to expand their harvest without risking either sector meeting or exceeding their sector annual catch limit.

Amendment 34 would revise the recreational ACLs to be 19,599,640 lb (8,890,247 kg) for the 2022–2023 fishing year; 16,970,420 lb (7,697,653 kg) for the 2023–2024 fishing year; 15,177,770 lb (6,884,521 kg) for the 2024–2025 fishing year; 13,922,915 lb (6,315,328 kg) for the 2025–2026 fishing year; and 13,026,590 lb (5,908,762 kg) for the 2026–2027 fishing year and subsequent fishing years. The South Atlantic Council acknowledged that the recreational sector has not met their quota in recent years but determined that the increase in poundage for the recreational sector may result in positive social benefits associated with the potential for increased harvest. The recreational sector does not have in-season accountability measures (AMs) in place but does have post-season AMs to address any overages of the recreational ACL. However, based on the new MRIP–FES recreational landings, none of the proposed recreational ACLs are expected to be reached.

Amendment 34 would revise the commercial ACLs to be 11,560,360 lb (5,243,691 kg) for the 2022–2023 fishing year; 10,009,580 lb (4,540,269 kg) for the 2023–2024 fishing year; 8,952,230 lb (4,060,663 kg) for the 2024–2025 fishing year; 8,212,085 lb (3,724,939 kg) for the 2025–2026 fishing year; and 7,683,410 lb (3,485,136 kg) for the 2026–2027 fishing year and subsequent fishing years. Similar to the recreational sector, the commercial sector has not met their quota in recent years. The South Atlantic Council determined that the increase in poundage for the commercial sector may also result in positive social benefits associated with the potential for increased harvest. The commercial sector for Atlantic king mackerel has in-season AMs in place to prevent the commercial ACL from being exceeded and post-season AMs, based on stock status, to implement a commercial quota reduction in the event the stock ACL is exceeded. However, based on commercial landings for the fishing years of 2015–2016 through 2019–2020, none of the proposed commercial ACLs are expected to be reached.

Atlantic King Mackerel Commercial Zone ACLs

In addition to sector allocations, the commercial sector is divided into a northern and southern zone, with the commercial ACL further allocated between the two zones. The South Atlantic Council decided not to modify those zone allocations in Amendment 34 for Atlantic king mackerel, based on recommendations from their Mackerel Cobia Advisory Panel (AP) that the current zone allocations are functioning well. The northern zone (from the New York/Connecticut/Rhode Island line to the North Carolina/South Carolina line) is allocated 23.04 percent of the commercial ACL and the southern zone (North Carolina/South Carolina line to the Miami-Dade/Monroe County line, Florida) is allocated 76.96 percent of the commercial ACL. In addition, there is an allowed incidental commercial harvest of Atlantic king mackerel by purse seine gear that is limited to 0.40 million lb (0.18 million kg) per fishing year. The current commercial sector ACL zone allocations and the purse seine allocation were not changed in Amendment 34.

The current northern zone commercial quota for king mackerel is 1,082,880 lb (491,186 kg). Based on the revised stock and commercial ACLs in Amendment 34, the commercial northern zone ACL (quota) would be 2,663,507 lb (1,208,146 kg) for the 2022–2023 fishing year; 2,306,207 lb (1,046,078 kg) for the 2023–2024 fishing year; 2,062,594 lb (935,577 kg) for the 2024–2025 fishing year; 1,892,064 lb (858,226 kg) for the 2025–2026 fishing year; and 1,770,258 lb (802,976 kg) for the 2026–2027 and subsequent fishing years.

The current southern zone commercial ACL (quota) is 3,617,120 lb (1,640,698 kg). The southern zone commercial ACL (quota) in Amendment 34 would be 8,896,853 lb (4,035,545 kg) for the 2022–2023 fishing year; 7,703,373 lb (3,494,191 kg) for the 2023–2024 fishing year; 6,889,636 lb (3,125,086 kg) for the 2024–2025 fishing year; 6,320,021 lb (2,866,713 kg) for the 2025–2026 fishing year; and 5,913,152 lb (2,682,161 kg) for the 2026–2027 and subsequent fishing years. The proposed revised commercial northern and southern zone ACLs for Atlantic king mackerel are all greater than the observed landings in recent years. Based on the average commercial landings from 2015–2016 through 2019–2020, future landings would be expected to continue to be less than the proposed commercial zone ACLs, and are not

expected to be constraining on harvest or alter fishing activity.

Atlantic King Mackerel Commercial Southern Zone Seasonal Quotas

The commercial fishing year for Atlantic king mackerel is March through February, and the commercial ACL for the southern zone is divided between two seasons. Season 1 is March 1 through September 30, and Season 2 is October 1 through the end of February. Season 1 is allocated 60 percent of the Atlantic king mackerel commercial ACL for the southern zone and Season 2 is allocated 40 percent. The current quota for Season 1 is 2,170,272 lb (984,419 kg) and the quota for Season 2 is 1,446,848 lb (656,279 kg).

Based on the revised stock, commercial, and commercial southern zone ACLs in Amendment 34, the Atlantic king mackerel commercial southern zone quota for Season 1 would be 5,338,112 lb (2,421,327 kg) for the 2022–2023 fishing year; 4,622,024 lb (2,096,515 kg) for the 2023–2024 fishing year; 4,133,782 lb (1,875,052 kg) for the 2024–2025 fishing year; 3,792,012 lb (1,720,028 kg) for the 2025–2026 fishing year; and 3,547,891 lb (1,609,296 kg) for the 2026–2027 fishing year and subsequent fishing years. The commercial southern zone quota for Season 2 would be 3,558,741 lb (1,614,218 kg) for the 2022–2023 fishing year; 3,081,349 lb (1,397,676 kg) for the 2023–2024 fishing year; 2,755,854 lb (1,250,034 kg) for the 2024–2025 fishing year; 2,528,008 lb (1,146,685 kg) for the 2025–2026 fishing year; and 2,365,261 lb (1,072,864 kg) for the 2026–2027 fishing year and subsequent fishing years. The proposed commercial southern zone seasonal quotas for Atlantic king mackerel are all greater than the observed landings in recent years. Based on the average landings from 2015–2016 through 2019–2020, landings would be expected to continue to be less than the proposed commercial southern zone seasonal quotas, and are not expected to be constraining on harvest or alter fishing activity.

Atlantic King Mackerel Recreational ACTs

The Atlantic king mackerel recreational ACT was first established in Amendment 18 to the CMP FMP (76 FR 82057, December 29, 2011) using the equation recreational ACL*[(1-Proportional Standard Error (PSE)) or 0.5, whichever is greater]. Recreational ACTs for Atlantic king mackerel are utilized in triggering the post-season recreational AMs. For the Atlantic king mackerel post-season AM, if recreational landings exceed the ACL, and the sum of the commercial and recreational landings exceed the stock ACL, a reduced bag limit would be implemented the following fishing year by the amount necessary to ensure the recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL. Additionally, if the sum of the commercial and recreational landings exceeds the stock ACL and Atlantic king mackerel are overfished, the recreational ACL and ACT may be reduced for the following year by the amount of any recreational sector overage in the prior fishing year. Because the post-season recreational AM has not been triggered in the past, and the SEDAR 38 Update (2020) indicates that the Atlantic king mackerel is not overfished, sector ACLs and the recreational ACT can be increased without having negative effects on the sustainability of the stock and are not expected to trigger post-season recreational AMs. In Amendment 18 and past CMP amendments, the South Atlantic Council has chosen to use the 5-year average PSE because it better represents the precision of recent catch estimates than the 3-year average. The current recreational ACT of 7,400,000 lb (3,356,584 kg) is derived from the current ABC and recreational ACL. Amendment 34 would maintain the formula for determining the recreational ACTs, but the PSE values used in the formula have been updated to reflect the revised recreational landings that are based on the MRIP's newer FES method, and the revised stock ACL and recreational ACL. The 5-year average PSE for the recreational data was 0.137. Using the current formula to calculate the recreational ACT, the resulting recreational ACT would be equal to the recreational ACL multiplied by (1–0.137), or 0.863, setting the recreational ACT at 86.3 percent of the recreational ACL.

Based on the revised stock and recreational ACLs, Amendment 34 would revise the recreational ACT to be 16,914,489 lb (7,672,283 kg) for the 2022–2023 fishing year; 14,645,472 lb (6,643,074 kg) for the 2023–2024 fishing year; 13,098,416 lb (5,941,342 kg) for the 2024–2025 fishing year; 12,015,476 lb (5,450,128 kg) for the 2025–2026 fishing year; and 11,241,947 lb (5,099,261 kg) for the 2026–2027 fishing year and subsequent fishing years.

Atlantic King Mackerel Recreational Bag and Possession Limits

Amendment 34 would revise the recreational bag and possession limits in the EEZ off the east coast of Florida. The current recreational daily bag limit for Atlantic king mackerel in both Federal and state waters off the east coast of Florida is two fish per person. However, the recreational daily bag limit is three fish per person in the rest of the Gulf of Mexico, South Atlantic, and Mid-Atlantic Federal waters. Fishermen and Mackerel Cobia AP members have requested that the Councils increase the bag limit for Federal waters off of the Florida east coast to three fish per person, to the match bag limit within the rest of the management area. Increasing the bag limit in Federal waters off the east coast of Florida would allow recreational fishermen throughout the South Atlantic Council's management jurisdiction the opportunity to harvest the same amount of Atlantic king mackerel. Additionally, the recreational sector has not been reaching their ACL, and the South Atlantic Council anticipates that an increased recreational ACL combined with an increased bag limit will help increase harvest.

Recreational Atlantic King Mackerel and Spanish Mackerel Landing Fish Intact

Currently, Atlantic king and Spanish mackerel recreational fishermen must land recreationally harvested fish with the head and fins intact. As described at 50 CFR 622.381(b), commercial Atlantic king and Spanish mackerel fisherman are allowed to land these fish without the head and fins intact (cut-off/damaged) provided the remaining portion of the fish complies with the minimum size limit. The commercial provision for cut-off fish was implemented through Amendment 9 to the CMP FMP (65 FR 16336, March 28, 2000) because of increasing interactions with sharks or barracudas resulting in Atlantic king mackerel and Atlantic Spanish mackerel having their tails bitten off before they could be landed. In response to similar concerns from the recreational sector about interactions with sharks or barracudas resulting in Atlantic king mackerel and Atlantic Spanish mackerel having their tails bitten off before they could be landed, the Councils considered revising the landing fish intact requirements in Amendment 34. The Councils decided that allowing possession of damaged Atlantic king mackerel or Atlantic Spanish mackerel could be expected to minimally increase recreational harvest, while reducing the number of discarded fish.

Amendment 34 would allow cut-off (damaged) Atlantic king mackerel and Atlantic Spanish mackerel caught under the recreational bag limit and that comply with the minimum size limits to be possessed and offloaded ashore.

Additionally, Amendment 34 revises the definition of ''damaged fish'' to refer to king or Spanish mackerel that are damaged only through natural predation.

Proposed Rule for Amendment 34

A proposed rule to implement Amendment 34 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 34 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The South Atlantic Council has submitted Amendment 34 for Secretarial review, approval, and implementation. Comments on Amendment 34 must be received by March 31, 2023. Comments received during the respective comment periods, whether specifically directed to Amendment 34 or the proposed rule, will be considered by NMFS in the decision to approve, partially approve, or disapprove, Amendment 34. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: January 24, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–01710 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 19
Monday, January 30, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0074]

Notice of Request for Revision To and Extension of Approval of an Information Collection; Importation of Live Swine (From Certain Regions), Pork, and Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an 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 a revision to and extension of approval of an information collection associated with the regulations for the importation of live swine (from certain regions), pork, and pork products free of classical swine fever, particularly from Brazil, Chile, and Mexico.

DATES: We will consider all comments that we receive on or before March 31, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0074 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–2022–0074, 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 importation of live swine (from certain regions), pork, and pork products, contact Dr. Nathaniel Koval, Senior Veterinarian Medical Officer, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3434; *nathaniel.j.koval@usda.gov.* For more information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at 301–851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Swine (From Certain Regions), Pork, and Pork Products.

OMB Control Number: 0579–0230.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations for the importation of animals and animal products are contained in 9 CFR parts 92 through 98.

Part 94 allows the importation, under certain conditions, of live swine, pork, and pork products from regions that are free of classical swine fever (CSF) to prevent the introduction of CSF into the United States. Brazil (the State of Santa Catarina only), Chile, and Mexico are subject to additional restrictions in accordance with § 94.32. APHIS recognizes these regions as free of CSF but restricts importation of live swine, pork, and pork products from these regions because they either supplement their pork supplies by importing fresh (chilled or frozen) pork from CSF-affected regions, supplement their pork supplies with pork from CSF-affected regions that is not processed in accordance with the requirements in part 94, share a common land border with CSF-affected regions, or import live swine from such regions under conditions less restrictive than would be acceptable for importation into the United States.

To ensure that the importation of live swine, pork, and pork products, particularly from Brazil (the State of Santa Catarina only), Chile, and Mexico do not introduce CSF into the United States, the regulations include information collection activities such as certification for importation of pork or pork products; application of seal; location and reason for breaking seal and application of new seal; termination of agreement; request for approval of defrost facility; request hearing for denial or approval of defrost facility; application for import of small amounts of pork or pork products; cooperative service agreement; notification of Customs and Border Protection inspectors for pork from specific regions; recordkeeping requirements for certificates; certificates for meat processed in tubes; certification for importation of hams; agreement for processing procedures; identification procedures; recordkeeping for processing origin of hams; and program statements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 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 1 hour per response.

Respondents: Full-time, salaried veterinary officers employed by the governments of Brazil, Chile, and Mexico; industry representatives; and U.S. importers.

Estimated annual number of respondents: 781.

Estimated annual number of responses per respondent: 230.

Estimated annual number of responses: 179,679.

Estimated total annual burden on respondents: 179,712 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 25th day of January 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–01812 Filed 1–27–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0001]

Information Collection Request; Increasing Land, Capital, and Market Access Program

AGENCY: Farm Service Agency, United States Department of Agriculture.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an information collection request associated with the Increasing Land, Capital, and Market Access grant and cooperative agreement activity. The purpose of the Increasing Land, Capital, and Market Access Program is to fund projects that support a diverse set of farmers, ranchers, and forest landowners (producers) on the edge financially; moving them from surviving to thriving as they address core barriers to attain land, capital, and market access.

DATES: We will consider comments that we receive by March 31, 2023.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments, identified by Docket ID: FSA–2023–0001 in the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting the FSA Increasing Land Access Team below. Additional information on the program is available at Increasing Land, Capital, and Market Access Program (*usda.gov*).

FOR FURTHER INFORMATION CONTACT: FSA Increasing Land Access Team; email: *Land.Access@usda.gov.* Persons with disabilities who require alternative mean for communication should contact the USDA's TARGET Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Increasing Land, Capital, and Market Access.

OMB Control Number: 0560–NEW.

Type of Request: New Collection.

Abstract: The purpose of the Increasing Land, Capital, and Market Access Program is to fund projects that support a diverse set of farmers, ranchers, and forest landowners (producers) on the edge financially; moving them from surviving to thriving as they address core barriers to attain land, capital, and market access. The Increasing Land, Capital, and Market Access Program will fund cooperative agreements or grants for projects that are designed to align with and respond to land, capital, and market access needs of the underserved farmers, ranchers, and forest landowners while concurrently providing wraparound technical assistance to ensure that program participants have the information, training, and customized support they require. FSA will make awards through grants.gov and will be collecting the initial report, and progress reports quarterly and annually.

Applicants, if selected for funding, are required to provide within 4 weeks after signing the grant or cooperative agreement, specific information related to target audience, work plan, approach activities and identified metrics and measures aligning with the delivery of work plan activities (initial report); and submit quarterly reports of project activities (progress report) every 90 days to the assigned National Program Leader and an annual reporting requirement (progress report) within 120 days, detailing as applicable:

1. Targeted audience(s) including demographic, geographic, and economic status;

2. Outreach to be conducted including number and type of events, dates, locations, activities, and producers anticipated and impacted;

3. Budget information including requested funding amount, allocation of requested funds, amount of funds provided for assistance directly benefitting underserved producers, and number of producers benefitted by use of funds;

4. Data identifying outcomes, improvements, and impact on underserved producers' business and financial conditions;

5. Anticipated outcomes including the estimated number of underserved producers who will have increased access to land, capital, and markets (including new markets);

6. How many underserved producers will be able to retain land or acquire new land; and

7. How many underserved producers are seeking and participating in USDA Farm Service Agency farm programs and farm loan programs, Natural Resources Conservation Service programs, Risk Management Agency Federal crop insurance, Rural Development loans, or grant programs or any other programs and services administered by USDA.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses, in hours, multiplied by the estimated total annual responses.

Estimate of Annual Burden: Public reporting burden for the collection of information is estimated to average 14.6 hours per response.

Respondents: Increasing Land, Capital, and Market Access Program Partnerships Awardees.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Number of Responses: 500.

Estimated Average Time per Response: 14.6 hours.

Estimated Total Annual Burden Hours: 7,300 hours.

We are requesting comments on all aspects of this information collection to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Evaluate the quality, utility, and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate 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 where provided, will be made a matter of public record. Comments will be summarized and included in the request for OMB approval of the information collection.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

USDA is an equal opportunity provider, employer, and lender.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2023–01754 Filed 1–27–23; 8:45 am]

BILLING CODE 3411–E5–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2023–0003]

Urban Agriculture and Innovative Production Advisory Committee Meeting

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice of public and virtual meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a public meeting of the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). UAIPAC will convene to discuss interim recommendations for the Secretary of Agriculture on the development of policies and outreach relating to urban, indoor, and other emerging agriculture production practices. UAIPAC is authorized under the Agriculture Improvement Act of 2018 (2018 Farm Bill) and operates in compliance with the Federal Advisory Committee Act, as amended.

DATES:

Meeting: The UAIPAC meeting will be held on Thursday, February 23, 2023, from 3:30 p.m. to 6 p.m. Eastern Standard Time (EST).

Written Comments: Written comments will be accepted until 11:59 p.m. EST on Thursday, March 9, 2023.

Oral Comments: The deadline to register to present oral comments during the meeting is Thursday, February 16, 2023.

ADDRESSES:

Meeting Location: The meeting will be held virtually via Zoom Webinar. Pre-registration is required to attend the UAIPAC meeting and access informaton will be provided to registered individuals via email. Registration details can be found at: *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

Written Comments: We invite you to send comments in response to this notice. Go to *https://www.regulations.gov* and search for Docket ID NRCS–2023–0003. Follow the instructions for submitting comments. All written comments received will be publicly available on *www.regulations.gov.*

Oral Comments: Only pre-registered individuals will be permitted to provide oral comments. Instructions to register and participate in the meeting can be found at: *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

FOR FURTHER INFORMATION CONTACT: Brian Guse; Designated Federal Officer; telephone: (202) 205–9723; email: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov*.

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

UAIPAC Purpose

The Federal Advisory Committee for Urban Agriculture and Innovative Production is one of several ways that USDA is extending support and building frameworks to support urban agriculture, including issues of equity and food and nutrition access. Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115–334) directed the Secretary to establish an ''Urban Agriculture and Innovative Production Advisory Committee'' to advise the Secretary of Agriculture on any aspect of section 222, including the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for the Secretary of Agriculture. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services.

Meeting Agenda

The agenda items may include, but are not limited to, welcome and introductions; administrative matters; presentations from the UAIPAC or USDA staff; and deliberations for proposed recommendations and plans. The USDA UAIPAC website (*https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag*) will be updated with the agenda 24 to 48 hours prior to the meeting.

Written Comments

Comments should address specific topics pertaining to urban agriculture and innovative production. Written comments will be accepted until 11:59 p.m. ET on Thursday, March 9, 2023. General questions and comments are also accepted at any time via email: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov.*

Meeting Materials

All written public comments received by March 9, 2023, will be compiled for UAIPAC review and will be included in the meeting minutes. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag* to view the agenda and minutes from the meeting.

Meeting Accomodations

If you require reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation, to the person listed under the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodation will be made on a case-by-case basis.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the FACA Committee: UAIPAC. To ensure that the recommendations of UAIPAC have taken in account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent minorities, women and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

Dated: January 25, 2023.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2023–01853 Filed 1–27–23; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–45–2022]

Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Authorization of Production Activity; Volkswagen Group of America—Chattanooga Operations, LLC (Passenger Motor Vehicles); Chattanooga, Tennessee

On September 26, 2022, Volkswagen Group of America—Chattanooga Operations, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 134, in Chattanooga, Tennessee.

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 59395–59396, September 30, 2022). On January 24, 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 24, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–01782 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket B–52–2020]

Foreign-Trade Zone 38—Spartanburg County, South Carolina, Application for Production Authority, Teijin Carbon Fibers, Inc. (Polyacrylonitrile-Based Carbon Fiber), Opening of Comment Period on Submission Containing New Evidence

The FTZ Board is inviting public comment on a submission containing new evidence pertaining to the application, as amended, on behalf of Teijin Carbon Fibers, Inc. (TCF), requesting production authority within FTZ 38 in Greenwood, South Carolina. Specifically, the amended application requests removal of the restriction requiring the reexport of foreign status 24,000 filament tow polyacrylonitrile fiber used to produce carbon fiber.

On January 20, 2023, TCF made a submission to the FTZ Board that

included new evidence in response to the examiner's preliminary recommendation not to approve the requested production authority. In response to this invitation for public comment, parties may also address argument or evidence presented in the application and in other prior submissions in this proceeding. TCF's submission on the preliminary recommendation, application and other prior submissions may be viewed in the Online FTZ Information System on the FTZ Board's website (accessible via *www.trade.gov/ftz*).

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 1, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 16, 2023).

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: January 25, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–01828 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for the upcoming public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on February 15, 2023, from 11:00 a.m. to 4:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration at Email: *richard.boll@trade.gov,* phone 571–331–0098.

SUPPLEMENTARY INFORMATION:

Background:

The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *https://www.trade.gov/acscc.*

Matters To Be Considered: Committee members are expected to continue discussing the major competitiveness-related topics raised at the previous Committee meetings, including supply chain resilience and congestion; trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain, Professional, and Business Services will post the final detailed agenda on its website, *https://www.trade.gov/acscc.* Video with closed captioning of the meeting will also be posted on the Committee website.

The meeting is open to the public and press on a first-come, first-served basis. Space is limited. Please contact Richard Boll, at *richard.boll@trade.gov,* for participation information.

Dated: January 25, 2023.

Heather Sykes,

Director, Office of Supply Chain, Professional, and Business Services.

[FR Doc. 2023–01824 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC704]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a seminar series presentation via webinar.

SUMMARY: The South Atlantic Fishery Management Council (Council) will host a presentation from the Nature Conservancy on anglers' release practices and attitudes towards descending devices in Southeast Florida and South Carolina via webinar on February 14, 2023.

DATES: The webinar presentation will be held on Tuesday, February 14, 2023, from 1 p.m. until 2:30 p.m.

ADDRESSES:

Meeting address: The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-meetings/other-meetings/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council will host a presentation from the Nature Conservancy on anglers' release practices and attitudes towards descending devices in Southeast Florida and South Carolina. This presentation will share highlights of research conducted in the South Atlantic region on use and attitudes towards descending devices. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 25, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–01841 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC719]

East Coast Fisheries of the United States; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: Fishery management bodies on the East Coast of the United States are convening a meeting to continue work on an initiative called *East Coast Climate Change Scenario Planning.* This is a joint effort of the Atlantic States Marine Fisheries Commission, the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, and NOAA's National Marine Fisheries Service. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held Wednesday, February 15, 2023 through Thursday, February 16, 2023.

ADDRESSES: The meeting will be held at the Westin Arlington Gateway, 801 N Glebe Road, Arlington, VA 22203; telephone: (703) 717–6200. The meeting will be partially streamed by webinar for portions of the agenda that are held in plenary. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Climate change is a growing threat for marine fisheries worldwide. On the East coast of the United States, some species have already experienced considerable climate-related changes in distribution, abundance, and/or productivity. These changes have the potential to strain fisheries management and governance systems. Through the East Coast Climate Change Scenario Planning Initiative, fishery scientists and managers are working collaboratively and engaging diverse fishery stakeholders to explore possible future scenarios and the associated governance and management issues that may arise related to climate change.

The final stage of this initiative will include a two-day summit meeting in Arlington, VA, from February 15–16, 2023. Participants will consist of a select group of representatives from each of the three U.S. East Coast Fishery Management Councils, and from the Atlantic States Marine Fisheries Commission and NOAA Fisheries. Summit participants will consider the scenarios previously developed to describe how climate change might affect East Coast fisheries in the next 20 years, as well as input received in previous stages on actions that should be taken now to ensure that fisheries are governed and managed effectively in an era of climate change. The goal of the summit is to develop a set of potential governance and management actions and priorities resulting from the scenario planning process.

Summit participants have been selected by each participating organization. Others attending the meeting in person are invited to observe the plenary discussions and to provide comments during designated public comment opportunities. Only plenary sessions will be broadcast by webinar. Additional details about the summit will be posted to this page once available: *https://www.mafmc.org/climate-change-scenario-planning.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: January 25, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–01842 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the National Sea Grant Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board), a Federal Advisory Committee. Board members will discuss and provide advice on the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website. For more information on this Federal Advisory Committee please visit the Federal Advisory Committee database: *https://www.facadatabase.gov/FACA/FACAPublicPage.*

DATES: The announced meeting is scheduled for Sunday, February 26, 2023 from 9 a.m.–5 p.m. (EST) and Monday, February 27, 2023 from 8:30 a.m.–3:30 p.m. (EST).

ADDRESSES: The meeting will be held at the Watergate Hotel in Washington DC For more information about the public meeting see below in the ''For Further Information Contact'' section.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program. Email: *oar.sg-feedback@noaa.gov* Phone Number 301–734–1088.

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to public participation with a public comment period on Sunday, February 26 at 9:10 a.m. (EST). The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Thursday, February 23, 2023 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date.

Special Accommodations: The Board meeting is virtually accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Thursday, February 23, 2023.

The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Matters To Be Considered: Board members will discuss and vote on New Membership for the Board's Resilience and Social Justice Subcommittee and a Resilience and Social Justice Recommendations Report, as well as discuss and vote on membership for two new charges, Fellowships and Allocation Policy. *https://seagrant.noaa.gov/About/Advisory-Board*

Privacy Act Statement: Authority. The collection of information concerning nominations to the MCAM FAC is authorized under the FACA, as amended, 5 U.S.C. App. and its implementing regulations, 41 CFR part 102–3, and in accordance with the Privacy Act of 1974, as amended, (Privacy Act) 5 U.S.C. 552a. *Purpose.* The collection of names, contact information, resumes, professional information, and qualifications is required in order for the Under Secretary to appoint members to the MCAM FAC. *Routine Uses.* NOAA will use the nomination information for the purpose set forth above. The Privacy Act of 1974 authorizes disclosure of the information collected to NOAA staff for work-related purposes and for other purposes only as set forth in the Privacy Act and for routine uses published in the Privacy Act System of Records Notice COMMERCE/DEPT–11, Candidates for Membership, Members, and Former Members of Department of Commerce Advisory Committees, available at *https://www.osec.doc.gov/opog/PrivacyAct/SORNs/dept-11.html* and the System of Records Notice COMMERCE/DEPT–18, Employees Personnel Files Not Covered by Notices of Other Agencies, available at *https://www.osec.doc.gov/opog/PrivacyAct/SORNs/DEPT-18.html.*

Disclosure: Furnishing the nomination information is voluntary; however, if the information is not provided, the individual would not be considered for appointment as a member of the MCAM FAC.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–01768 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC706]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Construction at Naval Station Newport, Rhode Island

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

ACTION: Notice; issuance of a modified Letter of Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued a modified Letter of Authorization to the U.S. Navy to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with pile driving and bulkhead repair at Naval Station Newport in Newport, Rhode Island.

DATES: This Authorization is effective from January 25, 2023 to May 14, 2027.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-naval-station-newport-rhode-island.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

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

History of Request

On December 15, 2021, NMFS issued a final rule to the Navy (86 FR 71162) to incidentally harass, by Level A and Level B harassment only, marine mammals during construction activities associated with bulkhead replacement and repairs at Naval Station Newport (NAVSTA Newport) over the course of 5 years (2022–2027). Subsequently, on January 26, 2022, NMFS issued a Letter of Authorization (LOA) to the Navy (87 FR 6145) associated with the final rule. Species authorized for take included Atlantic white-sided dolphin (*Lagenorhynchus acutus*), common dolphin (*Delphinus delphis*), harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harp seal (*Pagophilus groenlandicus*), and hooded seal (*Cystophora cristata*). The effective dates of this LOA are May 15, 2022 through May 14, 2027.

On November 15, 2022, NMFS received a request from the Navy for a modification to the NAVSTA Newport bulkhead construction project due to a change in the construction contractor's plan. On December 15, 2022, the Navy revised their request to incorporate NMFS's DTH source level recommendations (available at: *https://media.fisheries.noaa.gov/2022-11/PUBLIC%20DTH%20Basic%20Guidance_November%202022.pdf*). In its initial request for incidental take regulations, the Navy did not anticipate the need for vibratory driving of steel pipe piles or DTH installation of any pile type. Vibratory driving of steel sheet and H-piles was included, and analyzed in the rule. However, the construction contractor for the first phase of the project (S45 bulkhead) has since

determined that vibratory driving of steel pipe piles will be required, and that DTH hammering may be necessary if obstructions are encountered that would prevent the use of impact or vibratory hammers to install piles. Therefore, the Navy requested, and NMFS proposed, to modify the 2022 LOA to include take incidental to potential vibratory driving of 30-in steel pipe piles and DTH hammering of 10-in diameter holes. These updates to the Navy's specified activity will increase estimated Level B harassment isopleths and, therefore, result in an increased estimate of exposures by Level B harassment for harbor seal, gray seal, and harp seal. NMFS has determined that the changes also necessitate revised shutdown mitigation provisions for vibratory and DTH pile driving scenarios for all species. The monitoring and reporting measures remain the same as prescribed in the initial LOA, and no additional take is authorized for other species. There have been no changes from the proposed modification.

Description of the Specified Activity and Anticipated Impacts

The modified LOA includes the same construction activities (*i.e.,* impact pile driving, vibratory pile driving and removal) in the same locations that were described in the 2022 final rule (86 FR 71162; December 15, 2021); for the S45 location, additional vibratory driving and DTH hammering are included. The monitoring and reporting measures remain the same as prescribed in the initial LOA, while revisions to the required mitigation measures have been made. NMFS refers the reader to relevant documents related to issuance of the initial LOA, including the Navy's application, the proposed rule and request for comments (86 FR 56857; October 13, 2021), final rule (86 FR 71162; December 15, 2021), and notice of issued LOA (87 FR 6145; February 3, 2022) (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-naval-station-newport-rhode-island*) for more detailed description of the project activities.

Detailed Description of the Action

A detailed description of the planned construction activities is found in the aforementioned documents associated with issuance of the initial LOA. The location, time of year, and general nature of the activities are identical to those described in the previous documents. However, as noted in the History of Request section, the Navy anticipates that vibratory installation of 30-in steel pipe piles and DTH hammering will be necessary to complete the S45 phase of the project on time.

A detailed description of the planned S45 bulkhead modifications is provided in the **Federal Register** notice for the proposed LOA Modification (88 FR 342; January 4, 2023). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue a Modified LOA to the Navy was published in the **Federal Register** on January 4, 2023 (88 FR 342). That notice described, in detail, the Navy's modified activities. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed LOA modification, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 15-day public comment period. NMFS received no public comments on the proposed modification.

Description of Marine Mammals

A detailed description of the marine mammals in the area of the activities is found in relevant documents related to issuance of the initial LOA, including the Navy's application, and the proposed rule and request for comments (86 FR 56857; October 13, 2021). This information remains applicable to this modified LOA. A description of the modified construction activities at the S45 bulkhead, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** of proposed LOA Modification (88 FR 342; January 4, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the final rule, which remains applicable to modification of the LOA. NMFS is not aware of new information regarding potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take for the specified activity are found in the proposed rule (86 FR 56857; October 13, 2021); the descriptions presented in the proposed rule did not change in the final rule (86 FR 71162; December 15, 2021). The types and sizes of piles, and marine mammal stocks taken remain unchanged from the final rule. This modification addresses the addition of vibratory driving of four 30-in steel pipe piles and ten instances of DTH hammering at the S45 bulkhead, which would result in increased harassment zone sizes. The Navy anticipates that up to four days of vibratory driving (up to two piles per day) and up to eight days of DTH hammering at one hole per day will be required. Acoustic effects on marine mammals during the specified activity can occur from impact and vibratory pile installation and removal, and DTH. The effects of underwater noise from the Navy's activities have the potential to result in Level A and Level B harassment of marine mammals in the action area.

The modification includes the use of DTH hammers, which were not evaluated in the final rule. A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into to the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). The sounds produced by DTH methods contain both a continuous non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, NMFS treats DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously.

Ensonified Area

A detailed description of the 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, can be found in the proposed rule (86 FR 56857; October 13, 2021), and did not change in the final rule (86 FR 71162; December 15, 2021).

The new activities include vibratory driving of 30-in pipe piles and DTH hammering; for those activities, we provide a description of the sound source levels and ensonified areas below.

Sound Source Levels of Construction Activities—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment (*e.g.,* sediment type) in which the activity takes place. The Navy consulted with NMFS on the appropriate sound source levels to use for vibratory driving, and NMFS recommended a value based on available measurements of vibratory driving of 30-in steel pipe piles (CALTRANS, 2020). Source data for the installation methods and pile types are provided in Table 2. Note that the source levels in this Table represent the SPL referenced at a distance of 10 m from the source.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and the continuous threshold is used to evaluate Level B harassment. The Navy consulted with NMFS to obtain the appropriate proxy values for DTH mono-hammers. NMFS recommended proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Table 1) (Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021).

TABLE 1—SOURCE INFORMATION FOR MODIFIED PILE DRIVING AND DTH ACTIVITIES

	Average peak SPL (dB re 1 μPa)	Average RMS SPL (dB re 1 μPa)	Average SEL (dB re 1 μPa^2 sec)	Strike rate (strikes per second)	Minutes to drive	Maximum number of piles per day
Vibratory Driving 30-in steel pipe piles	N/A	159	N/A	N/A	30	2
10-in DTH mono-hammer	172	167	146	10	240	1

The methods used to calculate the ensonified areas based on the sound source information in Table 2 are identical to those used in the final rule; details are provided in the Proposed Rule (86 FR 56857; October 13, 2021). The resulting Level A and Level B harassment isopleths are provided in Tables 2 and 3.

TABLE 2—CALCULATED DISTANCE AND AREAS OF LEVEL A AND LEVEL B HARASSMENT FOR IMPULSIVE NOISE (DTH)

Activity	Duration, count, size, and or rate	Total production days	Level A harassment[2]			Level B harassment
			Mid-frequency cetaceans (dolphins)	High frequency cetaceans (harbor porpoise)	Phocid pinnipeds	Harbor porpoise and phocids
DTH (10-in holes)	4 hours/day (1 hole/day).	8	3.3 m/0.000034 km^2 ...	111.6 m/0.019204 km^2	50.1 m/0.004657 km^2	See Table 4.

TABLE 3—CALCULATED DISTANCE AND AREAS OF LEVEL A AND LEVEL B HARASSMENT FOR NON-IMPULSIVE NOISE (VIBRATORY, DTH)

Activity	Duration, count, size, and or rate	Total production days	Level A harassment[2]			Level B harassment
			Mid-frequency cetaceans (dolphins)	High frequency cetaceans (harbor porpoise)	Phocid pinnipeds	Harbor porpoise and phocids
DTH (10-in holes)	4 hours/day (1 hole/day).	8	See Table 3			13,594 m/7.80374 km^2
30-in Steel Pipe Vibratory.	1 hour/day (2 piles/day).	4	0.4 m/0.000001 km^2 ...	7.4 m/0.000152 km^2 ...	3.1 m/0.00003 km^2	3,981 m/6.741652 km^2

Marine Mammal Occurrence and Take Calculation and Estimation

A description of the methods used to estimate take anticipated to occur from the project is found in the project's aforementioned documents. The methods of estimating take are identical to those used in the final rule. Table 4 shows the authorized takes at the S45 facility under the initial LOA (all in year 1) and the estimated takes from the modified activities.

TABLE 4—TAKE ESTIMATES AT S45 FACILITY UNDER THE INITIAL LOA AND THE MODIFICATION

	Initial LOA (year 1; S45)		Modified LOA	
	Level A	Level B	Level A	Level B
Atlantic White-sided Dolphin	0	1	0	1
Common Dolphin	0	3	0	3
Harbor Porpoise	1	4	1	4
Harbor Seal	15	188	15	244
Gray Seal	3	40	3	52
Harp Seal	1	16	1	20
Hooded Seal	0	0	0	0

TABLE 5—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE FOR THE MODIFICATION FOR YEAR 1 TAKES AT THE S45 FACILITY

Species	Stock (N_{EST})	Level A harassment	Level B harassment	Percent of stock
Atlantic White-sided Dolphin	Western North Atlantic (93,233)	0	3	Less than 1 percent.
Common Dolphin	Western North Atlantic (172,947)	0	3	Less than 1 percent.
Harbor Porpoise	Gulf of Maine/Bay of Fundy (95,543)	1	4	Less than 1 percent.
Harbor Seal	Western North Atlantic (61,336)	15	244	Less than 1 percent.
Gray Seal	Western North Atlantic (451,431)	3	52	Less than 1 percent.
Harp Seal	Western North Atlantic (7.6 million)	1	20	Less than 1 percent.
Hooded Seal	Western North Atlantic (593,500)	0	0	Less than 1 percent.

Description of Mitigation, Monitoring and Reporting Measures

The reporting measures are identical to those included in the initial LOA included in 2022 final rule. The monitoring and mitigation measures have been updated to include additional hydroacoustic monitoring and conservative shutdown zones. The following measures are included in the LOA Modification, and are in addition to those described in the Final Rule (86 FR 71162; December 15, 2021):

- Supplemental hydroacoustic monitoring will include:
  - 30-in Steel Pipe—vibratory driving: 2 piles; and
  - Obstruction drilling—DTH hammer: up to 8 holes (if required for pile installation).
- Shutdown zones for the new activities are identical to those identified in the Final Rule (86 FR 71162; December 15, 2021):
  - DTH Obstruction Drilling: The maximum shutdown zone included in the initial LOA is 150 m. This distance is greater than the calculated distance to Level A harassment thresholds for marine mammal species from DTH activities at the S45 facility, which is 111.6 m for harbor porpoise. The Navy will implement the same 150 m shutdown distance for cetaceans and pinnipeds when conducting DTH activities.
  - Vibratory driving steel pipe piles: the greatest calculated distance to Level A harassment thresholds for species at this location is 7.4 m, which is less than the standard construction shutdown of 10 m to prevent equipment/mammal interactions. However, for consistency the Navy will implement a 30 m shutdown distance for cetaceans and 10 m for pinnipeds from vibratory pile driving steel pipe piles, which is the same as for vibratory driving steel sheet piles in the initial authorization.

Determinations

With the exception of the revised take numbers and monitoring and mitigation measures, the Navy's planned in water construction activities as well as reporting requirements are unchanged from those in the initial LOA. The effects of the activity on the affected species and stocks, taking into consideration the modified mitigation and related monitoring measures, remain unchanged, notwithstanding the increase to the authorized amount of harbor seal, gray seal, and harp seal take by Level B harassment.

The additional takes from Level B harassment will be due to potential behavioral disturbance and TTS. No serious injury or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Description of Mitigation, Monitoring and Reporting Measures section).

The Navy's pile driving project is unlikely to result in serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (immediately surrounding NAVSTA Newport in the Narragansett Bay area) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Furthermore, the amount of take authorized is extremely small when compared to stock abundance.

The additional 72 takes of harbor, gray, and harp seals represents an increase of approximately 5.7 percent of the total take authorized in the initial LOA, and the anticipated impacts are identical to those described in the 2022 final rule. The amount of additional take for each species is also small (less than 1 percent of each stock). The Navy will conduct additional hydro-acoustic monitoring of the new activities, which will improve understanding of the source levels of such activities for future work. The modification to the LOA includes additional required mitigation and monitoring measures (albeit some minor modification to harassment and shutdown distances), and identical reporting measures as the 2022 LOA.

In conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

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 action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action remains consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the modified LOA continues to qualify to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure 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 incidental take authorizations, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is expected to result from this activity, and none is authorized herein. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued a modified LOA to the Navy for the potential harassment of small numbers of three marine mammal species incidental to construction at the S45 Bulkhead at Naval Station Newport in Newport, Rhode Island, that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: January 25, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–01807 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Post Allowance and Reissue

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Post Allowance and Reissue.

OMB Control Number: 0651–0033.

Needs and Uses: This collection of information covers the submission of issue fee payments, requests for certificates of correction, and reissue applications to the United States Patent and Trademark Office (USPTO). The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18, 1.311, and 1.314.

This collection of information also covers several transactions that may be taken after issuance of a patent.

Pursuant to 35 U.S.C 254 and 255, a certificate of correction may be requested to correct an error or errors in an issued patent. If the USPTO determines that the request should be approved, the USPTO will issue a certificate of correction.

For an original patent that is believed to be wholly or partly inoperative or invalid, the original patentee, or the current patent owner if there has been a subsequent assignment, may apply for reissue of the patent. The reissue application process requires, among other items, provision of an oath or declaration specifically identifying at least one error being relied upon as the basis for reissue and stating the reason for the belief that the original patent is wholly or partly inoperative or invalid (*e.g.,* a defective specification or drawing, or claiming more or less than the patentee had the right to claim in the patent). The rules outlining reissue application procedures are found at 37 CFR 1.171–1.173 and 1.175–1.178.

The title of this item has been changed from ''Post Allowance and Refiling'' to ''Post Allowance and Reissue'' to better reflect the nature of the items in this information collection.

Form Number(s): (AIA = America Invents Act; SB = Specimen Book; PTOL = Patent & Trademark Office Legal Form).

- PTO/AIA/05, PTO/AIA/06, PTO/SB/51, PTO/SB/52 (Reissue Application Declaration by the Inventor or the Assignee)
- PTO/AIA/07 (Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- PTO/AIA/50 (Reissue Patent Application Transmittal)
- PTO/AIA/53, PTO/SB/53 (Reissue Application: Consent of Assignee; Statement of Non-Assignment)
- PTO/SB/44 (Certificate of Correction)
- PTO/SB/51S, (Supplemental Declaration for Reissue Patent Application to Correct ''Errors'' Statement (pre-AIA 37 CFR 1.175(c)))
- PTO/SB/56 (Reissue Application Fee Transmittal Form)
- PTOL–85B (Issue Fee Transmittal)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 426,301 respondents.

Estimated Number of Annual Responses: 426,301 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 30 minutes (0.5 hours) and 5.3 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 373,568 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $434,518,228.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number 0651–0033.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0033 information request'' in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United

States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–01748 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Term Extension and Adjustment

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 21, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Patent Term Extension and Adjustment.

OMB Control Number: 0651–0020.

Needs and Uses: The patent term restoration portion of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417), which is codified at 35 U.S.C. 156, permits the United States Patent and Trademark Office (USPTO) to extend the term of protection under a patent to compensate for delay during regulatory review and approval by the Food and Drug Administration (FDA) or United States Department of Agriculture (USDA). Only patents for drug products, medical devices, food additives, or color additives are potentially eligible for extension. The maximum length that a patent may be extended under 35 U.S.C. 156 is 5 years. The USPTO administers 35 U.S.C. 156 through 37 CFR 1.710–1.791.

This information collection covers information gathered in patent term extension applications submitted under 35 U.S.C. 156(d). Under this provision, an application for patent term extension must identify the approved product; the patent to be extended; and the claims included in the patent that cover the approved product, a method of using the approved product, or a method of manufacturing the approved product. 35 U.S.C. 156(d) also requires the submission of information that enables the USPTO to determine the eligibility of the patent for extension, and the rights that will be derived from the extension, and information to enable the USPTO and the Secretary of Health and Human Services or the Secretary of Agriculture to determine the period of the extension. Additionally, 35 U.S.C. 156(d) requires the applicant for patent term extension to provide a brief description of the activities undertaken by the applicant during the regulatory review period with respect to the approved product and the significant dates of these activities.

This information collection also covers information gathered in requests for interim extensions pursuant to 35 U.S.C. 156(d)(5) and 156(e)(2). Under 35 U.S.C. 156(d)(5), an interim extension may be granted if the applicable regulatory review period that began for a product is reasonably expected to extend beyond the expiration of the patent term in effect. Under 35 U.S.C. 156(e)(2), an interim extension may be granted if the term of an eligible patent for which an application for patent term extension has been submitted would expire before a certificate of extension is issued. In addition, this information collection covers requests for review of final eligibility decisions, and requests to withdraw an application requesting a patent term extension after it is submitted.

Separate from the extension provisions of 35 U.S.C. 156, the USPTO may in some cases adjust the term of an original patent under the provisions of 35 U.S.C. 154 due to certain delays in the prosecution of the patent application, including delays caused by interference proceedings, secrecy orders, or appellate review by the Patent Trial and Appeal Board or a Federal court in which the patent is issued pursuant to a decision reversing an adverse USPTO determination of patentability. The USPTO administers 35 U.S.C. 154 through 37 CFR 1.701–1.705. The patent term provisions of 35 U.S.C. 154(b), as amended by Title IV, Subtitle D of the Intellectual Property and Communications Omnibus Reform Act of 1999, allow the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination. This information collection covers information gathered in such a request.

In addition, this information collection covers information collected when the USPTO reduces the amount of a granted patent term adjustment if delays were caused by an applicant's failure to make a reasonable effort to respond to a communication from the USPTO within three months of the communication's mailing date. Applicants may petition for reinstatement of a reduction in patent term adjustment with a showing that, in spite of all due care, the applicant was unable to respond to a communication from the USPTO within the three-month period.

The title of this item has been changed from ''Patent Term Extension'' to ''Patent Term Extension and Adjustment'' to better reflect the scope of actions available regarding Patent terms that are a part of this information collection.

Form Number(s): None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 915 respondents.

Estimated Number of Annual Responses: 915 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 1 hour and 25 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 6,113 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $327,003.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number 0651–0020.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0020 information request'' in the subject line of the message.

• *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–01750 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Law Treaty

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 17, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Patent Law Treaty.

OMB Control Number: 0651–0073.

Needs and Uses: The Patent Law Treaties Implementation Act of 2012 (PLTIA) implements the provisions of the Patent Law Treaty (PLT) in title II. PLT Article 13 provides for the restoration of the right of priority where there is a failure to timely claim priority to the prior application, and also where there is a failure to file the subsequent application within 12 months of the filing date of the priority application.

The United States Patent and Trademark Office (USPTO) rules of practice are consistent with the PLT and title II of the PLTIA. Section 201(c) of the PLTIA amended 35 U.S.C. 119 to provide that the 12-month periods set forth in 35 U.S.C. 119(a) and (e) may be extended by an additional 2 months if the delay in filing an application claiming priority to a foreign application or the benefit of a provisional application within that 12-month period was unintentional.

The information in this information collection is necessary so that patent applicants and/or patentees may seek restoration of the right of priority to a prior-filed foreign application or of the right to the benefit of a prior-filed provisional application. The USPTO will use the petition to restore the right of priority to a prior filed foreign application or the right to the benefit of a prior-filed provisional application to determine whether the applicant has satisfied the conditions of the applicable statute (35 U.S.C. 119) and regulation (37 CFR 1.55(c) or 1.78(b)).

• *Form Number(s):* PTO/SB/459 (Petition to Restore the Right of Priority under 37 CFR 1.55(c) or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b)).

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 800 respondents.

Estimated Number of Annual Responses: 800 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 1 hour to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 800 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $1,464,824.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number 0651–0073.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0073 information request'' in the subject line of the message.

• *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–01753 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent and PTAB Pro Bono Programs

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 30, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Patent and PTAB Pro Bono Programs.

OMB Control Number: 0651–0082.

Needs and Uses: The Leahy-Smith America Invents Act (AIA), Public Law 112–29 § 32 (2011) directs the USPTO to work with and support intellectual property law associations across the country in the establishment of pro bono programs designed to assist financially under-resourced independent inventors and small

businesses. To support this, the USPTO—in collaboration with various non-profit organizations—implemented the Patent Pro Bono program; a series of autonomous regional programs that act as matchmakers to help connect low-income inventors with volunteer patent attorneys across the United States. The Patent Pro Bono program comprises a network of regional programs organized by various bar associations, law school IP clinics, and lawyer referral services that provide services across all fifty states, the District of Columbia, and Puerto Rico.

In 2022, the Patent Trial and Appeal Board (PTAB) began coordinating *pro bono* opportunities through the newly created PTAB Pro Bono Program, having supported the establishment of a national clearinghouse that acts as a matchmaker to connect under-resourced inventors with volunteer patent practitioners across the United States for assistance in preparing and arguing *ex parte* appeals before the PTAB. The PTAB Bar Association's national clearinghouse provides access to legal representation for *pro bono ex parte* appeal services across all fifty states and the District of Columbia.

Each *pro bono* program will be requesting that their respective regional programs and a national clearinghouse collect demographic information from those seeking assistance that will be self-identified by the applicant. The requested standardized demographic information, collected through Applicant Intake Forms, will be a voluntary part of the overall application materials that each independent inventor fills out when seeking *pro bono* assistance. The information collected will be kept confidential by the regional programs and the national clearinghouse and only aggregate information is shared with the USPTO. This aggregate information, will also be used to help determine the extent to which women, minorities, and veterans engage the Pro Bono Programs supported by USPTO.

This renewal of 0651–0082 broadens the scope of the information collection to include the PTAB Pro Bono Program, in addition to the Patent Pro Bono Program that was covered under this collection. The name of the information collection has been adjusted from ''Pro Bono Survey'' to ''Patent and PTAB Pro Bono Programs'' in order to include related programs under this single information collection. This information collection includes an instrument capturing data for the Patent Pro Bono program (Patent Pro Bono Survey) and its applicant participations (Patent Applicant Intake Form). The information collection also has a similar instrument that covers the collection of data for the PTAB program (PTAB Pro Bono Survey) and the applicants requesting to participate in that PTAB offering (PTAB Applicant Intake Form).

Form Number(s):

- USPTO/550 (Patent Pro Bono Survey)
- USPTO/551 (Patent Applicant Intake Form)
- USPTO/552 (PTAB Pro Bono Survey)
- USPTO/553 (PTAB Applicant Intake Form)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 1,763 respondents.

Estimated Number of Annual Responses: 1,832 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public between approximately 5 minutes (0.08 hours) and 2 hours to complete. This includes the time to gather the necessary information, fill out the item, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 332 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $1,333.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number 0651–0082.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0082 information request'' in the subject line of the message.
- *Postal mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–01749 Filed 1–27–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2022–0020; OMB Control Number 0750–0005]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Part 225, Disclosure of Employment of Individuals Who Work in the People's Republic of China

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to 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 March 1, 2023.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Disclosure of Employment of Individuals Who Work in the People's Republic of China; OMB Control Number 0750–0005.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Number of Respondents: 30.

Annual Responses: 50.

Annual Burden Hours: 50.

Reporting Frequency: On Occasion.

Needs and Uses: This information collection implements section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.). DoD uses the information obtained through this collection to ensure compliance with the statute as follows:

DFARS 252.225–7057, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China. The offeror's disclosure is required when the offeror

submits a proposal in response to a solicitation for a contract or subcontract with a value in excess of $5 million, excluding contracts for commercial items. The solicitation provision requires the offeror to disclose their proposed use of workforce and facilities in the People's Republic of China, if the offeror employs one or more individuals who will perform work in the People's Republic of China. The offeror will provide their disclosure in writing.

DFARS 252.225–7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China. Before renewing a covered contract, the contractor's recurring postaward disclosure is required from covered entities for fiscal years 2023 and 2024, to disclose if the contractor employs one or more individuals who perform work in the People's Republic of China. The disclosure must include the total number of individuals who will perform work in the People's Republic of China on the contract and a description of the exact street location of the physical presence in China where the work on the contract will be performed.

DoD uses this information to provide the congressional defense committees with briefings that summarize the disclosures received from offerors and contractors, in accordance with section 855 of the NDAA for FY 2022.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

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.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–01850 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0132]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), 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 March 1, 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: Active Duty Dental Program (ADDP) Claim Form; OMB Control Number 0720–0053.

Type of Request: Extension.

Number of Respondents: 75,000.

Responses per Respondent: 4.

Annual Responses: 300,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 75,000.

Needs and Uses: The information collection is necessary to obtain and record the dental readiness of Service Members using the Active Duty Dental Program (ADDP) and at the same time submit the claim for the dental procedures provided so that claims can be processed and reimbursement made to the provider. Many Service Members are not located near a military dental treatment facility and receive their dental care in the private sector.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matthew Eliseo.

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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01795 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0099]

Submission for OMB Review; Comment Request

AGENCY: Office of 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 March 1, 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: Spouse and Family Issues Survey—Active Duty; OMB Control Number 0704–SFIS.

Type of Request: New.

Number of Respondents: 11,500.

Responses per Respondent: 1.

Annual Responses: 11,500.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 2,875.

Needs and Uses: The 2022 Spouse and Family Issues Survey of Active Duty Spouses (SFIS–A) will serve as the primary source for reliable and generalizable survey data on the prevalence of suicide ideation and attempts by military spouses and dependents. DoD is required to report suicide data on military family members per section 567 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015. This will be the first time the Department of Defense (DoD) has collected this sort of survey data for military spouses and dependents addressing suicide ideation, attempts, and vulnerability/protective factors of suicide. The survey is designed to help DoD inform programs and policies focused on strengthening resilience and mitigating suicidality in military spouses and dependents to enhance understanding of how spouse and family resilience impact force readiness and retention, and to inform the effectiveness of programs and policies under the purview of the Defense Suicide Prevention Office (DSPO).

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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01810 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0133]

Submission for OMB Review; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), 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 March 1, 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: Application for Trusteeship; DD Form 2827; OMB Control Number 0730–0013.

Type of Request: Extension.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 75.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 19.

Needs and Uses: The information collection is needed to identify the prospective trustees for active duty military and retirees. The information is required in order for the Defense Finance and Accounting Service (DFAS) to make payments on behalf of incompetent military members or retirees. DFAS is representing all services as the functional proponent for Retired and Annuitant Pay.

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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01806 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0131]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), 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 March 1, 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: Women, Infants, and Children Overseas Program (WIC Overseas) Eligibility Application; OMB Control Number 0720–0030.

Type of Request: Extension.

Number of Respondents: 14,550.

Responses per Respondent: 2.

Annual Responses: 29,100.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 7,275.

Needs And Uses: The information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Mathew Eliseo.

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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01799 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–HA–0130]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), 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 March 1, 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: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Control Number 0720–0022.

Type of Request: Extension.

Number of Respondents: 150,000.

Responses per Respondent: 5.

Annual Responses: 750,000.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 37,500.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Business or other for-profit, and not-for-profit institutions; individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Mathew Eliseo.

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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01805 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0034]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Research and Engineering (USD(R&E)), 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 March 1, 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: DoD STEM Work Experience Program Participant Questionnaire; OMB Control Number 0704–STEM.

Type of Request: New collection.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 75.

Needs and Uses: The information collection is required to evaluate the DoD Work Experience Programs in support of the DoD STEM Office. The intent of the survey collection is to evaluate the participants' perspective on the program, what attracted them to the program, what they accomplished during the program and expected benefits from participation, along with any obstacles or barriers they had to overcome to participate. The survey's intended population is participants in DoD-funded work experience programs. The programs include internships, post-doctoral, and similar positions where the participants are working at or for DoD organizations while also receiving mentorship. All the respondents will be adults, either currently in college or recently graduated. Some of the respondents will be Federal civilians and others may be classified as contractors. Survey participation will be anonymous, and data will be reported only in aggregated form.

Affected Public: Individuals or households.

Frequency: Once.

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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01808 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0012]

Proposed Collection; Comment Request

AGENCY: National Defense University, Chairman of the Joint Chiefs of Staff (CJCS), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the National Defense University announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 31, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket 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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Defense University, 300 5th Avenue SW, Building 62, Washington, DC 20319, ATTN: LTC Ann Summers, or call (202) 685–3323.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: ISMO International Fellows Personal Information Collection; OMB Control Number 0704–0601.

Needs and Uses: This collection is necessary to collect essential personal information on Foreign National students attending the National Defense University. The information collected is used to create profiles for the international students that ensures their needs are met as they transition to their time living in the United States as a student. It also helps them secure driving licenses, CAC's, FIN's, TLA payments, and a DTS profile. Their preliminary information, including name, service, past assignments, etc. is collected via email correspondence while they are still in their home country. More sensitive information such as passport information, DOB, Visa # and their FIN are collected either in person or over the WhatsApp messaging service, utilizing their end-end encryption. All student information is stored in a database that is only accessible to members of our office.

Affected Public: Individuals and Households, Foreign Nationals.

Annual Burden Hours: 109.

Number of Respondents: 109.

Responses per Respondent: 2.

Annual Responses: 218.

Average Burden per Response: 30 minutes.

Frequency: Annually.

Dated: January 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01794 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0126]

Submission for OMB Review; Comment Request

AGENCY: Office of the Defense Counterintelligence and Security

Agency (DCSA), 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 March 1, 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: Freedom of Information/Privacy Act Request for Adjudication Records; OMB Control Number 0704–0561.

Type of Request: Revision.

Number of Respondents: 385.

Responses per Respondent: 1.

Annual Responses: 385.

Average Burden per Response: 5 Minutes.

Annual Burden Hours: 32 Hours.

Needs and Uses: The information collection requirement is necessary to ensure needed information is collected to positively identify individuals who request records regarding themselves that are maintained by the DoD Consolidated Adjudications Facility. These records will also be used in any Privacy Act appeals or related litigation. The Law Enforcement, Congressional Inquiries, Department of Justice for Litigation, National Archives and Records Administration, and Data Breach Remediation, and Routine Uses found at *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.* The DoD Consolidated Adjudications Facility Request for Records form will also be used to refer records under the release authority of another Federal Agency.

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: https://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 *https://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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01825 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0109]

Submission for OMB Review; Comment Request

AGENCY: Office of the Defense Contract Audit Agency, 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 March 1, 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: Defense Contract Audit Agency Customer Relationship Management Tool; OMB Control Number 0704–DCRM.

Type of Request: New.

Number of Respondents: 475.

Responses per Respondent: 1.

Annual Responses: 475.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 79.17.

Needs and Uses: DCAA needs to collect the data so as to conduct marketing, advertising, outreach, and recruitment activities with potential leads and applicants for employment. DCAA needs to manage all tracking and communications associated with potential leads so as to retain potential applicants during and through the recruitment and hiring process. DCAA needs the data to continuously engage with potential leads who may not initially meet minimum qualification requirements; who may have applied/submitted a resume but were not selected; or who meet all requirements except having graduated from college. DCAA needs the data to conduct data analytics for outreach and recruitment return on investment assessments; to better refine outreach strategies, and to measure effectiveness of marketing and advertising efforts/campaigns.

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: https://;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 *https://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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01815 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0031]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, 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 March 1, 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: Application Forms Booklet, Naval Reserve Officers Training Corps Scholarship Program; OMB Control Number 0703–0026.

Type of Request: Extension.

Number of Respondents: 14,000.

Responses per Respondent: 7.

Annual Responses: 98,000.

Average Burden per Response: 29.29 minutes.

Annual Burden Hours: 47,833.33.

Needs and Uses: This collection of information is used to determine an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or households.

Frequency: Annually.

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 25, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01826 Filed 1–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0023]

Agency Information Collection Activities; Comment Request; Student Assistance General Provision—Subpart E—Verification Student Aid Application Information

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before MARCH 31, 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–0023. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave., SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provision—Subpart E—Verification Student Aid Application Information.

OMB Control Number: 1845–0041.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private sector; individuals and households; State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 23,855,169.

Total Estimated Number of Annual Burden Hours: 3,835,338.

Abstract: This request is for an extension of the information collection supporting the policies and reporting requirements contained in subpart E of part 668—Verification and Updating of Student Aid Application Information. Sections 668.53, 668.54, 668.55, 668.56, 668.57, 668.59 and 668.61 contain information collection requirements (OMB control number 1845–0041). This subpart governs the verification and updating of information provided on the Free Application for Federal Student Aid (FAFSA) which is used to calculate an applicant's Expected Family Contribution (EFC) for purposes of determining an applicant's need for student financial assistance under Title IV of Higher Education Act of 1965, as amended (HEA). The collection of this documentation helps ensure that students (and parents in the case of PLUS loans) receive the correct amount of Title IV program assistance by providing accurate information to calculate an applicant's expected family contribution. There has been no change to the regulatory language since the prior information collection filing.

Dated: January 24, 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. 2023–01734 Filed 1–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) Regarding Grant Program To Facilitate the Siting of Interstate Electricity Transmission Lines

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Request for information.

SUMMARY: The Department of Energy (DOE) Grid Deployment Office (GDO) invites public input for its Request for Information (RFI) regarding issues related to the provision of grants to facilitate the siting of interstate and offshore electricity transmission lines, as authorized under the Inflation Reduction Act (IRA). This provision of the IRA authorizes the issuance of grants to siting authorities to facilitate the siting of interstate and offshore electricity transmission lines and to siting authorities and State, local, and Tribal governments to undertake economic development activities for communities impacted by such projects. Information collected from this RFI will be used by DOE for program planning purposes and the potential development of a Funding Opportunity Announcement (FOA).

DATES: Responses to this RFI must be received by no later than 5:00 p.m. EST on February 28, 2023.

ADDRESSES: Interested parties are to submit comments electronically to *GDOIRASection50152@hq.doe.gov.* RFI can be found at: *https://www.energy.gov/gdo/transmission-siting-and-economic-development-grants-program.* Include ''RFI for Transmission Siting and Economic Development Grants'' in the subject line of the email. Responses must be provided as a Microsoft Word (.docx) or PDF attachment to the email, and no more than 15 pages in length, 12-point font, 1-inch margins. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. For ease of replying and to aid categorization of your responses, please copy and paste the RFI questions, including the question numbering, and use them as a template for your response. Respondents may answer as many or as few questions as they wish. Respondents are requested to provide the following information at the start of their response to this RFI:

- Company/institution name.
- Company/institution contact.
- Contact's address, phone number, and email address.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed by email to *GDOIRASection50152@hq.doe.gov.* Questions about the RFI may be addressed to Jordan Meehan at (202) 586–2006. Further instructions can be found in the RFI document posted at *https://www.energy.gov/gdo/transmission-siting-and-economic-development-grants-program.*

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to solicit feedback from the public on siting authority and economic development activities that could be supported by grants under section 50152 of the IRA. DOE is also seeking feedback on the overall goals and programmatic objectives that DOE should consider when making grants under this section, including those related to environmental and energy justice, equity, job quality, and tribal cultural resources.

Section 50152 of the IRA authorizes the Secretary of Energy (Secretary) to make grants to siting authorities to carry out certain eligible activities that will facilitate the siting and permitting of certain interstate onshore and offshore electricity transmission lines. Section 50152 also authorizes the Secretary to make grants to siting authorities, or other State, local, or Tribal governmental entities, for economic development activities in communities that may be affected by the construction and operation of these transmission projects. The IRA makes funding for such grants available through September 30, 2029.

To help inform DOE's implementation of section 50152 of the IRA, this RFI seeks input on the following topics related to grants under this section:

A. Eligible Siting Activities With Respect to Covered Projects
B. Economic Development Activities for Affected Communities
C. Equity, Energy, and Environmental Justice

The complete RFI be found at: *https://www.energy.gov/gdo/transmission-siting-and-economic-development-grants.*

Proprietary and Confidential Information

Because information received in response to this RFI may be used to structure future programs and grants and/or otherwise be made available to the public, respondents are strongly advised NOT to include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response. Responses containing confidential, proprietary, or privileged information must be conspicuously marked as described below. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Federal Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

Confidential Business Information. Pursuant to 10 CFR 1004.11 any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well marked copies: one copy of the document marked ''Confidential Commercial and Financial Information'' including all the information believed to be confidential, and one copy of the document marked

''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination. The copy containing confidential commercial and financial information must include a cover sheet marked as follows: identifying the specific pages containing confidential, proprietary, or privileged information: ''Notice of Restriction on Disclosure and Use of Data: Pages [list applicable pages] of this response may contain confidential, commercial, or financial information that is exempt from public disclosure.'' The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source. In addition, (1) the header and footer of every page that contains confidential, proprietary, or privileged information must be marked as follows: ''Contains Confidential, Commercial, or Financial Information Exempt from Public Disclosure'' and (2) every line and paragraph containing proprietary, privileged, or trade secret information must be clearly marked with [[double brackets]] or highlighting.

Signing Authority

This document of the Department of Energy was signed on January 24, 2023, by Maria D. Robinson, Director of the Grid Deployment Office, 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 on publication in the **Federal Register**.

Signed in Washington, DC, on January 25, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–01820 Filed 1–27–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–921–000]

Black Mesa Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Black Mesa Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 13, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: January 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–01858 Filed 1–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–24–000.
Applicants: Questar Gas Company.
Description: Questar Gas Company submits tariff filing per 284.123(b),(e)/: Rate changes 2023 corrected date to be effective 1/1/2023.
Filed Date: 01/20/2023.
Accession Number: 20230120–5208.
Comment Date: 5 p.m. ET 2/10/23.

Docket Numbers: RP23–369–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Non-Conforming Service Agreement—Citadel Contract Termination to be effective 2/22/2023.
Filed Date: 1/23/23.
Accession Number: 20230123–5151.
Comment Date: 5 p.m. ET 2/6/23.

Docket Numbers: RP23–370–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Spire Negotiated Rate—Feb 2023 to be effective 2/1/2023.
Filed Date: 1/23/23.
Accession Number: 20230123–5157.
Comment Date: 5 p.m. ET 2/6/23.

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 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–01856 Filed 1–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–912–000]

Sun Streams Expansion, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sun Streams Expansion, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 13, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: January 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–01855 Filed 1–27–23; 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 exempt wholesale generator filings:

Docket Numbers: EG23–52–000.

Applicants: Gambit Energy Storage LLC.

Description: Gambit Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/21/22.

Accession Number: 20221221–5429.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: EG23–67–000.

Applicants: Chevelon Butte RE LLC.

Description: Chevelon Butte RE LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/24/23.

Accession Number: 20230124–5112.

Comment Date: 5 p.m. ET 2/14/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1332–010; ER14–1934–007; ER14–1935–007; ER15–1020–005; ER16–1724–009.

Applicants: Paulding Wind Farm III LLC, Rising Tree Wind Farm III LLC, Rising Tree Wind Farm II LLC, Rising Tree Wind Farm LLC, Arbuckle Mountain Wind Farm LLC.

Description: Notice of Change in Status of Arbuckle Mountain Wind Farm LLC, et al.

Filed Date: 1/23/23.

Accession Number: 20230123–5187.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER22–2318–001.

Applicants: MATL LLP.

Description: Compliance filing: Amendment to Order 881 Compliance Filing to be effective 3/14/2022.

Filed Date: 1/24/23.

Accession Number: 20230124–5099.

Comment Date: 5 p.m. ET 2/14/23.

Docket Numbers: ER22–2901–001.

Applicants: Carthage Energy, LLC.

Description: Tariff Amendment: Deficiency Filing to 78 to be effective 9/23/2022.

Filed Date: 1/23/23.

Accession Number: 20230123–5158.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER22–2902–001.

Applicants: Power City Partners, L.P.

Description: Tariff Amendment: Deficiency Filing to 54 to be effective 9/23/2022.

Filed Date: 1/23/23.

Accession Number: 20230123–5164.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER23–923–000.

Applicants: Wisconsin Power and Light Company.

Description: § 205(d) Rate Filing: WPL Administrative Changes to Formula Rate Templates to be effective 3/25/2023.

Filed Date: 1/23/23.

Accession Number: 20230123–5159.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER23–924–000.

Applicants: Wisconsin Power and Light Company.

Description: § 205(d) Rate Filing: WPL W–2A Formula Rate Revision to be effective 3/25/2023.

Filed Date: 1/23/23.

Accession Number: 20230123–5160.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER23–925–000.

Applicants: Wisconsin Power and Light Company.

Description: § 205(d) Rate Filing: WPL W–3A Formula Rate Revision to be effective 3/25/2023.

Filed Date: 1/23/23.
Accession Number: 20230123–5161.
Comment Date: 5 p.m. ET 2/13/23.

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 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–01857 Filed 1–27–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0008; FRL–10626–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Consolidated Superfund Information Collection Request (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Consolidated Superfund Information Collection Request (EPA ICR Number 1487.14, OMB Control Number 2050–0179) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2023. Public comments were previously requested, via the **Federal Register**, on July 26, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 1, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–SFUND–2004–0008, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1045; email address: *singer.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through March 31, 2023. 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.

Public comments were previously requested via the **Federal Register** (87 FR 44388) on July 26, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR covers the following: (1) the collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for state, federally-recognized Indian tribal governments, and political subdivision response actions; (2) the application of the Hazard Ranking System (HRS) by states as outlined by CERCLA section 105 that amends the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to include criteria prioritizing releases throughout the United States before undertaking remedial action at uncontrolled hazardous waste sites; and (3) the remedial portion of the Superfund program as specified in CERCLA and the NCP. For cooperative agreements and Superfund state contracts for Superfund response actions, the information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how federal funds are being utilized. EPA requires this information to meet its federal stewardship responsibilities. Recipient responses are required to obtain a benefit (federal funds) under 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities'' and under 40 CFR part 35, ''State and Local Assistance.'' For the Superfund site evaluation and the Hazard Ranking System, the states will apply the HRS by identifying and classifying those releases or sites that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions. For the NCP information collection, some community involvement activities covered by this ICR are not required at every site (*e.g.,* Technical Assistance Grants) and depend very much on the community and the nature of the site and cleanup. All community activities seek to involve the public in the cleanup of the sites, gain the input of community members, and include the community's perspective on the potential future reuse of Superfund NPL sites. Community involvement activities can enhance the remedial process and increase community acceptance and the potential for productive and beneficial reuse of the sites.

Form numbers: 6200–11.

Respondents/affected entities: State, Local or Tribal Governments; U.S. Territories; Communities.

Respondent's obligation to respond: Required to obtain benefits (40 CFR part 35; CERCLA section 105, 40 CFR part 300).

Estimated number of respondents: 13,266 (total).

Frequency of response: Annually.

Total estimated burden: 175,583 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $527,370 (per year), which includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is decrease of 20,974 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an overall decrease in the number of respondents and responses for the Superfund Site Evaluation and Hazard Ranking System, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions, and for the National Oil and Hazardous Substances Pollution Contingency Plan.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–01786 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2016–0010; FRL–10628–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Institutional Dual Use Research of Concern (iDURC) Policy Compliance (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Institutional Dual Use Research of Concern (iDURC) Policy Compliance (EPA ICR Number 2530.04, OMB Control Number 2080–0082) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2023. Public comments were previously requested via the **Federal Register** on May 31, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 1, 2023.

ADDRESSES: Submit your comments to EPA referencing Docket ID No. EPA–HQ–ORD–2016–0010, online using *www.regulations.gov* (our preferred method), by email to *ord.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *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: Viktoriya Plotkin, Center for Environmental Solutions & Emergency Response, Office of Research and Development, 26 W Martin Luther King Dr., Cincinnati, Ohio 45268; telephone number: 202–510–3602; email address: *plotkin.viktoriya@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 28, 2023. 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.

Public comments were previously requested, via the **Federal Register**, on May 31, 2022 during a 60-day comment period (87 FR 32409). This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: To comply with the U.S. Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (DURC Policy), EPA must ensure that the institutions subject to DURC Policy appropriately train their laboratory personnel and maintain records of their training. This training is specific to ''dual use research of concern,'' and should include information on how to properly identify DURC, appropriate methods for ensuring research that is determined to be DURC, and that it is conducted and communicated responsibly.

Form numbers: None.

Respondents/affected entities: Private sector and federal-owned/contractor-operated labs.

Respondent's obligation to respond: Mandatory (Per EPA Order 1000,19: Policy and Procedures for Managing Dual Use Research of Concern).

Estimated number of respondents: 40 (total).

Frequency of response: Only once and/or as necessary.

Total estimated burden: 20 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,240 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–01783 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2019–0143; FRL–10629–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (EPA ICR Number 2553.04 OMB Control Number 2040–0290) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2023. Public comments were previously requested via the **Federal Register** on

July 19, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 1, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2019–0143, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Edward Laird, Watershed Restoration, Assessment, and Protection Division (WRAPD), Office of Wetlands, Oceans, and Watersheds, Mail Code: 4503T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–2848; fax number: (202) 566–1437; email address: *laird.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through March 31, 2023. 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.

Public comments were previously requested via the **Federal Register** (87 FR 43028) on July 19, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. Supporting documents that explain in detail the information that the EPA will be collecting are available in the public docket for this ICR (Docket ID EPA–HQ–OW–2019–0143). The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket visit *http://www.epa.gov/dockets.*

Abstract: In 2016, EPA issued regulations establishing a process for federally recognized tribes to obtain treatment in a similar manner as states (TAS) for purposes of administrating the water quality restoration provisions of Clean Water Act (CWA) Section 303(d), including establishing lists of impaired waters on their reservations and developing total maximum daily loads (TMDLs). The CWA does not require tribes to administer the CWA Section 303(d) program. However, tribes seeking to be authorized must apply for and be found eligible for TAS through the procedures described in the regulations.

Section 303(d) of the CWA requires states, territories, and authorized tribes to identify and establish a priority ranking for waters that do not meet EPA-approved or promulgated water quality standards (WQS) following the implementation of technology-based controls. For waters so identified, Section 303(d) requires states, territories, and authorized tribes to establish TMDLs in accordance with their priority ranking for those pollutants the Administrator identified as suitable for TMDL calculation. A TMDL is the calculation and allocation to point and nonpoint sources of the maximum amount of a pollutant that a water body can receive and still meet applicable WQS, with a margin of safety.

Form numbers: None.

Respondents/affected entities: Any federally recognized tribe with a reservation.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: Five.

Frequency of response: Once for initial TAS status, thereafter biennially for lists of impaired waters, and from time to time for TMDLs.

Total estimated burden: 34,757 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,309,452 (per year). This action does not include annualized capital or operation & maintenance costs.

Changes in estimates: There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–01785 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0022; FRL–10621–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State and Federal Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), State and Federal Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators (EPA ICR Number 1899.10, OMB Control Number 2060–0422), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2023. Public comments were previously requested, via the **Federal Register**, on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 1, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0022, to EPA online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through January 31,

2023. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested, via the **Federal Register** (87 FR 43843), on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The Emission Guidelines (EG) (40 CFR part 60, subpart Ce) for Hospital/Medical/Infectious Waste Incinerators were proposed on February 27, 1995; promulgated on September 15, 1997; and revised on both October 6, 2009 and April 4, 2011. The Federal Plan Requirements for these regulations (40 CFR part 62, subpart HHH) were proposed on July 6, 1999; promulgated on August 15, 2000; and revised on May 13, 2013. Subpart Ce requires either states or tribes to develop plans to implement the EG. If approvable state or tribal plans were not developed, the EPA was required to develop a Federal plan (Subpart HHH) to implement the Emission Guidelines for such states and tribes. The Federal plan is an interim measure to ensure that emissions standards are implemented until states assume their role as the preferred implementers of the EG. The 2013 rule finalized amendments to the HMIWI federal plan to implement the amended EG adopted on October 6, 2009, for those states that did not have an approved revised/new state plan in place within 2 years after promulgation of the EG. The regulations in 40 CFR part 60, subpart Ce and 40 CFR part 62, subpart HHH apply to each existing individual hospital/medical/infectious waste incinerator (HMIWI) that either commenced construction prior to December 2, 2008 or commenced modification prior to April 6, 2010. This information is being collected to assure compliance with 40 CFR part 60, subpart Ce and 40 CFR part 62, subpart HHH.

Form numbers: None.

Respondents/affected entities: Hospital/Medical/Infectious Waste Incinerators.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Ce and 40 CFR part 62, subpart HHH).

Estimated number of respondents: 28 existing respondents, consisting of 16 privately-owned, 1 Federally-owned, 1 State/locally owned HMIWI facilities, plus 10 States requiring State Plan Inventories (total).

Frequency of response: Semiannually and annually.

Total estimated burden: 19,200 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,430,000 (per year), which includes $239,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: The decrease in burden from the most-recently approved ICR is due to a decrease in the number of sources due to a decline in the industry. This decrease is not due to any program changes. The number of sources has declined as HMIWI units have closed. Any new units that either commence construction after December 2, 2008 or commence modification after April 6, 2010 are subject to the new source performance standards at 40 CFR part 60, subpart Ec. The decrease in the operation and maintenance costs from the currently-approved ICR is also due to the decline in the number of HMIWI units. There are no changes to the capital costs because there are no new entities subject to 40 CFR part 60, subpart Ce or 40 CFR part 62, subpart HHH.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–01760 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0317; FRL–10627–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements (EPA ICR Number 1745.10, OMB Control Number 2050–0154) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2023. Public comments were previously requested, via the **Federal Register**, on July 5, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 1, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0317, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Richard Huggins, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0543; email address: *huggins.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 28, 2023. 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.

Public comments were previously requested via the **Federal Register** (87 FR 39830) on July 5, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Materials can

also be viewed at the Reading Room located at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). The telephone number for the Docket Center is 202–566–1744.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 257—subpart B on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes will have to comply with the final reporting and recordkeeping requirements. This continuing ICR documents the recordkeeping and reporting burdens associated with the location and ground-water monitoring provisions contained in 40 CFR part 257—subpart B.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are the private sector, as well as State, Local, or Tribal Governments.

Respondent's obligation to respond: Mandatory under Section 4010© and 3001(d)(4) of the Resource Conservation and Recovery Act (RCRA) of 1976.

Estimated number of respondents: 152.

Frequency of response: On occasion.

Total estimated burden: 11,219 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,951,843 per year, which includes $1,577,659 annualized capital or operation & maintenance costs.

Changes in the estimates: There is no change in the number of hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–01784 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–10525–01–OCSPP]

Pesticide Registration Review; Decisions and Case Closures for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's interim or final registration review decisions for the following chemicals: 2-methyl-1-butanol, calcium acetate, *Candida oleophila,* cedarwood oil, citral, heptyl butyrate, *l*-carvone. In addition, this notice announces the closure of the registration review case for cetylpyridinium chloride (CPC) because the last U.S. registrations for this pesticide have been canceled.

DATES: Comments must be received on or before March 31, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0751, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed interim or final decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's interim or final registration review decisions for the pesticides shown in Table 1. The registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE 1—REGISTRATION REVIEW INTERIM AND FINAL DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2-Methyl-1-Butanol, Case Number 6308	EPA–HQ–OPP–2022–0303	Jennifer Odom Douglas, *odomdouglas.jennifer@epa.gov,* (202) 566–1536.
Calcium Acetate, Case No. 6341	EPA–HQ–OPP–2022–0304	Jennifer Odom Douglas, *odomdouglas.jennifer@epa.gov,* (202) 566–1536.
Candida oleophila, Case No. 6019	EPA–HQ–OPP–2022–0445	Hannah Dean, *dean.hannah@epa.gov,* (202) 566–1531.
Cedarwood Oil, Case No. 3150	EPA–HQ–OPP–2022–0108	Jennifer Odom Douglas, *odomdouglas.jennifer@epa.gov,* (202) 566–1536.
Citral, Case No. 6314	EPA–HQ–OPP–2022–0301	Susanne Cerrelli, *cerrelli.susanne@epa.gov,* (202) 566–1516.
Heptyl butyrate, Case No. 6305	EPA–HQ–OPP–2022–0402	Hannah Dean, *dean.hannah@epa.gov,* (202) 566–1531.
l-carvone, Case No. 6306	EPA–HQ–OPP–2022–0392	Bibiana Oe, *oe.bibiana@epa.gov,* (202) 566–1538.

The proposed decisions and proposed interim registration review decisions for the chemicals in the table above were posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments or information received during the 60-day comment period for the proposed interim decisions in the discussion for each pesticide listed in the table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim or final decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the decision have been completed.

This document also announces the closure of the registration review case for cetylpyridinium chloride (CPC) (Case Number 3013, Docket ID Number EPA–HQ–OPP–2020–0380 because the last U.S. registrations for this pesticide has been canceled.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 23, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–01787 Filed 1–27–23; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, February 9, 2023.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit FCA.gov, select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of January 12, 2023, Minutes
- Office of Inspector General Year in Review

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–01927 Filed 1–26–23; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0896, OMB 3060–1273; FR ID 124482]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 31, 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 notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0896.

Title: Broadcast Auction Form Exhibits.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other-for profit entities, not-for-profit institutions, State, local or tribal government.

Number of Respondents and Responses: 2,000 respondents and 5,350 responses.

Estimated Hours per Response: 0.5 hours–2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of Information is contained in Sections 154(i) and 309 of the Communications Act of 1934, as amended.

Annual Hour Burden: 6,663 hours.

Annual Cost Burden: $12,332,500.

Needs and Uses: The Commission's rules require that broadcast auction participants submit exhibits disclosing ownership, bidding agreements, bidding credit eligibility and engineering data. These data are used by Commission staff to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if applicable. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering exhibits for non-table services enables the Commission to determine which applications are mutually exclusive.

OMB Control Number: 3060–1273.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17–59.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents and Responses: 1,258 respondents; 14,931 responses.

Estimated Time per Response: 0.5 hours to 25 hours.

Frequency of Response: Monthly, one time, and on occasion reporting requirements; recordkeeping requirement.

Obligation to Respond: Required to maintain or retain benefits. Statutory authority for this information collection is contained in sections 227 and 251(e)(1) of the Telecommunications Act of 1996.

Total Annual Burden: 14,738 hours.

Total Annual Cost: None.

Needs and Uses: On December 12, 2018, the Commission adopted rules in FCC 18–177, *Second Report and Order,* published at 84 FR 11226, March 26, 2019. Specifically, the Commission concluded that the obligation to provide permanent disconnect information will apply to all reporting carriers as defined in the Commission's numbering rules, which include wireless, wireline, and interconnected Voice over internet Protocol providers that obtain numbers from the North American Numbering Plan Administrator. As part of the Commission reporting requirements, reporting carriers must provide, among other things, the most recent date each North American Numbering Plan telephone number allocated or ported to the reporting carrier was permanently disconnected. The telephone number and date of permanent disconnection will allow voluntary users of the database to determine whether a number has been permanently disconnected prior to calling that number, thereby protecting against unwanted calls to consumers and potential Telephone Consumer Protection Act liability for callers. Reporting carriers and voluntary users of the reassigned numbers database may also need to provide contact information, including names, address, and telephone number, to enable the database administrator to contact the reporting carrier in case there are any issues with their submission.

The Commission has referred to the North American Numbering Council the development of a technical requirements document for the reassigned numbers database for review by the Commission. The technical requirements document will contain a single, unified set of functional and interface requirements for: technical interoperability and operational standards; the user interface specifications and data format for service providers to report to the Administrator; the user interfaces and other means by which callers may submit queries, including providing callers the abilities for high-volume and batch processing or to submit individual queries; appropriate safeguards to protect the privacy and security of subscribers, protect the database from unauthorized access, and ensure the security and integrity of the data; and keeping records of service providers' reporting and accounting.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–01809 Filed 1–27–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 124472]

Deletion of Items From January 26, 2023 Open Meeting

January 25, 2023.

The following items were released by the Commission on January 24, 2023 and deleted from the list of items scheduled for consideration at the Thursday, January 26, 2023, Open Meeting. These items were previously listed in the Commission's Sunshine Notice on Thursday, January 19, 2023.

3	Media	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.
4	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–01831 Filed 1–27–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1142; FR ID 124777]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 31, 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 notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1142.

Title: Electronic Tariff filing System (ETFS), WC Docket No. 10–141.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,307 respondents; 1,307 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201–205, and 226(h)(l)(A) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,307 hours.

Total Annual Cost: $2,170,490.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not anticipate providing confidentiality of the information submitted by local exchange carriers. In particular, the tariffs and related documents sent to the Commission will be made public through ETFS. If the respondents submit information they believe to be confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Incumbent local exchange carriers (LECs) file their tariffs and associated documents electronically, using ETFS. ETFS has improved the usefulness of tariff filings for both filers and the public and made the tariff filing process more open, transparent, and efficient. On June 30, 2011, the Commission released a Report and Order, WC Docket No. 10–141, FCC 11–92, determining that the benefits of using ETFS for incumbent LEC tariff filings would also be obtained if all tariff filers filed electronically. Such action benefits the public and carriers by creating a central system providing on-line access to all carrier tariffs and related documents filed with the Commission. As such, competitive LECs (and other nondominant carriers) must now file tariffs and associated documents electronically.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–01821 Filed 1–27–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Tuesday, February 7, 2023.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor on behalf of Saldivar* v. *Grimes Rock, Inc.,* Docket No. WEST 2021–0178–DM. (Issues include whether in a temporary reinstatement case, the Judge erred in ruling that economic reinstatement should not be tolled; whether the Judge erred in terminating economic reinstatement on the date of the merits decision; and whether the Judge erred in granting the motion to enforce the settlement agreement.)

Pursuant to the Commission's COVID–19 Workplace Safety Plan, in-person attendance shall be limited to persons participating in the oral argument process (*e.g.,* Chair and Commissioners, parties and their representatives, Commission employees providing support for the meeting). Non-participating individuals may listen to the meeting by calling the phone number listed below in this notice.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1 (866) 236–7472, Passcode: 678–100.

Authority: 5 U.S.C. 552b

Dated: January 26, 2023.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2023–01966 Filed 1–26–23; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 2:00 p.m., Tuesday, February 7, 2023.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor on behalf of Saldivar* v. *Grimes Rock, Inc.,* Docket No. WEST 2021–0178–DM. (Issues include whether in a temporary reinstatement case, the Judge erred in ruling that economic reinstatement should not be tolled; whether the Judge erred in terminating economic reinstatement on the date of the merits decision; and whether the Judge erred in granting the motion to enforce the settlement agreement.)

Pursuant to the Commission's COVID–19 Workplace Safety Plan, in-person attendance shall be limited to persons participating in the decisional process (*e.g.,* Chair and Commissioners,

Commission employees providing support for the meeting). Non-participating individuals may listen to the meeting by calling the phone number listed below in this notice.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1 (866) 236–7472, Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: January 26, 2023.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2023–01968 Filed 1–26–23; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes to rescind an existing system of records, entitled BGFRS–8, ''FRB—Travel Records.'' BGFRS–8 included travel authorization forms and supporting documentation, travel expense statements and supporting documentation, applications for government travel cards, records regarding Board reimbursement of travel expenses, and records regarding reservations for transportation and lodging sent to the Board's Travel Office.

DATES: January 30, 2023.

ADDRESSES: You may submit comments, identified by *BGFRS–8 ''FRB—Travel Records,''* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include SORN name and number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove sensitive personally identifiable information. Public comments may also be viewed electronically and printed in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: David B. Husband, Senior Counsel, (202) 530–6270, or *david.b.husband@frb.gov;* Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TDD, please dial 7–1–1 anywhere in the United States to access telecommunication relay services.

SUPPLEMENTARY INFORMATION: The Board is discontinuing BGFRS–8, ''FRB—Travel Records'' because the Board shifted its travel processes to the General Services Administration (GSA) E2 travel system in 2009. Therefore, the Board's current travel records are covered by the GSA government-wide system of records GSA/GOVT–4 Contracted Travel Services Program (E-Travel), which is published in the **Federal Register** at 74 FR 26700 (June 3, 2009). The retention periods for the Board's historic travel records expired in 2015 (six years after final payment or cancellation) or 2019 (for records related to overcharges or deductions). Thus, consistent with the applicable records retention schedule, the Board no longer retains or possesses historic travel records. Accordingly, the Board no longer requires BGFRS–8 ''FRB-Travel Records,'' and is providing notice of the discontinuation of this system.

SYSTEM NAME AND NUMBER:

BGFRS–8 ''FRB—Travel Records.''

HISTORY:

This SORN was previously published in the **Federal Register** at 73 FR 24984 at 24993 (May 6, 2008). The SORN was also amended to incorporate two new routine uses required by OMB at 83 FR 43872 (August 28, 2018).

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2023–01759 Filed 1–27–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001 not later than February 14, 2023.

A. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President, Formations, Transactions and Enforcement) 101 Market Street, San Francisco, California 94105.

1. *FinTech HQ Inc., Vancouver, Washington;* to acquire additional voting shares of Lewis & Clark Bancorp, and thereby indirectly acquire voting shares of Lewis & Clark Bank, both of Oregon City, Oregon.

2. *FinTech HQ Inc., Vancouver, Washington;* to acquire additional voting shares of Pacific West Bancorp, and thereby indirectly acquire voting shares of Pacific West Bank, both of West Linn, Oregon.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023–01851 Filed 1–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–RFA–IP–23–002, Understanding Adult Immunization Quality Improvement Approaches Among Adult HCP and Health Departments; and RFA–IP–23–003, Programmatic Interventions To Increase Uptake of Influenza and COVID–19 Vaccination Among Students Attending Institutions of Higher Education; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–23–002, Understanding Adult Immunization Quality Improvement Approaches Among Adult HCP and Health Departments; and RFA–IP–23–003, Programmatic Interventions To Increase Uptake of Influenza and COVID–19 Vaccination Among Students Attending Institutions of Higher Education; March 29–30, 2023, 10 a.m.–5 p.m. EDT, Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Boulevard, Atlanta, Georgia, 30329, in the original FRN. The meeting was published in the **Federal Register** on December 23, 2022, Volume 87, Number 246, pages/s/78968–78969.

The meeting is being amended to remove the second day of the meeting and should read as follows:

Date: March 29, 2023.

Time: 10 a.m.–5 p.m. (EDT).

Place: Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Blvd., Atlanta, GA 30329.

The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329–4027; Telephone: (404) 718–8833; Email: *GAnderson@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–01800 Filed 1–27–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), ICD–10 Coordination and Maintenance (C&M) Committee Meeting

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The CDC, National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting of the ICD–10 Coordination and Maintenance (C&M) Committee. This meeting is open to the public, limited only by the number of audio lines available. Online registration is required.

DATES: The meeting will be held on March 7, 2023, from 9 a.m. to 5 p.m., EST, and March 8, 2023, from 9 a.m. to 5 p.m., EST.

ADDRESSES: This is a virtual meeting. Register in advance at *https://cms.zoomgov.com/webinar/register/WN__piUmNYaRjmkcYczb3ePIQ.* After registering, you will receive a confirmation email containing information about joining the meeting. Further information will be provided on each of the respective web pages when it becomes available. For the Centers for Disease Control and Prevention, National Center for Health Statistics: *https://www.cdc.gov/nchs/icd/icd10cm_maintenance.htm.* For the Centers for Medicare & Medicaid Services, Department of Health and Human Services: *https://www.cms.gov/Medicare/Coding/ICD10/C-and-M-Meeting-Materials.*

FOR FURTHER INFORMATION CONTACT: Traci Ramirez, Medical Systems Specialist, National Center for Health Statistics, CDC, 3311 Toledo Road, Hyattsville, Maryland 20782–2064; Telephone: (301) 458–4454; Email: *TRamirez@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The ICD–10 Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Tenth Revision, Clinical Modification (CM) and ICD–10 Procedure Coding System (PCS).

Matters To Be Considered: The tentative agenda will include discussions on the ICD–10–CM and ICD–10–PCS topics listed below. Agenda items are subject to change as priorities dictate. Please refer to the posted agenda for updates one month prior to the meeting.

ICD–10–PCS Topics

1. Administration of Elranatamab *
2. Administration of Epcoritamab *
3. Administration of Glofitamab *
4. Administration of Pafolacianine *
5. Administration of Posoleucel **
6. Administration of Quizartinib *
7. Administration of Rezafungin *
8. Administration of SER–109 *
9. Administration of Sulbactam-Durlobactam *
10. Implantation of Bioprosthetic Femoral Venous Valves
11. Rapid Antimicrobial Susceptibility Testing of Blood Cultures *
12. Dual-Chamber Leadless Cardiac Pacemaker *
13. Percutaneous Femoral-Popliteal Artery Bypass *
14. Insertion of Lengthening Device for Esophageal Atresia
15. Implantation of Extraluminal Saphenous Vein Graft Support Device During Coronary Artery Bypass Graft (CABG) *
16. Short-term External Heart Assist with Graft
17. Ultrasound Ablation of Renal Sympathetic Nerves *
18. Computer-aided Detection of Heart Failure in Echocardiography *
19. Percutaneous Mechanical Circulatory Support
20. Monitoring of Intracranial Electrical Activity for Status Epilepticus *
21. Monitoring of Intracranial Electrical Activity for Delirium *
22. Rapid Antimicrobial Susceptibility Testing System for Blood and Body Fluid Cultures *
23. Percutaneous Hepatic Perfusion with Administration of Melphalan Hydrochloride **
24. Insertion of Muscle Compartment Pressure Monitor *
25. Insertion of Tibial Extension Implant During Total Knee Arthroplasty *
26. Talar Replacement of Ankle *
27. Ankle Fusion with Truss Implant *

28. Computer-aided Triage and Notification for Measurement of Intracranial Vessel Flow *
29. Extravascular Implantable Defibrillator Leads

* Requestor has submitted a new technology add-on payment (NTAP) application for FY 2024.

** Requestor intends to submit an NTAP application for FY 2025 consideration.

Presentations for procedure code requests are conducted by both the requestor and the Centers for Medicare & Medicaid Services (CMS) during the C&M Committee meeting. Discussion from the requestor generally focuses on the clinical issues for the procedure or technology, followed by the proposed coding options from a CMS analyst. Topics presented may also include requests for new procedure codes that relate to a new technology add-on payment (NTAP) policy request.

CMS has modified the approach for presenting the new NTAP-related ICD–10–PCS procedure code requests that involve the administration of a therapeutic agent. For the March 7–8, 2023, ICD–10 C&M Committee meeting, consistent with the requirements of section 1886(d)(5)(K)(iii) of the Social Security Act, applicants submitted requests to create a unique procedure code to describe the administration of a therapeutic agent, such as the option to create a new code in Section X within the ICD–10–PCS procedure code classification. CMS will initially display only those meeting materials associated with the NTAP-related ICD–10–PCS procedure code requests that involve the administration of a therapeutic agent on the CMS website in February 2023 at: *https://www.cms.gov/Medicare/Coding/ICD10/C-and-M-Meeting-Materials.*

The nine NTAP-related ICD–10–PCS procedure code requests that involve the administration of a therapeutic agent are:

1. Administration of Elranatamab *
2. Administration of Epcoritamab *
3. Administration of Glofitamab *
4. Administration of Pafolacianine *
5. Administration of Posoleucel **
6. Administration of Quizartinib *
7. Administration of Rezafungin *
8. Administration of SER–109 *
9. Administration of Sulbactam-Durlobactam *

These topics will not be presented during the March 7–8, 2023, meeting. CMS will solicit public comments regarding any clinical questions or coding options included for these nine procedure code topics in advance of the meeting continuing through the end of the respective public comment periods. Members of the public should send any questions or comments to the CMS mailbox at: *ICDProcedureCodeRequest@cms.hhs.gov.*

CMS intends to post a question-and-answer document in advance of the meeting to address any clinical or coding questions that members of the public may have submitted. Following the conclusion of the meeting, CMS will post an updated question-and-answer document to address any additional clinical or coding questions that members of the public may have submitted during the meeting that CMS was not able to address or that were submitted after the meeting.

The NTAP-related ICD–10–PCS procedure code requests that do not involve the administration of a therapeutic agent and all non-NTAP-related procedure code requests will continue to be presented during the virtual meeting on March 7, 2023, consistent with the standard meeting process.

CMS will make all meeting materials and related documents available at: *https://www.cms.gov/Medicare/Coding/ICD10/C-and-M-Meeting-Materials.* Any inquiries related to the procedure code topics scheduled for the March 7–8, 2023, ICD–10 C&M Committee meeting that are under consideration for October 1, 2023, implementation should be sent to the CMS mailbox at: *ICDProcedureCodeRequest@cms.hhs.gov.*

ICD–10–CM Topics

1. Anal Fistula
2. Bicuspid Aortic Valve
3. Epileptic Seizures Related to External Causes, Intractable
4. Eating Disorders
5. Flank Anatomical Specificity
6. Gulf War Illness
7. Lymphoma in Remission
8. Nonionizing Radiation Sensitivity and Toxicity (NIRST)
9. Personal History of Colonic Polyps
10. Sepsis Aftercare
11. Addenda

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–01801 Filed 1–27–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0007]

Advisory Committee on Immunization Practices

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and request for comment.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public comment. The meeting will be webcast live via the World Wide Web.

DATES: The meeting will be held on February 22, 2023, 8 a.m. to 5:15 p.m., EST, February 23, 2023, 8 a.m. to 5 p.m., EST, and February 24, 2023, 8 a.m. to 1 p.m., EST (times subject to change, see the ACIP website for updates: *http://www.cdc.gov/vaccines/acip/index.html*). Written comments must be received between February 6–17, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0007, by any of the following methods below. CDC does not accept comments by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* ACIP Meeting, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24–8, Atlanta, GA 30329–4027. Docket No. CDC–2023–0007.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MSH24–8, Atlanta, GA 30329–4027; Telephone: 404–639–8836; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines For Children program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the Director, CDC, and appear on CDC immunization schedules must be covered by applicable health plans.

Matters To Be Considered: The agenda will include discussions on mpox vaccines, influenza vaccines, pneumococcal vaccine, rotavirus vaccines, varicella vaccines, meningococcal vaccines, Polio vaccine, respiratory syncytial virus vaccine pediatric/maternal, respiratory syncytial virus vaccine adult, dengue vaccines, Chikungunya vaccine, and COVID–19 vaccines. Recommendation votes on mpox vaccine are scheduled. A Vaccines For Children vote on rotavirus vaccines is scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit *https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html.*

Meeting Information: The meeting will be webcast live via the World Wide Web; for more information on ACIP, please visit the ACIP website: *http://www.cdc.gov/vaccines/acip/index.html.*

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket. CDC does not accept comments by email.

Written Public Comment: The docket will be opened to receive written comments on February 6, 2023. Written comments must be received by February 17, 2023.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines For Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the February 22, 2023 ACIP meeting must submit a request at *http://www.cdc.gov/vaccines/acip/meetings/* no later than 11:59 p.m., EST, February 17, 2023 according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by February 20, 2023. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to three minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–01802 Filed 1–27–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7069–N]

Request for Nominations and Announcement of the Advisory Panel on Outreach and Education (APOE) Virtual Meeting

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

ACTION: Notice.

SUMMARY: This notice invites all interested parties to submit nominations to fill vacancies on the Advisory Panel on Outreach and Education (APOE). This notice also announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace®, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES:

Meeting date: Thursday, February 9, 2023 from 12 p.m. to 5 p.m. eastern time (e.t.).

Deadline for meeting registration, presentations, special accommodations, and comments: Thursday, February 2, 2023, 5 p.m. (e.t.).

Deadline for submitting nominations: Nominations will be considered if we receive them at the appropriate address, provided in the **ADDRESSES** section of this notice, no later than 5 p.m., (e.t.) on February 24, 2023.

ADDRESSES:

Meeting location: Virtual. All those who RSVP will receive the link to attend.

Nominations, presentations, and written comments: Nominations, presentations and written comments

should be submitted to: Walt Gutowski or Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Registration: Persons wishing to attend this meeting must register at the website *https://zoom.us/webinar/register/WN_JM5NRcwRSI6_6lkFVoON-g* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in this section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Walt Gutowski or Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–6003, or via email at *APOE@cms.hhs.gov.*

Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (the Act) (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Panel was first chartered in 1999 to advise and make recommendations to the Secretary of the U.S. Department of Health and Human Services (the Department) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare, Medicaid, Children's Health Insurance Program (CHIP) and Health Insurance Marketplace outreach and education programs.

The APOE has focused on a variety of laws, including the Medicare Modernization Act of 2003 (Pub. L. 108–173), and the Affordable Care Act (Patient Protection and Affordable Care Act, (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)).

The APOE helps the Department determine the best communication channels and tactics for various programs and priorities, as well as new rules and legislation. In the coming years, we anticipate the American Rescue Plan, the Inflation Reduction Act, and the SUPPORT Act will be some of many of the topics the Panel will discuss. The Panel will provide feedback to CMS staff on outreach and education strategies, communication tools and messages and how to best reach minority, vulnerable and Limited English Proficiency populations.

B. Charter Renewal

The Panel's charter was renewed on January 19, 2023, and will terminate on January 19, 2025, unless renewed by appropriate action. The Charter can be found at *https://www.cms.gov/regulations-and-guidance/guidance/faca/apoe.*

In accordance with the renewed charter, the APOE will advise the Secretary and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to minority and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP, and the Health Insurance Marketplace® education programs and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of September 15, 2022, are as follows:

- Julie Carter, Senior Federal Policy Associate, Medicare Rights Center.
- Scott Ferguson, Psychotherapist, Scott Ferguson Psychotherapy.
- Jean-Venable Robertson Goode, Professor, Department of Pharmacotherapy and Outcomes Science, School of Pharmacy, Virginia Commonwealth University.
- Ted Henson, Director of Health Center Performance and Innovation, National Association of Community Health Centers.
- Joan Ilardo, Director of Research Initiatives, Michigan State University, College of Human Medicine.
- Lydia Isaac, Vice President for Health Equity and Policy, National Urban League.
- Daisy Kim, Policy Manager, Asian & Pacific Islander American Health Forum.
- Cheri Lattimer, Executive Director, National Transitions of Care Coalition.
- Erin Loubier, Senior Director for Health and Legal Integration and Payment innovation, Whitman-Walker Health.
- Cori McMahon, Behavioral Medicine Psychologist, Cooper University Hospital.
- Alan Meade, Director of Rehabilitation Services, Holston Medical Group.
- Neil Meltzer, President and CEO, LifeBridge Health.
- Michael Minor, National Director, H.O.P.E. HHS Partnership, National Baptist Convention USA, Incorporated.
- Jina Ragland, Associate State Director of Advocacy and Outreach, AARP Nebraska.
- Morgan Reed, Executive Director, Association for Competitive Technology.
- Carrie Rogers, Associate Director, Community Catalyst.
- Margot Savoy, Senior Vice President, American Academy of Family Physicians.
- Congresswoman Allyson Schwartz, Senior Advisor, FTI Consulting.
- Matthew Snider, JD, Senior Policy Analyst, Unidos US.
- Tia Whitaker, Statewide Director, Outreach and Enrollment, Pennsylvania Association of Community Health Centers.

II. Request for Nominations

The APOE shall consist of no more than 20 members. The Chair shall either be appointed from among the 20 members, or a Federal official will be designated to serve as the Chair. The charter requires that meetings shall be held up to four times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in one or more of the following fields:

- Senior citizen advocacy
- Outreach to minority and underserved communities
- Health communications
- Disease-related health advocacy
- Disability policy and access
- Health economics research
- Behavioral health
- Health insurers and plans
- Health IT
- Social media
- Direct patient care
- Labor and retirement

Representatives of the general public may also serve on the APOE.

This notice also requests nominations for 14 individuals to serve on the APOE to fill vacancies that will become available later in 2023. This notice is an invitation to interested organizations or individuals to submit their nominations for membership (no self-nominations will be accepted). The CMS Administrator will appoint new members to the APOE from among those candidates determined to have the expertise required to meet specific agency needs, and in a manner to ensure an appropriate balance of membership. We have an interest in ensuring that the interests of all genders, members of all racial and ethnic groups, and disabled individuals are adequately represented on the APOE. Therefore, we encourage nominations of qualified candidates who can represent these interests. Any interested organization or person may nominate one or more qualified persons.

Each nomination must include a letter stating that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a curricula vitae and a brief biographical summary of the nominee's experience.

We are requesting that all submitted curricula vitae include the following:

- Date of birth
- Place of birth
- Title and current position
- Professional affiliation(s)
- Home and business addresses
- Telephone and fax numbers
- Email address
- Areas of expertise

Phone interviews of nominees may also be requested after review of the nominations.

In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts.

Members are invited to serve for 2-year terms, contingent upon the renewal of the APOE by appropriate action prior to its termination. A member may serve after the expiration of that member's term until a successor takes office. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of that term.

III. Meeting Format and Agenda

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the February 9, 2023 meeting will include the following:

- Welcome and opening remarks from CMS leadership
- Recap of the previous (September 15, 2022) meeting
- Presentations on CMS programs, initiatives, and priorities; discussion of panel recommendations
- An opportunity for public comment
- Meeting adjourned

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

IV. Meeting Participation

The meeting is open to the public, but attendance is limited to registered participants. Persons wishing to attend this meeting must register at the website *https://zoom.us/webinar/register/WN_JM5NRcwRSI6_6lkFVoON-g* or contact the DFO at the address or number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held virtually. Individuals who are not registered in advance will be unable to attend the meeting.

V. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: January 25, 2023.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–01797 Filed 1–25–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10110 & CMS–10537]

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 31, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *https://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development.

Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10110 Manufacturer Submission of Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologicals

CMS–10242 Emergency Ambulance Transports and Beneficiary Signature

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Manufacturer Submission of Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologicals; *Use:* Section 401 of Division CC of Title IV of the Consolidated Appropriations Act (CAA), 2021 amended section 1847A of the Social Security Act (the Act) to add new section 1847A(f)(2) of the Act, which requires manufacturers without a Medicaid drug rebate agreement to report average sales price (ASP) information to CMS for calendar quarters beginning on January 1, 2022, for drugs or biologicals payable under Medicare Part B and described in sections 1842(o)(1)(C), (E), or (G) or 1881(b)(14)(B) of the Act, including items, services, supplies, and products that are payable under Part B as a drug or biological. The reported ASP data are used to establish the Medicare payment amounts. *Form Number:* CMS–10110 (OMB control number: 0938–0921); *Frequency:* Quarterly; *Affected Public:* Private sector, Business or other for-profit; *Number of Respondents:* 500; *Total Annual Responses:* 2,000; *Total Annual Hours:* 26,000. (For policy questions regarding this collection contact Felicia Brown at 410–786–9287.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* CAHPS Hospice Survey; *Use:* CMS is required to collect and publicly report information on the quality of services provided by hospices under provisions in the Social Security Act. Specifically, sections 1814(i)(5)(A) through (C) of the Act, as added by section 3132(a) of the Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111–148), required hospices to begin submitting quality data, based on measures specified by the Secretary of the Department of Health and Human Services (the Secretary) for FY 2014 and subsequent FYs.

The goal of the survey is to measure the experiences of patients and their caregivers with hospice care. The survey was developed to:

- Provide a source of information from which selected measures could be publicly reported to beneficiaries and their family members as a decision aid for selection of a hospice program;
- Aid hospices with their internal quality improvement efforts and external benchmarking with other facilities;
- Provide CMS with information for monitoring the care provided.

Form Number: CMS–10537 (OMB control number: 0938–1257); *Frequency:* Once; *Affected Public:* Individuals and Households; *Number of Respondents:* 1,140,695; *Total Annual Responses:* 1,140,695; *Total Annual Hours:* 198,481. (For policy questions regarding this collection contact Lauren Fuentes at 410–786 2290 or 443–618–2123.)

Dated: January 25, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–01822 Filed 1–27–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[0970–0490]

Submission for OMB Review; Generic Program-Specific Performance Progress Report

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comments.

SUMMARY: This notice describes the proposal to extend data collection under the Administration for Children and Families (ACF) Generic Program-Specific Performance Progress Report (PPR) (0970–0490). This overarching generic currently allows ACF program offices to collect performance and progress data from recipients and sub-recipients who receive funding from ACF under a discretionary grant or cooperative agreement. This generic mechanism provides the opportunity for ACF program offices to tailor requests for performance and progress data to specific funding recipients. ACF is proposing to include performance and progress data reporting for mandatory funding recipients in addition to discretionary funding recipients. ACF is also requesting an increase in burden.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect

if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF is primarily a grant-making agency that promotes the economic and social well-being of families, children, individuals and communities with partnerships, funding, guidance, training and technical assistance.

Prior to the use of this generic program-specific PPR, a standard ACF PPR (#0970–0406) was used for all ACF discretionary grant and cooperative agreement awards for post award reporting. Historically, on the standard ACF PPR form, ACF required grantees to only respond to a common set of broad questions, which often solicited qualitative or incomplete information. This one-size-fits-all approach did not adequately collect the specific data needed for particular grant programs or allow program offices to assess continuous quality improvement. Different grant programs vary in purpose, target population, and activities. Therefore, a need for program offices to customize performance measurements was identified and the generic program-specific PPR was developed. Non-discretionary funding recipients have historically provided performance and progress data through program-specific information collection requests. When subject to the Paperwork Reduction Act, these collections have been approved through full information collection requests.

ACF program offices have provided feedback that the ability to efficiently customize performance measurements would also be helpful for these funding recipients and therefore, ACF would like to expand this generic to cover these non-discretionary funding recipients as well.

ACF program offices have benefited from the ability to create and use a program-specific PPR that is more effective and includes specific data elements that reflects a specific program's indicators, demographics, priorities and objectives.

A generic program-specific PPR that can be tailored for program-specific needs allows program offices to collect useful data in a uniform and systematic manner. The reporting format allows program offices to gather uniform program performance data from each grantee, allowing aggregation at the program level to calculate outputs and outcomes, providing a snapshot and allowing for longitudinal analysis.

Data from a tailored program-specific PPR that demonstrates a program's successes and challenges have been useful for accountability purposes, such as required reports to Congress. Moreover, it has been useful for program management and oversight, such as identifying grantees' technical assistance needs and ensuring compliance with federal and programmatic regulations and policies. To review currently approved PPRs under this generic, see: *https://www.reginfo.gov/public/do/PRAICList?ref_nbr=202206-0970-004.*

Respondents: ACF funding recipients.

Annual Burden Estimates: ACF is requesting an increase in burden account for the potential use by non-discretionary programs and to reflect use over the past 3 years and anticipated use in the next 3 years.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Program Specific PPRs	900	3	6	16,200

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–01762 Filed 1–27–23; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0187]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with premarket approval of medical devices.

DATES: Submit either electronic or written comments on the collection of information by March 31, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 31, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 31, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note

that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0187 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Approval of Medical Devices.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Approval of Medical Devices

OMB Control Number 0910–0231—Revision

This information collection supports implementation of statutory and regulatory requirements that govern premarket approval of medical devices. Premarket approval (PMA) is the FDA process of scientific and regulatory review to evaluate the safety and effectiveness of Class III medical devices. Class III devices are those that support or sustain human life, are of substantial importance in preventing impairment of human health, or which present a potential, unreasonable risk of illness or injury. Due to the level of risk associated with Class III devices, FDA has determined that general and special controls alone are insufficient to assure the safety and effectiveness of Class III devices. Therefore, these devices require a premarket approval (PMA) application under section 515 of the FD&C Act (21 U.S.C. 360e) in order to obtain marketing approval. Please note that PMA requirements apply differently to preamendments devices, postamendments devices, and transitional class III devices and some Class III preamendment devices may require a Class III 510(k). See the PMA Historical Background web page at *https://www.fda.gov/medical-devices/premarket-approval-pma/pma-historical-background* for additional information. Section 515A of the FD&C Act (21 U.S.C. 360e–1) governs pediatric uses of devices.

The PMA is the most stringent type of device marketing application required by FDA. Applicants must receive FDA approval of a PMA application prior to marketing the device. PMA approval is based on a determination that the PMA contains sufficient valid scientific evidence to assure that the device is safe and effective for its intended use(s). Respondents to the information collection are PMA applicants, or persons who own the rights, or otherwise have authorized access, to the data and other information to be submitted in support of FDA approval. This person may be an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. The applicant is often the inventor/developer and ultimately the manufacturer. A Class III device that fails to meet PMA requirements is considered to be

adulterated under section 501(f) of the FD&C Act (21 U.S.C. 351(f)) and may not be marketed.

FDA regulations in part 814 (21 CFR part 814) implement section 515 and 515A of the FD&C Act and establish procedures for the premarket approval of medical devices intended for human use, including the submission of information concerning use in pediatric patients. Regulations in part 814, subpart A (§§ 814.1 to 814.19) set forth general provisions pertaining to the confidentiality of data and information submitted to FDA in a PMA, research conducted outside the United States, service of orders, and product development protocols. Provisions in part 814, subparts B and C (§§ 814.20 to 814.47) establish format and content elements that must be included in an application, explain submission and review schedules, and address the withdrawal and temporary suspension of a PMA. Postapproval requirements, including reports required under 21 CFR part 803 (medical device reporting), are covered in regulations in part 814, subpart E (§§ 814.80 to 814.84). Burden attributable to information collection associated with regulations in part 814, subpart H (§§ 814.100 to 814.126) pertaining to Humanitarian Use Devices is currently approved in OMB control number 0910–0332.

For operational efficiency, we are revising the information collection to include burden that may be associated with recommendations found in the Agency guidance document entitled, ''Providing Information about Pediatric Uses of Medical Devices'' (May 2014), currently approved in OMB control number 0910–0748. The guidance document describes how to compile and submit the readily available pediatric use information required under section 515A of the FD&C Act. The guidance document is available for download from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/providing-information-about-pediatric-uses-medical-devices.*

Relatedly, we are revising the information collection to include burden that may be associated with the submission of information on pediatric use of medical devices under section 515A of the FD&C Act, also currently approved in OMB control number 0910–0748. Section 515A(a) of the FD&C Act requires applicants who submit information to include readily available information providing a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients. This information allows FDA to track the number of approved devices for which there is a pediatric subpopulation that suffers from the disease or condition that the device is intended to treat, diagnose, or cure and the review time for each such device application.

We are also revising the information collection to include burden applicable to implementing requirements under section 402(j)(5)(B) of the Public Health Service (PHS) Act (42 U.S.C. 282(j)(5)(b)), and set forth in regulations at 42 CFR part 11 (see 81 FR 64981, September 21, 2016). Specifically, applications under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 355, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act, must be accompanied by a certification. Where available, such certification must include the appropriate National Clinical Trial numbers. We have developed Form FDA 3674 (''Certifications to Accompany Drug, Biological Product, and Medical Device Applications/Submissions''), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/form-fda-3674-certifications-accompany-drug-biological-product-and-device-applicationssubmissions,* for respondents to submit the requisite information.

Respondents can make single submissions in an electronic format that includes eCopies, submissions submitted on CD, DVD, or flash drive and mailed to FDA and eSubmissions, submissions created using an electronic submission template (*e.g.,* ''electronic Submission Template and Resource'' (eSTAR)). Consistent with our authority in section 745A(b) of the FD&C Act (21 U.S.C. 379k–1(b)), and performance goals found in our current Medical Device User Fee Amendments Commitment Letter, we developed eSTAR for use through the Center for Devices and Radiological Health Customer Collaboration Portal. We use eSTAR as a tool to facilitate the preparation of submissions in electronic format (available on FDA's website at *https://www.fda.gov/medical-devices/how-study-and-market-your-device/voluntary-estar-program* and identified as Form FDA 4062 ''Electronic Submission Template and Resource (eSTAR)'' (for Non-In Vitro Diagnostic submissions) and form FDA 4078 ''Electronic Submission Template and Resource (eSTAR)'' (for In Vitro Diagnostic submissions)). We believe respondents' use of eSTAR will significantly reduce burden attendant to application submissions by providing a uniform format for requisite elements and by enhancing user interface through the use of modernized technology.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR or FD&C Act section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Premarket Approval Submissions (''traditional'' preparation; eCopy submission) 21 CFR Part 814, Premarket Approval of Medical Devices					
Subpart A—General:					
Research conducted outside the United States (814.15(b))	20	1	20	2	40
Subpart B—Premarket Approval Application (PMA):					
PMA application (814.20)	40	1	40	654.6	26,184
Information on clinical investigations conducted outside the United States (814.20(b)(6)(ii)(C)).	10	1	10	0.5 (30 minutes)	5
PMA amendments and resubmitted PMAs (814.37(a)–(c) and (e)).	1,356	1	1,356	167	226,452
PMA supplements (814.39(a))	762	1	762	0.983 (59.11 minutes)	45,048
Special PMA supplement—changes being affected (814.39(d))	75	1	75	6	450
30-day notice (814.39(f))	1,181	1	1,181	16	18,896
Subtotal Parts A and B					317,075
Subpart C—FDA Action on a PMA:					
Panel of experts request (814.42 and 515(c)(3) of the FD&C Act).	1	1	1	30	30

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity/21 CFR or FD&C Act section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Subpart E—Postapproval Requirements:					
Postapproval requirements (814.82(a)(9))	121	1	121	135	16,335
Periodic reports (814.84(b))	764	1	764	10	7,640
Total Subpart E					24,005
42 CFR part 11, Clinical Trials Registration and Results Information Submission, subparts D and E; and FDA Guidance "Form FDA 3674—Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions"					
Certification to accompany PMA submissions (Form FDA 3674)	40	1	40	0.75 (45 minutes)	30
FD&C Act section 515A Pediatric Uses of Devices:					
Pediatric information in a PMA, PDP, or PMA supplement	944	1	944	2.10	1984
Pediatric use information outside approved indication	800	1	800	0.5 (30 minutes)	400
Subtotal	1,744	1	1,744		2,384
Premarket Approval Submissions (eSTAR preparation; eCopy submission):					
eSTAR setup	30	1	30	0.08 (5 minutes)	2
Total					343,496

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate is based on the annual rate of receipt of PMA submissions, including PDPs and PMA supplements, for fiscal years 2019 through 2021 and our expectation of submissions to come in the next few years. We also account for referrals of PMAs to a panel for review, as provided for under § 814.44(a). FDA may refer the PMA to a panel on its own initiative, and will do so upon request of an applicant, unless FDA determines that the application substantially duplicates information previously reviewed by a panel. We have adjusted our figures to reflect an overall decrease, which we attribute to respondents' use of modernized submission technologies including eSTAR. At the same time, we include in our estimate an initial burden attributable to respondents who need to set up an eSTAR account for the first time.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintenance of records (814.82(a)(5) and (a)(6))	552	1	552	17	9,384

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The regulations require the maintenance of records, which are used to trace patients, and the organization and indexing of records into identifiable files to ensure a device's continued safety and effectiveness. These records are required of all applicants who have an approved PMA. Currently there are 815 active PMAs that could be subject to these requirements, based on FDA data, and approximately 33 new PMAs are approved each year. We estimate our annual recordkeeping burden based on an average of 552 PMA holders. The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required under 21 CFR part 820 may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions of approval to ensure the device's continuing safety and effectiveness.

Cumulatively, our adjustments reflect only a slight increase to the estimated burden for the information collection.

Dated: January 25, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01849 Filed 1–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2658]

Acromegaly: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Acromegaly: Developing Drugs for Treatment.'' The purpose of this guidance is to provide recommendations to sponsors regarding clinical development of drugs for the treatment of patients with acromegaly. This draft guidance is intended to serve as a focus for continued discussions among the FDA Division of General Endocrinology, pharmaceutical sponsors, the academic community, and the public.

DATES: Submit either electronic or written comments on the draft guidance by March 31, 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–2022–D–2658 for ''Acromegaly: Developing Drugs for Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Naomi Lowy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–0692.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Acromegaly: Developing Drugs for Treatment.'' The purpose of this guidance is to provide recommendations to sponsors regarding clinical development of drugs for the treatment of patients with acromegaly. This draft guidance is intended to serve as a focus for continued discussions among the FDA Division of General Endocrinology, pharmaceutical sponsors, the academic community, and the public.

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 ''Acromegaly: Developing Drugs for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information related to the submission of new drug applications and abbreviated new drug applications under 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information related to the submission of investigational new drug applications under 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information related to the submission of biologics license applications under 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01766 Filed 1–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0094]

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee. The general function of the committees is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on March 20, 2023, from 9 a.m. to 5:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–0094. Please note that late, untimely filed comments will not be considered. The docket will close on March 17, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 17, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before March 6, 2023, will be provided to the committees. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2023–N–0094 for ''Joint Meeting of the Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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 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 the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2894, email: *NDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to

learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION: *Agenda:* The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committees will discuss new drug application 217722, for naloxone hydrochloride nasal spray, 3 mg/0.1 mL, submitted by Harm Reduction Therapeutics, Inc. The product is proposed for nonprescription use as an opioid reversal agent in the emergency treatment of opioid overdose. The issues for discussion will be on the adequacy of the data supporting the nonprescription application. This product represents a potential first in class product in a new therapeutic category for nonprescription drugs.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before March 6, 2023, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 24, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 27, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Choi (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01761 Filed 1–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1211]

Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions To Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled ''Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions to Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Draft Guidance for Industry.'' The draft guidance document provides blood establishments that collect blood or blood components, including Source Plasma, with FDA's revised donor deferral recommendations for individuals with increased risk for transmitting human immunodeficiency virus (HIV) infection. FDA is also recommending that these blood establishments make corresponding revisions to donor educational materials, donor history questionnaires and accompanying materials, along with revisions to donor requalification and product management procedures. This draft guidance, when finalized, will supersede the guidance entitled, ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry'' dated April 2020 and updated August 2020.

DATES: Submit either electronic or written comments on the draft guidance by March 31, 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–2015–D–1211 for ''Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions to Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Draft Guidance for Industry.'' 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 Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), 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 the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Andrew Harvan, 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 entitled ''Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions to Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Draft Guidance for Industry.'' This draft guidance document provides blood establishments that collect blood or blood components, including Source Plasma, with FDA's revised donor deferral recommendations for individuals with increased risk for transmitting HIV infection. FDA is also recommending that these blood establishments make corresponding revisions to donor educational materials, donor history questionnaires and accompanying materials, along with revisions to donor requalification and product management procedures.

In this draft guidance, based on FDA's review of the available science, FDA recommends eliminating the time-based deferrals for men who have sex with men (MSM) and women who have sex with MSM. Instead, FDA recommends assessing donor eligibility using gender-inclusive, individual risk-based questions relevant to HIV risk. In addition, FDA recommends deferral of any individual taking medications to treat or prevent HIV infection. FDA does not expect that implementation of these recommendations will be associated with any adverse effect on the safety of the blood supply.

This draft guidance, when finalized, will supersede the guidance entitled, ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry'' dated April 2020 and updated August 2020.

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 evaluating donor eligibility using individual risk-based questions to reduce the risk of HIV transmission by blood and blood products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.121 and parts 610 and 630 have been approved under OMB control number 0910–0116; and the collections of information for consignee notification have been approved under OMB control number 0910–0681.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 25, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01796 Filed 1–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0173]

Practices To Prevent Unsafe Contamination of Animal Feed From Drug Carryover; 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 final guidance for industry #272 entitled ''Practices to Prevent Unsafe Contamination of Animal Feed from Drug Carryover.'' We are issuing this final guidance to describe practices that medicated feed manufacturers can use to prevent unsafe contamination from drug carryover into a non-medicated animal feed or an animal feed containing a different approved new animal drug. Unsafe contamination of animal feed from drug carryover can pose a risk to human and animal health. This guidance replaces Compliance Policy Guides Sec. 680.500 and 680.600.

DATES: The announcement of the guidance is published in the **Federal Register** on January 30, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0173 for ''Practices to Prevent Unsafe Contamination of Animal Feed from Drug Carryover.'' 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 guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kevin Klommhaus, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 515–378–8075, *Kevin.Klommhaus@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 10, 2022 (87 FR 28018), FDA published the notice of availability for draft guidance #272 entitled ''Practices to Prevent Unsafe Contamination of Animal Feed from Drug Carryover,'' giving interested persons until August 8, 2022, to comment on the draft guidance. FDA received two comment submissions on the draft guidance and the comments within these submissions were considered as the guidance was finalized. Several editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated May 10, 2022.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Practices to Prevent Unsafe Contamination of Animal Feed from Drug Carryover.'' 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

FDA concludes that this final guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under

the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov*.

Dated: January 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01764 Filed 1–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 11¼%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2022. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2023–01731 Filed 1–27–23; 8:45 am]

BILLING CODE 4150–04–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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neuronal Communications Study Section.

Date: February 23–24, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Prithi Rajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *prithi.rajan@nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Prevention Study Section.

Date: February 23–24, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Byung Min Chung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4056, *justin.chung@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: February 23–24, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, (301) 402–3019, *andrew.wolfe@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.

Date: February 23–24, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8515, *janzr2@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Data Management and Analysis Study Section.

Date: February 23–24, 2023.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Shivakumar V. Chittari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 408–9098, *chittari.shivakumar@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: February 23–24, 2023.

Time: 9:00 a.m. to 7:30 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: Shivani Sharma, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 507–7661, *shivani.sharma@nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: February 23–24, 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: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Drug and Biologic Disposition and Toxicity Study Section (DBDT).

Date: February 23, 2023.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: February 23–24, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel Tapestry Collection by Hilton, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tami Jo Kingsbury, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (410) 274–1352, *tami.kingsbury@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 25, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–01833 Filed 1–27–23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0004]

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, the Administrator of FEMA is publishing this notice describing the fiscal year (FY) 2022 Assistance to Firefighters Grant (AFG) Program application process, deadlines, and award selection criteria. This notice explains the differences, if any, between these guidelines and those recommended by representatives of the national fire service leadership during the annual meeting of the Criteria Development Panel (CDP), which was held July 12–15, 2022. The application period for the FY 2022 AFG Program is January 9–February 10, 2023, and was announced on the FEMA AFG Program website at *https://www.fema.gov/grants/preparedness/firefighters,* as well as at *https://www.grants.gov.*

DATES: Grant applications for the FY 2022 AFG Program are being accepted electronically through the FEMA Grant Outcomes (FEMA GO) system at *https://go.fema.gov/,* through 5 p.m. ET on February 10, 2023.

ADDRESSES: DHS/FEMA/GPD Assistance to Firefighters Grant Branch, 400 C Street SW, 3N, Washington, DC 20472–3635.

FOR FURTHER INFORMATION CONTACT: Catherine Patterson, Chief, Assistance to Firefighters Grant Branch, 1–866–274–0960.

SUPPLEMENTARY INFORMATION: The AFG Program awards grants directly to fire departments, nonaffiliated emergency medical service (EMS) organizations, and State Fire Training Academies (SFTA) for the purpose of enhancing the health and safety of first responders and improving their abilities to protect the public from fire and fire-related hazards. Applications for the FY 2022 AFG Program are submitted and processed online through *https://go.fema.gov/.* Before the application period started, the FY 2022 AFG Program Notice of Funding Opportunity (NOFO) was published on FEMA's AFG Program website at *https://www.fema.gov/grants/preparedness/firefighters/assistance-grants.* The AFG Program website provides additional information and materials useful for FY 2022 AFG Program applicants, including Frequently Asked Questions, Application Checklist, Narrative Get Ready Guide, Self-Evaluation Sheets for Vehicle Acquisition and Operations Safety, and a Cost-Share Calculator. Based on past AFG Program application periods, FEMA anticipates receiving 8,000 to 10,000 applications for the FY 2022 AFG Program and has the ability to award approximately 2,000 grants.

Congressional Appropriations

For the FY 2022 AFG Program, Congress appropriated $360 million through the Department of Homeland Security Appropriations Act, 2022, Public Law 117–103. From this amount, $324 million will be made available for FY 2022 AFG Program awards. In addition, section 33 of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2229), requires that a minimum of 10% of available funds be expended for Fire Prevention and Safety (FP&S) Program grants. FP&S Program awards will be made directly to local fire departments and to local, regional, state, or national entities recognized for their expertise in the fields of fire prevention and firefighter safety research and development. The funds appropriated for FY 2022 are available for obligation and award until Sept. 30, 2023.

The Federal Fire Prevention and Control Act of 1974 further directs FEMA to administer these appropriations according to the following requirements:

- Career fire departments: Not less than 25% of available grant funds.
- Volunteer fire departments: Not less than 25% of available grant funds.
- Combination fire departments and departments using paid-on-call firefighting personnel: Not less than 25% of available grant funds.
- Open competition (career, volunteer, and/or combination fire departments and departments using paid-on-call firefighting personnel): Not less than 10% of available grant funds awarded.
- EMS providers including fire departments and nonaffiliated EMS organizations: Not less than 3.5% of available grant funds awarded.
- Nonaffiliated EMS providers: Not more than 2% of the total available grant funds.
- SFTAs: Not more than 3% of available grant funds shall be collectively awarded to SFTA applicants, with a maximum of $500,000 per applicant.
- Vehicles: Not more than 25% of available grant funds may be used for the purchase of vehicles; by policy and based on recommendations, FEMA intends to dedicate 10% of those vehicle funds for ambulances.
- Micro grants: This is a voluntary funding limitation choice made by the applicant for requests submitted within the operations and safety activity. It is not an additional funding opportunity. Micro grants are awards that have a Federal participation (share) that does not exceed $50,000. Applicants that select micro grants may receive additional consideration for award. If an applicant selects micro grants in their application, they will be limited in the total amount of funding their organization can be awarded. If they are requesting funding in excess of $50,000 federal participation, they should not select micro grants.

Background of the AFG Program

Since 2001, the AFG Program has awarded approximately $8.1 billion in grant funding to help firefighters and other first responders obtain critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel from fire and

fire-related hazards. FEMA awards grants on a competitive basis to the applicants that best address the AFG Program's priorities and provide the most compelling justification. Applications that best address AFG Program priorities, as identified in the Application Evaluation Criteria, are reviewed by a panel composed of fire service personnel.

The AFG Program has three program activities:

- Operations and Safety;
- Vehicle Acquisition; and
- Regional Projects.

The priorities for each activity are fully outlined in the funding notice.

Application Evaluation Criteria

Before making a grant award, FEMA is required by *31 U.S.C. 3354,* as amended by the Payment Integrity Information Act of 2019, *Public Law 116–117* (2020), *41 U.S.C. 2313,* and *2 CFR 200.206* to review information available through any Office of Management and Budget-designated repositories of government-wide eligibility qualification or financial integrity information. Therefore, application evaluation criteria may include the following risk-based considerations of the applicant: (1) financial stability; (2) quality of management systems and ability to meet management standards; (3) history of performance in managing federal awards; (4) reports and findings from audits; and (5) ability to effectively implement statutory, regulatory, or other requirements.

FEMA will rank all complete and submitted applications based on how well they align with program priorities for the type of jurisdiction(s) served. Answers to activity-specific questions provide information used to determine each application's ranking relative to the stated program priorities.

Funding priorities and criteria for evaluating AFG Program applications are established by FEMA based on the recommendations from the Criteria Development Panel (CDP). The CDP is composed of fire service professionals who make recommendations to FEMA regarding creating new, or modifying previously established, funding priorities, as well as developing criteria for awarding grants. The content of the funding notice reflects implementation of the CDP's recommendations with respect to the priorities and evaluation criteria for awards.

The nine major fire service organizations represented on the CDP:

- International Association of Fire Chiefs
- International Association of Fire Fighters
- National Volunteer Fire Council
- National Fire Protection Association
- National Association of State Fire Marshals
- International Association of Arson Investigators
- International Society of Fire Service Instructors
- North American Fire Training Directors
- Congressional Fire Service Institute

Review and Selection Process

AFG Program applications are reviewed through a multi-phase process. All applications are electronically pre-scored and ranked based on how well they align with the funding priorities outlined in the funding notice. Applications with the highest pre-score rankings are then scored competitively by no less than three members of a Peer Review Panel. Applications are also evaluated through a series of internal FEMA review processes for completeness, adherence to programmatic guidelines, technical feasibility, and anticipated effectiveness of the proposed project(s). Below is the process by which applications are reviewed:

i. Pre-Scoring Process

The application undergoes an electronic pre-scoring process based on established program priorities listed in the funding notice and answers to activity-specific questions within the online application. Application narratives are not reviewed during pre-scoring. Request details and budget information should comply with program guidance and statutory funding limitations. The pre-score is 50% of the total application score.

ii. Peer Review Panel Process

Applications with the highest pre-score undergo peer review. The peer review is comprised of fire service representatives recommended by the organizations represented on the CDP. The panelists assess the merits of each application based on the narrative section of the application, including the evaluation elements listed in the Narrative Evaluation Criteria below. Panelists independently score each project within the application, discuss the merits and/or shortcomings of the application with their peers, and document the findings. A consensus is not required. The panel score is 50% of the total application score.

iii. Technical Evaluation Process

The highest ranked applications will be considered within the fundable range. Applications that are in the fundable range will undergo both a Technical Review by a subject-matter expert as well as a FEMA Program Office review before being recommended for award. The FEMA Program Office will assess the request with respect to costs, quantities, feasibility, eligibility, and recipient responsibility prior to recommending any application for award. Once the Technical Evaluation Process is complete, each application's cumulative score will be determined and a final ranking of applications will be created. FEMA will award grants based on this final ranking and the ability to meet statutorily required funding limitations outlined in the NOFO.

Narrative Evaluation Criteria

1. Financial Need (25%)

Applicants should describe their financial need and how consistent it is with the intent of the AFG Program. This statement should include details describing the applicant's financial distress, summarized budget constraints, unsuccessful attempts to secure other funding, and proof that their financial distress is out of their control.

2. Project Description and Budget (25%)

This statement should clearly explain the applicant's project objectives and the relationship between those objectives and the applicant's budget and risk analysis. The applicant should describe the activities, including program priorities or facility modifications, ensuring consistency with project objectives, the applicant's mission, and any national, state and/or local requirements. Applicants should link the proposed expenses to operations and safety, as well as the completion of the project goals.

3. Cost Benefit (25%)

Applicants should describe how they plan to address the operations and personal safety needs of their organization, including cost effectiveness and sharing assets. This statement should also include details about gaining the maximum benefits from grant funding by citing reasonable or required costs, such as specific overhead and administrative costs. The applicant's request should also be consistent with their mission and identify how funding will benefit their organization and personnel.

4. Statement of Effect on Daily Operations (25%)

This statement should explain how these funds will enhance the applicant's

overall effectiveness. It should address how an award will improve daily operations and reduce the applicant's risks. Applicants should include how frequently the requested items will be used, and in what capacity. Applicants should also indicate how the requested items will help the community and increase the organization's ability to save additional lives or property. Jurisdictions that demonstrate their commitment and proactive posture to reducing fire risk, by explaining their code enforcement (to include Wildland Urban Interface code enforcement) and mitigation strategies (including whether or not the jurisdiction has a FEMA-approved mitigation strategy) may receive stronger consideration under this criterion.

Eligible Applicants

Fire Departments: Fire departments operating in any of the 50 states, as well as fire departments in the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally recognized Indian Tribe or tribal organization. A fire department is an agency or organization having a formally recognized arrangement with a state, territory, local (city, county, parish, fire district, township, town or other governing body), or tribal authority to provide fire suppression to a population within a geographically fixed primary first due response area.

Nonaffiliated EMS organizations: Nonaffiliated EMS organizations operating in any of the 50 states, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally recognized Indian Tribe or tribal organization. A nonaffiliated EMS organization is an agency or organization that is a public or private nonprofit emergency medical services entity providing medical transport that is not affiliated with a hospital and does not serve a geographic area in which emergency medical services are adequately provided by a fire department. FEMA considers the following as hospitals under the AFG Program:

- Clinics;
- Medical centers;
- Medical colleges or universities;
- Infirmaries;
- Surgery centers; and
- Any other institutions, associations, or foundations providing medical, surgical, or psychiatric care and/or treatment for the sick or injured

State Fire Training Academies: SFTAs operating in any of the 50 states, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of Puerto Rico. Applicants must be designated either by legislation or by a Governor's declaration as the sole fire service training agency within a state, territory, or the District of Columbia. The designated SFTA shall be the only agency/bureau/division, or entity within that state, territory, or the District of Columbia.

Non-federal airport and/or port authority fire or EMS organizations are eligible only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression or emergency medical services on a first-due basis outside the confines of the airport or port facilities. Airport or port authority fire and EMS organizations whose sole responsibility is suppression of fires or EMS response on the airport grounds or port facilities are not eligible for funding under the AFG Program.

Ineligibility

FEMA considers two or more separate fire departments or nonaffiliated EMS organizations with different funding streams, personnel rosters, and Employer Identification Numbers (EIN) but sharing the same facilities as being separate organizations for the purposes of AFG Program eligibility. If two or more organizations share facilities and each submits an application in the same program area (*i.e.,* Equipment, Modifications to Facilities, Personal Protective Equipment (PPE), Training, or Wellness and Fitness Programs), FEMA reserves the right to review all of those program area applications for eligibility. This determination is designed to avoid the duplication of benefits.

Examples of Ineligible Applications and/or Organizations Include

- Nonaffiliated EMS organization requests for any activity that is specific or unique to structural/proximity/wildlands firefighting gear.
- Fire departments that are a Federal Government entity, or contracted by the Federal Government, and are solely responsible under a formally recognized agreement for suppression of fires on Federal installations or land.
- Fire departments or nonaffiliated EMS organizations that are not independent entities but are part of, controlled by, or under the day-to-day operational command and control of a larger department, agency or Authority Having Jurisdiction (AHJ).
  - However, if a fire department is considered to be the same legal entity as a municipality or other governmental organization, and otherwise meets the eligibility criteria, that municipality or other governmental organization may apply on behalf of that fire department as long as the application clearly states that the fire department is considered part of the same legal entity.
- Fire-based EMS organization applying as a nonaffiliated EMS organization.
- Auxiliaries, hospitals or fire service associations or interest organizations that are not the AHJ over the applicant.
- Dive teams, search and rescue squads, or similar organizations that do not provide medical transport.
- Fire departments, regional or nonaffiliated EMS organizations that are for profit.
- State or local agencies, or subsets of any governmental entity, or any authority that do not meet the requirements as defined by 15 U.S.C. 2229(a), (c).
- If an applicant submits two or more applications for the same equipment or other eligible activity (for example, if an applicant submits two or more applications, one under the Regional activity, and one under the Operations and Safety activity for self-contained breathing apparatus [SCBA]), both applications may be disqualified. If an applicant submits two separate applications for the same activity (*i.e.,* two separate vehicle applications for the same vehicle) during the same application period, both applications may be disqualified.
  - This is different from when an entity is applying on behalf of other organizations that are agencies or instrumentalities of the applicant (*e.g.,* multiple fire departments under the same county, city, borough, parish, or other municipality). In that situation, the applicant may request similar or the same equipment as long as the application clearly states which equipment (including quantities) is for which agency/instrumentality. This is permissible even if that entity submits multiple applications across regional versus direct applications.
  - Eligible Fire Department and nonaffiliated EMS applicants may submit only one application for each of the following application types: Individual Operations and Safety, Individual Vehicle, Regional Operations and Safety, and Regional Vehicle. Under the Operations and Safety applications, applicants may submit for multiple activities and for multiple items within

each activity. Under the Vehicle application, applicants may submit one application for a vehicle activity (or activities) for their department and one separate application for a regional vehicle (the same vehicle(s) may not be requested for both purposes). All duplicate application submissions may be disqualified.

Statutory Limits to Funding

Congress has enacted statutory limits to the amount of funding that a grant recipient may receive from the AFG Program in any single fiscal year based on the population served (*15 U.S.C. 2229(c)(2)*). Awards will be limited based on the size of the population protected by the applicant, as indicated below. Notwithstanding the annual limits stated below, the FEMA Administrator may not award a grant in an amount that exceeds 1% of the available grant funds in such fiscal year, except where it is determined that such recipient has an extraordinary need for a grant in an amount that exceeds the 1% aggregate limit.

- In the case of a recipient that serves a jurisdiction with 100,000 people or fewer, the amount of available grant funds awarded to such recipient shall not exceed $1 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, the amount of available grant funds awarded to such recipient shall not exceed $2 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 500,000 people, but not more than 1 million people, the amount of available grant funds awarded to such recipient shall not exceed $3 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 1 million people, but not more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the 1% aggregate cap of $3.24 million for FY 2022, but FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap; if FEMA waives the aggregate cap, the amount of grant funds awarded to such a recipient shall not exceed $6 million for any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the 1% aggregate cap of $3.24 million for FY 2022, but FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap; if FEMA waives the aggregate cap, the amount of grant funds awarded to such recipient shall not exceed $9 million for any fiscal year.
- FEMA may not waive the population-based limits on the amount of grant funds awarded as set by *15 U.S.C. 2229(c)(2)(A).*

The cumulative total of the federal share of awards in Operations and Safety, Regional, and Vehicle Acquisition activities will be considered when assessing award amounts and any limitations thereto. Applicants may request funding up to the statutory limit on each of their applications.

For example, an applicant that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, may request up to $2 million on their Operations and Safety Application and up to $2 million on their Vehicle Acquisition request. However, should both grants be awarded, the applicant would have to choose which award to accept if the cumulative value of both applications exceeds the statutory limits.

Cost Sharing and Maintenance of Effort

Grant recipients must share in the costs of the projects funded under this grant program as required by *15 U.S.C. 2229(k)(1)* and in accordance with applicable federal regulations at *2 CFR part 200,* but they are not required to have the cost-share at the time of application nor at the time of award. However, before a grant is awarded, FEMA validates that the grant recipient has provided sufficient evidence that the cost-share requirement will be fulfilled during the performance period of the grant award.

In general, an eligible applicant seeking a grant shall agree to make available non-federal funds equal to not less than 15% of the grant awarded. However, the cost share will vary as follows based on the size of the population served by the organization, with exceptions to this general requirement for entities serving smaller communities:

- Applicants that serve populations of 20,000 or less shall agree to make available non-federal funds in an amount equal to not less than 5% of the grant awarded.
- Applicants serving areas with populations above 20,000, but not more than 1 million, shall agree to make available non-federal funds in an amount equal to not less than 10% of the grant awarded.
- Applicants serving areas with populations above 1 million shall agree to make available non-federal funds in an amount equal to not less than 15% of the grant awarded.

The cost share for SFTAs will apply the requirements above based on the total population of the state.

The cost share for a regional application will apply the requirements above based on the aggregate population of the primary first due response areas of the host and participating partner organizations that execute a Memorandum of Understanding as described in Appendix B, Section g., Regional Applications, of the FY 2022 AFG Program NOFO.

On a case-by-case basis, FEMA may allow a grant recipient that may already own assets (equipment or vehicles), acquired with non-federal cash, to use the trade-in allowance/credit value of those assets as ''cash'' for the purpose of meeting the cost-share obligation of their AFG Program award. In-kind, cost-share matches are not allowed.

Grant recipients under this grant program must also agree to a maintenance of effort requirement as required by *15 U.S.C. 2229(k)(3)* (referred to as a ''maintenance of expenditure'' requirement in that statute). A grant recipient shall agree to maintain during the term of the grant the applicant's aggregate expenditures relating to the activities allowable under the NOFO at not less than 80% of the average amount of such expenditures in the two fiscal years preceding the fiscal year in which the grant amounts are received.

In cases of demonstrated economic hardship, and at the request of the grant recipient, the Administrator of FEMA may waive or reduce a grant recipient's cost-share requirement or maintenance of effort requirement. AFG Program applicants for FY 2022 must indicate at the time of application whether they are requesting a waiver and whether the waiver is for the cost-share requirement, for the maintenance of effort requirement, or both. As required by statute, the Administrator of FEMA is required to establish guidelines for determining what constitutes economic hardship. FEMA has published these guidelines on FEMA's website at *https://www.fema.gov/sites/default/files/2020-04/Eco_Hardship_Waiver_FPS_SAFER_AFG_IB_FINAL.pdf.*

Before the start of the FY 2022 AFG Program application period, FEMA conducted applicant internet webinars to inform potential applicants about the AFG Program. In addition, FEMA provided applicants with information at the AFG Program website, *https://www.fema.gov/grants/preparedness/firefighters,* to help them prepare quality grant applications. The AFG Program

Help Desk is staffed throughout the application period to assist applicants with the automated application process as well as answer any questions.

Applicants can reach the AFG Program Help Desk through a toll-free telephone number Monday through Friday, 8 a.m.–4:30 p.m. ET at 1–866–274–0960 or electronic mail at *firegrants@fema.dhs.gov.*

Application Process

Organizations may submit one application per application period in each of the three AFG Program activities (*e.g.,* one application for Operations and Safety, one for Vehicle Acquisition, and/or a separate application to be a Joint/Regional project host). If an organization submits more than one application for any single AFG Program activity (*e.g.,* two applications for Operations and Safety, two for Vehicles), either intentionally or unintentionally, both applications may be disqualified.

Applicants may access the grant application electronically at *https://go.fema.gov/.* New applicants must register and establish a username and password for secure access to the grant application. Previous AFG Program applicants must use their previously established username and password.

Applicants are expected to answer questions about their grant request that reflect the AFG Program funding priorities. In addition, each applicant must complete four separate narratives for each project or grant activity requested. Grant applicants will also provide relevant information about their organization's characteristics, call volume, and existing organizational capabilities.

System for Award Management (SAM)

Per *2 CFR 25.200,* all federal grant applicants and recipients must register at *https://sam.gov/content/home.* SAM is the Federal Government's System for Award Management, and registration is free of charge.

Effective April 4, 2022, the Federal Government transitioned from using the Data Universal Numbering System or DUNS number, to a new, non-proprietary identifier known as a Unique Entity Identifier or UEI. For entities that had an active registration in *SAM.gov* before this date 2022, the UEI has automatically been assigned and no action is necessary. For all entities filing a new registration in *SAM.gov*, the UEI will be assigned to that Entity as part of the *SAM.gov* registration process.

FEMA will not make a Federal award until the applicant has complied with all applicable SAM requirements. Therefore, an applicant's SAM registration must be active not only at the time of application, but also during the application review period and when FEMA is ready to make a Federal award.

Criteria Development Panel Recommendations

If there are any differences between the published AFG Program guidelines and the recommendations made by the CDP, FEMA must explain them and publish the information in the **Federal Register** prior to awarding any grant under the AFG Program. For FY 2022, FEMA accepted and will implement all of the CDP's recommendations.

Adopted Recommendations for FY 2022

Below is a list of changes between FY 2021 and FY 2022 to the AFG Program. The FY 2022 AFG Program funding notice contains some changes to definitions, descriptions, and priority categories. Changes include:

- Under Supporting Definitions:
  - Definition of Combination Fire Department was updated as follows: Combination Fire Department as defined in *15 U.S.C. 2229,* means a fire department that has paid firefighting personnel and volunteer firefighting personnel. FEMA considers a fire department with firefighting personnel paid a stipend, regardless of the amount, on a per event basis, or paid on-call, to be a combination fire department. This also includes non-fire emergency medical service personnel of the department.
- Under the Personal Protective Equipment (PPE) Activity:

The following equipment was added as eligible under Additional Funding:

  - Air Compressor/Fill Station/Cascade Systems (Fixed or Mobile) in support of SCBA request under PPE activity.
  - PPE gear Washer/Extractor/Dryer in support of PPE gear request under PPE activity.
- Under Training Activity:
  - Various NFPA standards were updated to reflect the most current editions.
  - Props requested under the Training Activity must be essential to the training activity requested in the application.
- Under Equipment Activity:
  - P–25-compliant Portable Radios should be requested based on the number of seated riding positions or active members of the department and supported in the request narratives.
  - Repairs and upgrades to the existing simulators was added as a High priority item for SFTA applicants.
  - Software and Learning Management System for Fire Department applicants was changed to Low priority.
  - Vehicle mounted exhaust systems were changed to High priority for Fire Department, Regional, nonaffiliated EMS organizations, and SFTA applicants.
  - Subscriptions necessary for the operation of the awarded equipment and purchased concurrently are eligible.
  - Refurbished equipment was added under ineligible Equipment Activity.
- Under Modifications to Facilities the following ineligible items for Fire Departments and nonaffiliated EMS organizations were added:
  - Station maintenance.
  - Resurfacing of bay floors.
  - Interior remodeling not pertaining to the requested project(s).
  - Food and beverages.
- Under Regional Applications:
  - Clarification that the host organization and its partners must be the intended beneficiaries of the proposed project was added.
  - Exception to the requirement for same vendor was added.
  - Clarification that the host of the Regional application is not considered a pass-through entity and may not issue any sub-awards.
- Under Vehicle Acquisition:
  - Exception to the penalty clause for vehicle contracts was added.
- The following definitions were added:
  - *Front Line Vehicle:* a vehicle that is fully equipped and ready to respond to emergency calls (first due, second due, ready-reserve vehicle).
  - *Ready-Reserve Vehicle:* a vehicle that is equipped and may be easily made ready to respond (*i.e.,* emergency mobilization).
  - *Reserve Vehicle:* a vehicle that is not fully equipped and not ready to respond. Reserve apparatus is used when the front-line vehicle is out-of-service (repairs/maintenance). Equipment is removed from the front-line vehicle and moved to the reserve vehicle for emergency response.
  - *Temporarily Out of Service Vehicle:* A vehicle which has been temporarily removed from emergency response duties due to mechanical or safety conditions requiring repair. Although currently out of service this vehicle is required to meet the response needs of the agency. Temporarily out-of-service vehicles are included in the vehicle inventory, included in the seated position count and are eligible for replacement in the AFG program.
  - *Decommissioned Vehicle:* A vehicle which has been permanently removed from any or all emergency response duties or functions. Examples include retired vehicles awaiting disposal, vehicles used solely for parade/public

relations use, antique vehicles, display or similar uses. Decommissioned vehicles are not listed in the vehicle inventory or included in the seated position count and are not eligible for replacement in the AFG program.

- Under Additions to the Application:
  - Paid on call/stipend question was added.

Recommendations Not Adopted for FY 2022

- All recommendations were adopted.

Authority: 15 U.S.C. 2229.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–01832 Filed 1–27–23; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Transportation Security Officer Medical Questionnaire

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0032, abstracted below, that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves using a questionnaire to collect medical information from candidates for the job of Transportation Security Officer (TSO) to ensure applicants are qualified to perform TSO duties.

DATES: Send your comments by March 31, 2023.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Number 1652–0032; Security Officer Medical Questionnaire. TSA collects relevant medical information from TSO candidates who have successfully completed certain prior steps in the hiring process. This information is used to assess whether the TSO candidates meet the medical qualification standards the agency has established pursuant to 49 U.S.C. 44935. TSA currently collects this information using a medical questionnaire completed by TSO candidates. The medical questionnaire is used in concert with information collected during a physical medical exam to evaluate a candidate's physical and medical qualifications to be a TSO, including visual and aural acuity, and physical coordination and motor skills.

Historical data indicates that on average 22,500 candidates for TSO positions annually complete medical exams. The medical questionnaire takes approximately 45 minutes (0.75 hours) for the candidates to complete, resulting in an estimated burden of 16,875 hours. Also, TSA estimates the average round-trip travel time to a TSA-contracted physician's office to be 54 minutes (0.9 hours), for an estimated hour burden of 20,250 hours (22,500 × 54 minutes). The estimated total burden time for the completion of the medical questionnaire is 37,125 (16,875 + 20,250) annual hours.

Dated: January 25, 2023.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2023–01798 Filed 1–27–23; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0003]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application To Extend/Change Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until March 31, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0003 in the body of the letter, the agency name and Docket ID USCIS–2007–0038. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0038.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website

at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0038 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–539 and I–539A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–539 (paper) is 217,000 and the estimated hour burden per response is 1.85 hours, the estimated total number of respondents for the information collection I–539 (electronic) is 93,000 and the estimated hour burden per response is 1 hour; and the estimated total number of respondents for the information collection I–539A is 114,044.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 534,365 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $69,874,000.

Dated: January 23, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–01763 Filed 1–27–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23GS00EMMA900]

Request for Comments on Helium Supply Risk

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of opportunity for public comment.

SUMMARY: In light of recent geopolitical events and concurrent with the return of primary helium data-collection responsibility from the Bureau of Land Management (BLM) to the U.S. Geological Survey (USGS), the USGS is soliciting input from the public, including domestic helium users, that will aid the USGS in analyzing whether there is an increasing risk of helium-supply disruption; whether that risk stems from supply from countries that may be unwilling or unable to continue to supply the United States; and whether those risks pose a significant likelihood of increasing the Nation's import reliance or creating a concentration and risk of permanent or intermittent supply disruptions from a small number of international or domestic supply sources. The USGS is also soliciting input that will aid the USGS in analyzing whether potential disruptions to helium supply would jeopardize manufacturing or use of products vital to the defense, healthcare, aerospace, consumer electronics, and other industries.

DATES: Please submit written comments by March 16, 2023.

ADDRESSES: You may submit written comments online at *http://www.regulations.gov* by entering ''DOI–2022–0012'' in the Search bar and clicking ''Search,'' or by mail to Request for comments on Helium Supply Risk, MS–102, U.S. Geological Survey, 12201 Sunrise Valley Dr, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: James Mosley, (703) 648–6312, *jmosley@usgs.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: Helium is important to the U.S. economy, with uses including magnetic resonance imaging, lifting gas, analytical and laboratory applications, electronics and semiconductor manufacturing, welding, engineering and scientific applications, and various minor applications.[1] At present, the United States is the world's leading helium producer and is a net exporter of helium. In 2021, fifteen plants in the United States extracted helium from natural gas and produced crude helium; two plants extracted helium from natural gas and produced Grade-A helium; and three plants purified helium from other sources to produce Grade-A helium. Helium production outside the United States was concentrated primarily in Qatar and Algeria. Both countries, as well as Canada, Russia, and Tanzania, have the

[1] U.S. Geological Survey, 2022, Mineral commodity summaries 2022: U.S. Geological Survey, 202 p., *https://doi.org/10.3133/mcs2022.*

technical capacity to increase their production in the future.

Helium did not meet the criteria for inclusion on the 2022 final list of critical minerals (87 FR 10381). However, the USGS has noted that several factors make helium a commodity that warrants watching. The Helium Stewardship Act of 2013 directed the sale of the Federal Helium System by the Bureau of Land Management (BLM). The global shift from conventional natural gas toward shale gas, which lacks recoverable quantities of helium, has the potential to reduce the supply of helium. While the United States has significant domestic helium-production capacity, recent geopolitical events may impact foreign production capacity.

Given the factors described above related to helium, the USGS is soliciting public comments that will aid the USGS in analyzing:

(1) whether there is an increasing risk of supply disruption,

(2) whether that risk stems from supply from countries that may be unwilling or unable to continue to supply the United States,

(3) whether those risks pose a significant likelihood of increasing the Nation's import reliance or create a concentration and risk of permanent or intermittent supply disruptions from a small number of international or domestic supply sources,

(4) potential disruptions to helium supply due to foreign geopolitical uncertainty, military conflict, civil unrest, or anti-competitive behaviors, and

(5) whether such supply disruption would jeopardize manufacturing or use of products vital to the defense, healthcare, aerospace, consumer electronics, and other industries.

In conjunction with the sale of the Federal Helium System, the BLM is returning responsibility for collecting data and reporting helium production and consumption statistics to the USGS. Therefore, the USGS is also seeking comments that will aid the USGS in:

(1) conducting comprehensive analyses of the helium supply chain,

(2) determining domestic helium consumers and their primary uses for helium,

(3) identifying points of contact for helium producers, suppliers, and consumers who might collaborate with the USGS in data collection and survey development, and

(4) identifying additional types of information that might aid in future USGS data collection on helium.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment, including your PII, may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so. Please be aware that public comments submitted in response to this **Federal Register** notice will have no bearing on the closure of the federally managed helium reserve by the BLM as directed by the Helium Stewardship Act of 2013. Additionally, no person is required to respond to this request for comments. Consistent with 5 CFR 1320.3(h)(4), no person is asked to supply specific information pertaining to themselves other than information necessary for self-identification to receive USGS's full consideration of their comment(s). The U.S. Government will not pay for any comments or administrative costs incurred by those responding to this request for comments.

Authority: Energy Act of 2020, (div. Z, Pub. L. 116–260; 30 U.S.C. 1606).

James D. Applegate,

Director, U.S. Geological Survey.

[FR Doc. 2023–01852 Filed 1–27–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23LR000F60100; OMB Control Number 1028–0065/Renewal]

Agency Information Collection Activities; Production Estimate

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an Information Collection.

DATES: Interested persons are invited to submit comments on or before March 31, 2023.

ADDRESSES: Send your comments on this Information Collection Request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0065 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at 703–648–7720. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the ''Mineral Commodity

Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Title of Collection: Production Estimate.

OMB Control Number: 1028–0065.

Form Number: USGS Forms 9–4042–A and 9–4124–A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses or other For-Profit Institutions: U.S. nonfuel mineral producers.

Total Estimated Number of Annual Respondents: 1,100.

Total Estimated Number of Annual Responses: 1,100.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 275.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: There are no ''non-hour cost'' burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA, the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Steven Fortier,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2023–01773 Filed 1–27–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Land Acquisitions; Tohono O'odham Nation, Far West Valley Site, Maricopa County, Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire in trust 110.34 acres, more or less, of land known as the Far West Valley Site in Maricopa County, Arizona, (Site) for the Tohono O'odham Nation, (Nation) for gaming and other purposes.

DATES: This final determination was made on January 24, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Mailstop 3543, 1849 C Street NW, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs made a final agency determination to acquire the Site, consisting of 110.34 acres, more or less, in trust for the Nation under the authority of the Gila Bend Indian Reservation Lands Replacement Act, Public Law 99–503, 100 Stat. 1798 (1986), and Department regulations.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Site in the name of the United States of America in trust for the Nation upon fulfillment of all Departmental requirements. The legal description for the Site is as follows:

Legal Description of Property

A portion of the Southeast Quarter of Section 36, Township 3 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South Quarter Corner of said Section 36, being marked, as witnessed, by a 3″ Arizona Department of Transportation brass cap in handhole, North 89 degrees 48 minutes 26 seconds West, 15.00 feet from the calculated position, from which the Southeast Corner of said Section 36, being marked by a 3″ Maricopa County brass cap in handhole, bears South 89 degrees 56 minutes 32 seconds East, 2632.60 feet;

thence along the South line of said Southeast Quarter, South 89 degrees 56 minutes 32 seconds East, 1601.49 feet;

thence North 0 degrees 03 minutes 28 seconds East, 33.00 feet to the POINT OF BEGINNING;

thence along the Easterly right-of-way of State Route 303, as dedicated by Document 2014–0611509 of Maricopa County Records, the following courses:

thence North 85 degrees 37 minutes 53 seconds West, 286.30 feet;

thence North 0 degrees 03 minutes 28 seconds East, 75.64 feet;

thence North 89 degrees 56 minutes 32 seconds West, 996.07 feet;

thence North 10 degrees 50 minutes 52 seconds West, 101.01 feet;

thence North 0 degrees 15 minutes 47 seconds East, 504.14 feet;

thence North 5 degrees 21 minutes 18 seconds East, 916.34 feet;

thence North 32 degrees 20 minutes 04 seconds East, 159.39 feet;

thence North 48 degrees 30 minutes 08 seconds East, 493.37 feet;

thence North 63 degrees 51 minutes 13 seconds East, 481.52 feet;

thence South 89 degrees 48 minutes 01 seconds East, 1207.87 feet;

thence along the Southerly right-of-way of West Northern Parkway, as dedicated by Document 2017–0799438 of Maricopa County Records, the following courses:

thence South 0 degrees 15 minutes 32 seconds West, 52.65 feet;

thence South 89 degrees 44 minutes 28 seconds East, 54.46 feet;

thence South 44 degrees 44 minutes 22 seconds East, 35.13 feet;

thence along a line 80.00 feet West of and parallel with the East line of said Southeast Quarter, South 0 degrees 15 minutes 32 seconds West, 275.17 feet;

thence South 89 degrees 44 minutes 28 seconds East, 47.00 feet;

thence departing said Southerly right-of-way, along a line 33.00 feet West of and parallel with said East line, South 0 degrees 15 minutes 32 seconds West, 1931.50 feet;

thence along a line 33.00 feet North of and parallel with said South line, North 89 degrees 56 minutes 32 seconds West, 998.23 feet to the POINT OF BEGINNING.

Contains 4,806,640 square feet or 110.3453 acres, more or less.

Authority

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–01829 Filed 1–27–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19900000.PO0000.LLHQ320.23X; OMB Control No. 1004–0194]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Surface Management Activities Under the General Mining Law

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 1, 2023.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Sabry Hanna by email at *shanna@blm.gov,* or by telephone at (571) 458–6644. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 9, 2022 (87 FR 67714). One comment was received in response to this notice. The comment, along with the BLM's response, is summarized in the request submitted to OMB.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The control number enables the BLM to determine whether operators and mining claimants are meeting their responsibility to prevent unnecessary or undue degradation while conducting exploration and mining activities on public lands under mining laws. This OMB Control Number is currently scheduled to expire on April 30, 2023. The BLM plans to request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Surface Management Activities under the General Mining Law (43 CFR Subpart 3809).

OMB Control Number: 1004–0194.

Form Numbers: 3809–1, Surface Management Surety Bond; 3809–2, Surface Management Personal Bond; 3809–4, Bond Rider Extending Coverage of Bond to Assume Liabilities for Operations Conducted by Parties Other Than the Principal; 3809–4a, Surface Management Personal Bond Rider and; 3809–5, Notification of Change of Operator and Assumption of Past Liability.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Operators and mining claimants.

Total Estimated Number of Annual Respondents: 1,304.

Total Estimated Number of Annual Responses: 1,304.

Estimated Completion Time per Response: Varies from 1 to several hours per response.

Total Estimated Number of Annual Burden Hours: 158,053.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $4,240 for notarizing Forms 3809–2 and 3809–4a.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2023–01747 Filed 1–27–23; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035186; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State Police, Dimondale, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Michigan State Police has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Gladwin County, MI.

DATES: Disposition of the human remains in this notice may occur on or after March 1, 2023.

ADDRESSES: Hanna Friedlander, Human Remains Analyst, Michigan State Police, Intelligence Operations Division—Missing Persons Coordination Unit, 7150 Harris Drive, Dimondale, MI 48821, telephone (517) 242–5731, email *friedlanderh@michigan.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Michigan State Police. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related

records held by the Michigan State Police.

Description

On July 30, 2002, human remains representing, at minimum, one individual were removed from their resting spot in Beaverton Township, MI (Gladwin County). The human remains (MPC–7–22) consist of a fragmented partial cranium that is missing the mandible, maxillae, majority of the facial bones, and teeth. Osteobiographical information determined by Dr. Todd Fenton of Michigan State University indicated the individual was Native American due to the dry bone, cortical exfoliation, adhered soil, lack of odor, and vault shape. On August 24, 2022, the human remains were located at the Michigan State Police West Branch post, which immediately requested assistance in carrying out NAGPRA responsibilities. Subsequently, Ms. Hanna Friedlander collected the human remains and transferred them to temporary holding at the Michigan State Police Headquarters in Dimondale, MI. No known individual was identified. No associated funerary objects are present.

Aboriginal Land

The human remains in this notice are not culturally identifiable. They were removed from a known geographic location that is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a treaty.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Michigan State Police has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Bad River Band of the Lake Superior Chippewa Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after March 1, 2023. If competing requests for disposition are received, the Michigan State Police must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The Michigan State Police is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: January 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–01847 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–ADIR–PIM–NPS0034921; PPWOIRADA1, PPMPSAS1Y.TY0000 (222); OMB Control Number 1024–0280]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Certification of Identity and Consent Form

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 1, 2023.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in DATES to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0280'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Charis Wilson, NPS Freedom of Information Act (FOIA) Officer, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287 (mail); at *charis_wilson@nps.gov* (email), or (303) 969–2959 (telephone). Please reference OMB Control Number 1024–0280 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with

an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 28, 2022 (87 FR 17321). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS maintains law enforcement incident reports in the Department of the Interior's Incident and Management Reporting System (IMARS), which is a Privacy Act System of Records (DOI–10). In accordance with the Privacy Act (5 U.S.C. 552a(b)), the NPS is barred from releasing copies of records contained within IMARS, including but not limited to motor vehicle accident reports, without the prior written request and/or consent of the individual to whom the record pertains unless authorized under appropriate routine-use exceptions.

The purpose of the collection is to enable the NPS to respond to requests made under the FOIA and the Privacy Act of 1974 by locating applicable law enforcement case incident reports responsive to the request. The NPS uses Form 10–945, ''Certification of Identity and Consent'' to collect the information necessary to verify the identity of first-party requesters and to document when they authorize the NPS to release their information to a third party. Failure to provide the required information may result in the NPS being unable to take any action on the request. The form collects the following information to verify the identity of the requester:

- Full name of the requester
- Case number
- Current address
- Date of birth
- Place of birth

Title of Collection: Certification of Identity and Consent Form.

OMB Control Number: 1024–0280.

Form Number: NPS Form 10–945.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals requesting copies of law enforcement case incident reports maintained within the Department of Interior's IMARS.

Total Estimated Number of Annual Respondents: 2,000.

Total Estimated Number of Annual Responses: 2,000.

Estimated Completion Time per Response: 3 minutes.

Total Estimated Number of Annual Burden Hours: 100.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–01817 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PPWOVPADH0–32572; PPMPRHS1Y.Y00000]

Notice of Availability and Request for Comments on Draft Director's Order #83A Concerning National Park Service Policies and Procedures Governing Public Health Protection and Disease Prevention

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared Director's Order #83A to set forth its policies and procedures to protect the health of visitors, employees, contractors, and partners in national parks and facilities operated by the NPS. Once adopted, the policies and procedures in Director's Order #83A and the accompanying Reference Manual 83A (RM–83A) will supersede and replace the policies and procedures issued in Director's Order #83: Public Health, dated October 21, 2004.

DATES: Written comments will be accepted until March 1, 2023.

ADDRESSES: Draft Director's Order #83A is available online at: *https://forms.office.com/g/JguB44hEu8* where readers may submit comments electronically.

FOR FURTHER INFORMATION CONTACT: CAPT Sara Newman, Director, Office of Public Health, National Park Service, at *sara_newman@nps.gov,* or by telephone at 202–513–7225.

SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. Director's Order #83A and a reference manual (subsequent to the Director's Order) will be issued. The draft Director's Order provides direction to NPS and U.S. Public Health Service managers and employees who are responsible for protecting public health; guidance for NPS administration of Federal, State, and local public health laws, regulations, and ordinances; and requirements and procedures for reporting, investigating, and responding to infectious disease outbreaks and other public health emergencies.

Public Disclosure of Comments: Before including your address, telephone number, email address, or other personal identifying information

in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 54 U.S.C. 100101(a) *et seq.*

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–01752 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035191; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Michigan State University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Sacramento County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after March 1, 2023.

ADDRESSES: Judith Stoddart, Michigan State University, 287 Delta Ct, East Lansing, MI 48824, telephone (517) 432–2524, email *stoddart@msu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Michigan State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Michigan State University.

Description

Human remains representing, at minimum, one individual were removed from Sacramento County, CA. On an unknown date, this individual was acquired by Kalamazoo resident Donald Boudeman, who collected Native American material culture during the first half of the twentieth century. In July of 1961, some years after her husband's death, Donna Boudeman donated these human remains to the Michigan State University Museum. The Museum's record indicates the remains of this individual were recovered from a mound in Sacramento County, CA. Mounds in this region could be as much as 7,000 years old. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and other relevant information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Michigan State University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (*previously* listed as Jackson Rancheria of Me-Wuk Indians of California); Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 1, 2023. If competing requests for repatriation are received, Michigan State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Michigan State University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–01848 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035187; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: William S. Webb Museum of Anthropology, University of Kentucky, Lexington, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the William S. Webb Museum of Anthropology, University of Kentucky (WSWM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from: Breathitt, Carroll, Floyd, Franklin, Greenup, Jessamine, Johnson, Lewis, Nicholas, Perry, and Scott Counties, KY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 1, 2023.

ADDRESSES: Celise Fricker, William S. Webb Museum of Anthropology, University of Kentucky, 1020 Export

Street, Lexington, KY 40504, telephone (859) 257–5124, email *celise.fricker@uky.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WSWM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the WSWM.

Description

Human remains representing, at minimum, three individuals were removed from site 15BR9 (Kragon) in Breathitt County, KY. The site was originally reported by W.R. Russell in 1932, followed by Phase I survey and limited excavation by contract archeologist C.W. McIlhany in 1986, during a survey of a coal company permit area, and by full excavation in 1987, by McIlhany for the coal company. A Fort Ancient determination for these human remains is based on C14 dates (840+/−50 BP) and the presence of Fort Ancient ceramic types. The 115 associated funerary objects are two biconical cannel coal beads, 13 tubular bone beads, 29 perforated turkey digits, 35 disk shell beads, 13 tubular shell beads, and 23 Marginella beads.

Human remains representing, at minimum, three individuals were removed from site 15CL16 in Carroll County, KY. In 1961, after a flood uncovered several graves near Little Kentucky River, these ancestral human remains were collected by Charles Johnson. Subsequently, Orin Breeck donated them to WSWM on behalf of Johnson. A Fort Ancient determination for these human remains is based on the limestone grave mortuary form and the presence of shell-tempered ceramics. The six associated funerary objects are two bone pins, one perforated bivalve (broken), one shell fragment, and two chunks of ochre.

Human remains representing, at minimum, two individuals were removed from site 15FD110 (Clark Rockshelter) in Floyd County, KY. The site was excavated by GAI Consultants in 2005–2006 during testing for the Equitrans Pipeline. A Fort Ancient determination for these human remains is based on C14 dating (Cal A.D. 1000–1180 and Cal A.D. 1280–1400). No associated funerary objects are present.

Human remains representing, at minimum, 10 individuals were removed from site 15FR101 (Capitol View) in Franklin County, KY. The site was surveyed by the Kentucky Heritage Council in 1989 and excavated by the Council in 1990. In December of 1991 and January of 1992, while being monitored during construction activities, seven burials, samples of material culture, and subsistence remains were collected from the site. A Fort Ancient determination for these human remains is based on the presence of wall-trench houses, limestone-shell-tempered ceramics, and narrow triangular projectile points, and on C14 dates of 590+/−50 BP; 570+/−60 BP. The three associated funerary objects are one large cannel-coal palette and two lots of corn kernels and cupules.

Human remains representing, at minimum, 26 individuals were removed from site 15GP1/15GP15 (Old Fort Village/Bentley/Lower Shawneetown) in Greenup County, KY. The site was excavated in 1938 by the University of Kentucky Museum of Anthropology under contract to the Works Progress Administration (WPA). A Fort Ancient determination for these human remains is based on the presence of mid-18th century Euro-American artifacts shell/limestone tempered ceramics, triangular projectile points, and disk pipes, and on a C14 date of 230±50. The 90 associated funerary objects are three ceramic jars, 42 ceramic sherds, 21 projectile points, four scrapers, one worked flint, one Steatite vasiform pipe, one bone atlatl, three bone drifts/gaming pieces, one copper fragment, three faunal bones, one conical pendant, seven pierced elk teeth, one brass pendant, and one animal tooth.

Human remains representing, at minimum, 56 individuals were removed from site 15GP3 (Fullerton Field) in Greenup County, KY. In 1926/1930, Lucien Beckner of the Kentucky Geological Survey and University of Kentucky Museum of Anthropology excavated the site during the development of the Fullerton Heights subdivision. A Fort Ancient determination for these human remains is based on the presence of shell/limestone-tempered ceramics, wall-trench houses, shell gorgets, and triangular projectile points. The 42 associated funerary objects are 25 bone beads, three marginella beads, 12 wolf jaws, one hematite celt, and one bear maxilla gorget.

Human remains representing, at minimum, one individual were removed from site 15JS7 (W.B. Buford Farm) in Jessamine County, KY. The site was excavated in 1934 by W.D. Funkhouser. A Fort Ancient determination for these human remains is based on mortuary style. No associated funerary objects are present.

Human remains representing, at minimum, eight individuals were removed from site 15JS16 (Hickman Water Treatment) in Jessamine County, KY. In 1971, University of Kentucky students conducted a salvage excavation at the site. A Fort Ancient determination for these human remains is based on the associated funerary objects. The 1,258 associated funerary objects are 558 6mm shell beads, 548 2mm shell beads, 45 tubular bone beads, two rolled copper beads, one wooden earspool covered with copper, one piece of copper with 20 disc shell beads and 53 tiny disc shell beads adhered, one copper stained string, one fragment of leather and textile shirt with 25 small/tiny shell beads adhering to remnants, one fragment of thin charred bark, and two chert flakes.

Human remains representing, at minimum, three individuals were removed from site 15JO14 (Mayo) in Johnson County, KY. In 1939, the site was excavated by the University of Kentucky Museum of Anthropology under contract to the WPA. A Fort Ancient determination for these human remains is based on the shell-tempered ceramics, the site plan, and a C14 date of 800±100 BP. The 13 associated funerary objects are five tubular bone beads, four bird wing clips/pendants, one chunk of limonite, one flint, one projectile point, and one broken base of a projectile point.

Human remains representing, at minimum, one individual were removed from site 15LW190 in Lewis County, KY. In 1990, the site was excavated by the University of Kentucky Program in Cultural Resource Assessment. A Fort Ancient determination for these human remains is based on the presence of shell-tempered ceramic types. The three associated funerary objects are one sherd, one deer bone, and one mussel shell.

Human remains representing, at minimum, 13 individuals were removed from site 15NI1 (Clay Mound) in Nicholas County, KY. In 1925, the site was excavated by W.S. Webb and the finds were donated to UKMA. A Fort Ancient determination for these human remains is based on the mound's construction and the presence of marine shell pendants and projectile points. The 1,071 associated funerary objects are one serrated projectile point, one bone hair pin, 865 shell beads, one large shell bead, 202 small snail shell beads, and one bone flaker.

Human remains representing, at minimum, two individuals were removed from site 15PE126 (Lead

Branch Crematory) in Perry County, KY. In 1993, the site was excavated by Cultural Resources Analysts, Inc. A Fort Ancient determination for these human remains is based on C14 dates. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from site 15SC2 (W.S.Yates Farm) in Scott County, KY. In 1935, the site was excavated by University of Kentucky Museum of Anthropology staff. A Fort Ancient determination for these human remains is based on the ceramics, projectile points, and sandstone discs. No associated funerary objects are present.

Human remains representing, at minimum, five individuals were removed from 15SC3 (Singer Mound) in Scott County, KY. The ancestral human remains were donated by private collectors in 1978 and 1990. This mound is a well-known Fort Ancient village site. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from site 15SC227 in Scott County, KY. In 2000, after a burial was encountered during construction at the Great Crossing School, the site was excavated by the Scott County coroner and the Kentucky Archaeological Survey. A Fort Ancient determination for these human remains is based on the diagnostic pipes and projectile points. The 16 associated funerary objects are one ceramic elbow pipe, one limestone pipe, two projectile points, four biface fragments, six chert flakes, and two biface preforms.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folklore, geographical, historical, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the WSWM has determined that:

- The human remains described in this notice represent the physical remains of 138 individuals of Native American ancestry.
- The 2,617 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and the Shawnee Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 1, 2023. If competing requests for repatriation are received, the WSWM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The WSWM is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–01845 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035190; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent to Repatriate Cultural Items: Ralph Foster Museum, College of the Ozarks, Point Lookout, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ralph Foster Museum intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from the State of Tennessee.

DATES: Repatriation of the cultural items in this notice may occur on or after March 1, 2023.

ADDRESSES: Thomas A. Debo, The Ralph Foster Museum, 237 Christian Court, Point Lookout, MO 65726, telephone (417) 690–2602, email *debo@cofo.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ralph Foster Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Ralph Foster Museum.

Description

In the 1950s or early 1960s, three cultural items were removed from Hardeman, Fayette, or Shelby County, TN. Two of the items have ''Lucy Hatchie, Tennessee'' written on their undersides, giving the impression that they were removed from somewhere along the Loosahatchie River, which runs through Hardeman, Fayette, and Shelby Counties. The third item has ''Millington, Tennessee'' written on its underside, giving the impression that it was removed from Millington in Shelby County, TN. It is believed that Ralph Foster donated these three items as they are similar to other items he donated at the time. The three objects of cultural patrimony are one pottery possum effigy bowl, one pottery stirrup bottle, and one pottery turtle effigy.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Ralph Foster Museum has determined that:

- The three cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 1, 2023. If competing requests for repatriation are received, the Ralph Foster Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Ralph Foster Museum is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: January 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–01846 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035192; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Vassar College, Poughkeepsie, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Vassar College has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Maui County, HI.

DATES: Repatriation of the human remains in this notice may occur on or after March 1, 2023.

ADDRESSES: Brian Daly, Vassar College, 124 Raymond Avenue, Poughkeepsie, NY 12604, telephone (845) 437–5310, email *brdaly@vassar.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Vassar College. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Vassar College.

Description

Human remains representing, at minimum, four individuals were removed from Maalaea, Maui County, HI. During the 1920s, these human remains (030 Box; 380 Box; 577; Mandible 9) were acquired by Vassar College's Natural History and Social Museums. Following the Museums' dissolution in the 1960s, the human remains were acquired by the Anthropology and Biology Departments. Human remains located in the Biology and Anthropology Department teaching collections were examined for visual and statistical markers of Native American affinities, and the results were reported on December 21, 2020. On October 3, 2022, Uluwehi K. Cashman identified the individuals listed in this notice as Native Hawaiians from the Island of Maalaea, Maui, Hawaii. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, biological, geographical, historical, kinship, linguistic, oral traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Vassar College has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Hui Iwi Kuamo'o.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 1, 2023. If competing requests for repatriation are received, Vassar College must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Vassar College is responsible for sending a copy of this notice to the Native Hawaiian organization identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–01844 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035189; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Us, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Us has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Tunica County, MS.

DATES: Repatriation of the human remains in this notice may occur on or after March 1, 2023.

ADDRESSES: Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 42, email *cmosley@museumofus.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Us. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Museum of Us.

Description

In 1911, human remains representing, at minimum, one individual were removed from Commerce in Tunica County, MS, by Clarence B. Moore. Soon thereafter, Clarence B. Moore donated the human remains to the Smithsonian Institution. In 1914 or 1915, the Smithsonian Institution sent these human remains, along with a large collection of human and primate skeletal remains and casts, to the San Diego Museum (now the Museum of Us) for the Aleš Hrdlička-curated *The Science of Man* exhibition at the 1915 Panama California Exposition. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and historical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Museum of Us has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and The Chickasaw Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 1, 2023. If competing requests for repatriation are received, the Museum of Us must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of Us is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–01839 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035188; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum of Natural History has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from unknown location(s).

DATES: Disposition of the human remains in this notice may occur on or after March 1, 2023.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 S Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Field Museum.

Description

Human remains representing, at minimum, four individuals were removed from unknown location(s). According to Museum records, these human remains consisting of four crania were part of a group of eighteen unaccessioned individuals that had been stored in a box labeled ''Sun Dance, Arapaho.'' The Museum contends, based on institutional history

and collections practices, that the box was likely used previously for a collection of Sun Dance materials, which did not include human remains, without being re-labeled. Some time prior to 1985, catalog cards were prepared for the eighteen individuals, identifying them as ''Arapaho?''. During a 1985–87 inventory, 12 of the 18 individuals were identified as Basketmaker from San Juan County, Utah, and as coming to the Museum as part of the Lang Collection from the University of Chicago's Walker Museum. The other six individuals could not be identified. The Museum determined these human remains to be culturally unidentifiable due to a lack of information. The Northern Arapaho Tribe's position is that the Museum's records were, at some point, sufficient for the Museum to conclude that the requested human remains were possibly Arapaho, and that there is no extant contrary evidence sufficient to overturn this initial conclusion. The fact that there is no present evidence could simply be the result, in the Tribe's view, that the evidence establishing these remains as Arapaho previously simply didn't survive. Accordingly, the Northern Arapaho Tribe has requested repatriation of four of these individuals. No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from unknown geographic location(s). The evidence from the Field Museum's records indicates that the human remains may have come from either accession 694 (Arapaho materials from Wind River Reservation, Wyoming), accession 777 (Sun Dance, Arapaho materials from the Cheyenne-Arapaho Reservation, Oklahoma), or accession 1468 (Basketmaker material from San Juan County, Utah).

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice may have been removed from the aboriginal land of Big Pine Band Paiute Tribe of the Owens Valley; Burns Paiute Tribe; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Cheyenne and Arapaho Tribes, Oklahoma; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; Ohkay Owingeh, New Mexico; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; San Juan Southern Paiute Tribe of Arizona; Santo Domingo Pueblo; Shoshone-Bannock Tribes of the Fort Hall Reservation; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Summit Lake Paiute Tribe of Nevada; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; Ysleta del Sur Pueblo; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after March 1, 2023. If competing requests for disposition are received, the Field Museum must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: January 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–01840 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NER–NPS0034619; PPNEHATUC0, PPMRSCR1Y.CU0000 (222); OMB Control Number 1024–0232]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Underground Railroad Network to Freedom Program

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 1, 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 Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242), Reston, VA 20191 (mail); or to *phadrea_ponds@nps.gov* (email). Please reference OMB Control Number 1024–0232 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Diane Miller, National Program Manager, National Underground Railroad Network to Freedom Program, National Park Service, Harriet Tubman Underground Railroad Visitor Center, 4068 Golden Hill Road, Church Creek, Maryland 21622; at *diane_miller@nps.gov* (email); or 410–221–2290, extension 1111 (telephone). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 16, 2022 (87 FR 8874). We did not receive any comments in response to that Notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Underground Railroad Network to Freedom Act of 1998 (54 U.S.C. 308301, *et seq.*) authorizes the NPS to collect information from applicants requesting to join the Network to Freedom Program (the Network). The NPS uses Form 10–946, National Underground Railroad Network to Freedom Application, to evaluate potential participants and determine eligibility to become part of the Network. Through the Network, we coordinate preservation and education efforts nationwide and are working to integrate local historical sites, museums, and interpretive programs associated with the Underground Railroad movement.

All entities that apply to join the Network must have a verifiable association with the historic Underground Railroad movement and complete NPS Form 10–946, ''National Underground Railroad Network to Freedom Application,'' available at *https://www.nps.gov/subjects/ugrr/index.htm* (website). Respondents must (1) verify associations and characteristics through descriptive texts that are the result of historical research and (2) submit supporting documentation (*e.g.,* copies of rare documents, photographs, and maps).

Network to Freedom Program Partners work with the NPS to help validate the efforts of local and regional organizations, making it easier for them to share their expertise and communicate with us and each other. Prospective partners must submit a letter with the following information:

- Name and address of the agency (company or organization)
- Name, address, and phone, fax, and email information of principal contact
- Abstract not to exceed 200 words describing the partner's activity or mission statement
- Brief description of the entity's association to the Underground Railroad

Title of Collection: National Underground Railroad Network to Freedom Program.

OMB Control Number: 1024–0232.

Form Number: NPS Form 10–946, ''National Underground Railroad Network to Freedom Application.''

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals; businesses; nonprofit organizations; and Federal, State, tribal, and local governments.

Total Estimated Number of Annual Responses: 42.

Estimated Completion Time per Response: 40 hours.

Total Estimated Number of Annual Burden Hours: 1,601.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–01818 Filed 1–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0020; DS63644000 DR2000000.CH7000 234D1113RT; OMB Control Number 1012–0004]

Agency Information Collection Activities: Royalty and Production Reporting

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Office of Natural Resources Revenue (''ONRR'') is proposing to revise a currently approved information collection to expand its scope to include the mineral estate underlying Osage County, Oklahoma (''Osage Mineral Estate'').

DATES: You must submit your written comments on or before March 31, 2023.

ADDRESSES: All comment submissions must (1) reference ''OMB Control Number 1012–0004'' in the subject line; (2) be sent to ONRR before the close of the comment period listed under **DATES**; and (3) be sent using the following method:

Electronically via the Federal eRulemaking Portal: Please visit *https://www.regulations.gov.* In the Search Box, enter the Docket ID Number for this ICR renewal (''ONRR–2011–0020'') and click ''search'' to view the publications associated with the docket folder. Locate the document with an open comment period and click the ''Comment Now!'' button. Follow the prompts to submit your comment prior to the close of the comment period.

Docket: To access the docket folder to view the ICR **Federal Register** publications, go to *https://www.regulations.gov* and search ''ONRR–2011–0020'' to view renewal notices recently published in the **Federal Register**, publications associated with prior renewals, and applicable public comments received for this ICR. ONRR will make the comments submitted in response to this notice available for public viewing at *https://www.regulations.gov.*

OMB ICR Data: OMB also maintains information on ICR renewals and approvals. You may access this information at *https://www.reginfo.gov/public/do/PRASearch.* Please use the following instructions: Under the ''OMB Control Number'' heading enter ''1012–0004'' and click the ''Search'' button located at the bottom of the page. To view the ICR renewal or OMB approval status, click on the latest entry (based on the most recent date). On the ''View ICR—OIRA Conclusion'' page, check the box next to ''All'' to display all available ICR information provided by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact Donna Myles, Data Intake, Solutioning, and Coordination, ONRR, by email at *Donna.Myles@onrr.gov or by* telephone (214) 640–9057. 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: Through this revision, ONRR seeks authority to collect information related to the paperwork requirements under 30 CFR part 1210, subparts B, C, and D; part 1212, subpart B, and the Bureau of Indian Affairs' (''BIA'') proposed regulations at 25 CFR part 226, subparts F and I. ONRR uses forms ONRR–2014, ONRR–4054, and ONRR–4058 as part of these information collection requirements.

Pursuant to the PRA, 44 U.S.C. 3501, *et seq.,* and 5 CFR 1320.5, all information collections, as defined in 5 CFR 1320.3, require approval by OMB. ONRR 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 ONRR's continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information in accordance with the PRA and 5 CFR 1320.8(d)(1). This helps ONRR to assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ONRR's information collection requirements and provide the requested data in the desired format.

ONRR is especially interested in public comments addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of ONRR's 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. ONRR will include or summarize each comment in its 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 ONRR in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

Abstract: (a) General Information: The Federal Oil and Gas Royalty Management Act of 1982 (''FOGRMA'') directs the Secretary of the Interior (''Secretary'') to ''establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.'' *See* 30 U.S.C. 1711. ONRR performs these and other mineral revenue management responsibilities for the Secretary. *See* U.S. Department of the Interior Departmental Manual, 112 DM 34.1 (Sept. 9, 2020). FOGRMA and ONRR's regulations at 30 CFR Chapter XII do not apply to the Osage Mineral Estate.

The Osage Mineral Estate is held in trust by the United States for the benefit of the Osage Nation. *See* Osage Allotment Act of June 28, 1906, Public Law 59–321, 3, 34 Stat. 539, as amended. BIA's regulations at 25 CFR part 226 contain requirements specific to the Osage Mineral Estate, and, historically, BIA has performed compliance activities related to those requirements. In conjunction with this ICR, BIA has published a proposed rule in the **Federal Register** on January 13, 2023 (88 FR 2430) that would require a lessee of the Osage Mineral Estate to submit to ONRR certain forms already authorized in this ICR for Federal and non-Osage Indian lands. Accordingly, this ICR revision adds information collections specific to oil and gas royalty and production reporting for the Osage Mineral Estate.

This ICR remains unchanged in its application and effect as to all leases previously subject to the information collections described below in (b)(2) and (3), which includes all Federal leases onshore and offshore and all Indian leases held in trust by the United States, except for the Osage Mineral

Estate. The information collection related to the Osage Mineral Estate is described below in (b)(1).

ONRR uses the production, royalty, and other information collected in this ICR to ensure that a lessee properly pays royalty and other mineral revenues due on oil, gas, and geothermal resources produced from Federal and Indian lands. ONRR shares the data with the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, and Tribal and State governments for their land and lease management responsibilities. The requirement to report accurately and timely is mandatory.

(b) Information Collections: This ICR covers the paperwork requirements under 30 CFR part 1210, subparts B, C, and D; part 1212, subpart B and proposed regulations under 25 CFR part 226, subparts F and I as follows:

(1) *Osage Mineral Estate Royalty and Production Reporting:* The proposed regulations at 25 CFR part 226, subparts F and I require a lessee to submit information to ONRR specific to the Osage Mineral Estate's royalties, rental, bonuses, and other payment information, including sales volumes and values. Lessees are required to submit this information by using one of the forms identified by ONRR. ONRR uses the information collected to ensure companies properly pay royalties based on accurate production accounting on oil, gas, and geothermal resources that they produce from leases of the Osage Mineral Estate.

(2) Royalty Reporting: Regulations at 30 CFR part 1210, subparts B and D and part 1212, subpart B, require a lessee to report and remit royalty on oil, gas, and geothermal resources, and to make, retain, and, upon request, provide for inspection accurate and complete records demonstrating proper royalty and other payment. A lessee submits form ONRR–2014, *Report of Sales and Royalty Remittance,* monthly to report royalty on oil, gas, and geothermal leases. Each line contains the royalty owed and the basic elements necessary to calculate the royalty, such as lease number, agreement number, unit number, product code, sales type, sales volume, sales value, processing allowances, transportation allowances, royalty value prior to allowances, and royalty value less allowances. A lessee also uses the form to report certain rents.

(3) Production Reporting: Regulations at 30 CFR part 1210, subparts C and D and part 1212, subpart B, require an operator to submit production reports if it operates a Federal or Indian oil and gas lease or federally approved unit or communitization agreement, and to make, retain, and, upon request, provide for inspection accurate and complete records for demonstrating royalty payment. An operator uses the following forms for production accounting and reporting:

(i) Form ONRR–4054, Oil and Gas Operations Report: An operator submits this report monthly. Part A tracks the oil and gas volume produced from each Federal or Indian well. Part B tracks disposition of the oil and gas. Part C tracks the oil and gas inventory on the property. ONRR compares the production information with the sales and other royalty data that a lessee submits on form ONRR–2014 to ensure that the lessee paid and reported the proper royalty on the reported oil and gas production. ONRR also uses the information from parts A, B, and C to track all oil and gas from the point of production to the point of first sale or other disposition.

(ii) Form ONRR–4058, Production Allocation Schedule Report: Unless certain conditions are met, an operator must submit this report if it operates an offshore facility measurement point (FMP) handling production from a Federal oil and gas lease or federally approved unit agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination. The report is filed monthly to allocate the production to each source. ONRR uses the data to verify accurate production and royalty reporting.

Title of Collection: Royalty and Production Reporting.

OMB Control Number: 1012–0004.

Form Numbers: ONRR–2014, ONRR–4054, and ONRR–4058.

Type of Review: Revision to 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 from the table below (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 from the table below (12,827,063).

Total Estimated Number of Annual Burden Hours: 369,379 hours.

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 collection of information.

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 PRA (44 U.S.C. 3501, *et seq.*).

Howard Cantor,

Acting Director, Office of Natural Resources Revenue.

[FR Doc. 2023–01000 Filed 1–27–23; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–564 and 731–TA–1338–1340 (Review)]

Steel Concrete Reinforcing Bar From Japan, Taiwan, and Turkey

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on steel concrete reinforcing bar (''rebar'') from Turkey and revocation of the antidumping duty orders on rebar from Japan, Taiwan, and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 1, 2022 (87 FR 33206) and determined on September 6, 2022 that it would conduct expedited reviews (87 FR 77636, December 19, 2022).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on January 24, 2023. The views of the Commission are contained in USITC Publication 5400 (January 2023), entitled *Steel Concrete Reinforcing Bar from Japan, Taiwan,*

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

and Turkey: Investigation Nos. 701–TA–564 and 731–TA–1338–1340 (Review).

By the order of the Commission.

Issued: January 24, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–01756 Filed 1–27–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–480 and 731–TA–1188 (Second Review)]

High Pressure Steel Cylinders From China; Termination of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission instituted the subject five-year reviews on November 1, 2022 to determine whether revocation of the countervailing duty order and antidumping duty order on high pressure steel cylinders from China would be likely to lead to continuation or recurrence of material injury. On January 20, 2023, the Department of Commerce published notice that it was revoking the orders effective December 5, 2022, because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline. Accordingly, the subject reviews are terminated.

DATES: December 5, 2022 (effective date of revocation of the order).

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 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: This review is 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 24, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–01776 Filed 1–27–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1291]

Certain Replacement Automotive Lamps; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on January 24, 2023, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. 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: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States: unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order against certain replacement automotive lamps of TYC Brother Industrial Co., Ltd, Genera Corporation (dba TYC Genera), LKQ Corporation, and Keystone Automotive Industries, Inc. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's recommended determination on remedy and bonding issued in this investigation on January 24, 2023. Comments should address whether issuance of the recommended limited exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended limited exclusion order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended limited exclusion order;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended limited exclusion order within a commercially reasonable time; and

(v) explain how the recommended limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on February 23, 2023.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798

(March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1291'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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 25, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–01823 Filed 1–27–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1139]

Importer of Controlled Substances Application: Globyz Pharma, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Globyz Pharma, LLC. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 1, 2023. Such persons may also file a written request for a hearing on the application on or before March 1, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 30, 2022, Globyz Pharma LLC, 7 Chelsea Parkway, Suite 707, Boothwyn, Pennsylvania 19061–1300, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lisdexamfetamine	1205	II

The company plans to import the listed controlled substance in dosage form for use in a clinical trial. No other activities for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–01816 Filed 1–27–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act (CWA), and the Oil Pollution Act (OPA)

On January 24, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the Western District of Washington in the lawsuit entitled *United States of America, State of Washington, Suquamish Tribe, and Muckleshoot Indian Tribe* v. *Lynden, Inc., et al.,* Civil Action No. 2:23–cv–00101.

The proposed consent decree resolves claims brought by the United States on behalf of the National Oceanic and Atmospheric Administration and the Department of the Interior, the State of Washington, the Suquamish Tribe, and the Muckleshoot Indian Tribe (collectively, the Natural Resource Trustees) against Lynden, Inc., Knik Construction Co., Inc., Douglas Management Company, Alaska Marine Lines, Inc., Swan Bay Holdings, Inc., Bering Marine Corp., 7100 First Avenue S Seattle, LLC, 5615 West Marginal Way SW Seattle, LLC, 5600 West Marginal Way SW Seattle, LLC, LTI, Inc., Lynden Transport, Inc. (f/k/a Lynden Transfer, Inc.), and Alagnak Holdings, LLC (Defendants) for natural resource damages caused by releases of hazardous substances and discharges of oil from facilities owned and/or operated at various times by the Defendants, located along and near the Lower Duwamish River, pursuant to

section 107(a) of CERCLA, section 311 of the CWA, section 1002(b) of OPA, and the Washington Model Toxics Control Act (MTCA), RCW 70.105D. The settlement requires Defendants to make a payment of $556,250 for natural resource damages to the Trustees, and to purchase restoration credits in a restoration project constructed along the Lower Duwamish River by a project developer to serve as a restoration credit bank. The settlement also requires Defendants to pay their equitable share of assessment costs incurred by the Natural Resource Trustees, totaling $31,528.25. The Defendants will receive covenants not to sue under the statutes listed in the complaint and proposed consent decree for specified natural resource damages.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Lynden, Inc., et al.,* D.J. Ref. No. 90–11–3–07227/5. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–01836 Filed 1–27–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Clean Air Act

On January 24, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Delaware in the lawsuit entitled *United States* v. *Genesee & Wyoming Railroad Services, Inc., et a.,* Civil Action No. 1:23–cv-00084–UNA.

The Complaint alleges claims for penalties and injunctive relief under the Clean Air Act, 42 U.S.C. 7413, arising from Defendants' non-compliance with regulations pertaining to locomotives promulgated by the Environmental Protection Agency. The proposed Consent Decree resolves these claims and requires Defendants and affiliated non-defendants who also own and operate locomotives to pay a penalty of $1,350,000, undertake various actions to facilitate their compliance with applicable locomotive regulations, and remove eighty-eight older and high emission locomotives from service to mitigate the harm caused by their violations.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Genesee & Wyoming Railroad Services, Inc., et al.* D.J. Ref. No. 90–5–2–1–12479. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–01792 Filed 1–27–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0042]

CSA Group Testing & Certification Inc.: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of CSA Group & Testing Certification Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application. Additionally, OSHA proposes to add one test standard to the NRTL Program's List of Appropriate Test Standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 14, 2023.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2006–0042). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about

themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before February 14, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that CSA Group Testing & Certification Inc. (CSA), is applying for expansion of the current recognition as a NRTL. CSA requests the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including CSA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

CSA currently has seven facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: CSA Group Testing & Certification Inc., 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3, Canada. A complete list of CSA's scope of recognition is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/csa.*

II. General Background on the Application

CSA submitted an application on September 24, 2021 (OSHA–2006–0042–0030), to expand the recognition to include four additional test standards. This application was revised on January 18, 2022 (OSHA–2006–0042–0031) to remove one standard from the original request. This expansion covers the remaining three standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1, below, lists the appropriate test standards found in CSA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TESTS STANDARDS FOR INCLUSION IN CSA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 8800 *	Horticultural Lighting Equipment and Systems.
UL 1598C	Standard for Light Emitting Diode (LED) Retrofit Luminaire Conversion Kits.
UL 61010–2–091	Standard for Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–091: Particular Requirements for Cabinet X-Ray Systems.

* Represents the standard that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standard to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to: (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standards in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if

the test standard is for a particular type of product that another test standard also covers or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add one new test standard to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standard that is new to the NRTL Program. OSHA preliminarily determined that this test standard is an appropriate test standard and proposes to include it in the NRTL Program's List of Appropriate Test Standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—TEST STANDARD OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 8800	Horticultural Lighting Equipment and Systems.

IV. Preliminary Findings on the Application

CSA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that CSA has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of the three test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of CSA's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether CSA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2006–0042 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant CSA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on January 23, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–01780 Filed 1–27–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0039]

Standard for Process Safety Management of Highly Hazardous Chemicals; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend and revise the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard for Process Safety Management (PSM) of Highly Hazardous Chemicals.

DATES: Comments must be submitted (postmarked, sent, or received) by March 31, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2012–0039) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that employment has been tested and is in safe operating condition.

The collection of information in the standard is necessary for implementation of the requirements of the standard. The information is used by employers to ensure that processes using highly hazardous chemicals with the potential of a catastrophic release are operated as safely as possible. The employer must thoroughly consider all facets of a process, as well as the involvement of employees in that process. Employers analyze processes so that they can identify, evaluate and control problems that could lead to a major release, fire, or explosion. The major information collection requirements in this standard include: consulting with workers and their representatives on and providing them access to process hazard analyses and the development of other elements of the standard; developing a written action plan for implementation of employee participation in process hazard analyses and other elements of the standard; completing a compilation of written process safety information; performing a process hazard analysis; documenting actions taken to resolve process hazard analysis team findings and recommendations; updating, revalidating, and retaining the process hazard analysis; developing and implementing written operating procedures accessible to workers; reviewing operating procedures as often as necessary and certifying the procedures annually; developing and implementing safe work practices; preparing training records; informing contract employers of known hazards and applicable provisions of the emergency action plan; maintaining a contract worker injury and illness log; establishing written procedures to maintain the integrity of and documenting inspections and tests of process equipment; providing information on permits issued for hot work operations; establishing and implementing written procedures to manage changes; preparing reports at the conclusion of incident investigations, documenting resolutions and corrective measures, and reviewing the reports with affected personnel; establishing and implementing an emergency action plan; developing a compliance audit report and certifying compliance; and disclosing information necessary to comply with the standard to persons responsible for compiling process safety information.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment decrease of 167,171 hours from 2,492,465 hours to 2,325,294 hours. This adjustment decrease is due to a reduction in the number of new and existing establishments from 9,787 to 9,049 establishments. The agency will summarize the any comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119 and 29 CFR 1926.64).

OMB Control Number: 1218–0200.

Affected Public: Businesses or other for-profits.

Number of Respondents: 9,049.

Number of Responses: 929,528.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 2,325,294.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0039). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection

and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on January 17, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–01778 Filed 1–27–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Death Gratuity

AGENCY: Office of Workers' Compensation Programs, Division of Federal Employees', Longshore and Harbor Workers' Compensation—DFELHWC-FECA

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Death Gratuity.'' This request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 31, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Background: The information collected through Forms CA–40, CA–41 and CA–42 is used by claims examiners in OWCP to determine a person's entitlement to any or all of the death gratuity payment provided by 5 U.S.C. 8102a. The National Defense Authorization Act for Fiscal Year 2008, Public Law (Pub. L.) 110–181, was enacted on January 28, 2008. Section 1105 of Public Law 110–181 amended the Federal Employees' Compensation Act (FECA) creating a new section, 5 U.S.C. 8102a effective upon enactment. This section establishes a FECA death gratuity benefit of up to $100,000 for eligible beneficiaries of federal employees and Non-Appropriated Fund Instrumentality (NAFI) employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation. 5 U.S.C. 8102a also permits agencies to authorize retroactive payment of the death gratuity for employees who died on or after October 7, 2001, in service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. 5 U.S.C. 8102a also allows federal employees to vary the order of precedence of beneficiaries or to name alternate beneficiaries. 20 CFR 10.909 and 10.911 provides that the Forms CA–40, CA–41, and CA–42 as the forms to be used to designate beneficiaries and initiate the payment process for death gratuity benefits. See 5 U.S.C. 8145 and 8149.

Form CA–40 is an optional form that requests the information necessary from the employee to accomplish this variance and to name alternate beneficiaries only if the employee wishes to do so. Form CA–41 provides the means for those named beneficiaries and possible recipients to file claims for those benefits and requests information from such claimants so that OWCP may determine their eligibility for payment. Further, the statute and regulations require agencies to notify OWCP immediately upon the death of a covered employee. Form CA–42 provides the means to accomplish this notification and requests information necessary to administer any claim for benefits resulting from such a death. This information collection is currently approved for use through July 31, 2023. 5 CFR 1320.3(c)(3) authorizes this information collection. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0017.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL—Office of Workers' Compensation Programs.

Type of Review: Extension.

Title of Collection: Death Gratuity.

Forms: CA–40, Designation of a Recipient of the Federal Employees' Compensation Act Death Gratuity Payment under 5 U.S.C. 8102a; CA–41, Claim for Survivor Benefits Under the Federal Employees' Compensation Act Section 8102a Death Gratuity; and CA–42, Official Notice of Employees' Death for Purposes of FECA Section 8102a Death Gratuity.

OMB Control Number: 1240–0017.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1.

Frequency: On occasion.

Total Estimated Annual Responses: 1.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: .25.

Total Estimated Annual Other Cost Burden: $0.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–01779 Filed 1–27–23; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Claim for Reimbursement of Benefit Payments and Claims Expense Under the War Hazards Act (CA–278)

AGENCY: Office of Workers' Compensation Programs, Division of Federal Employees', Longshore and Harbor Workers' Compensation—DFELHWC-FECA, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Claim for Reimbursement of Benefit Payments and Claims Expense under the War Hazards Act. (CA–278)''. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 31, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

I. Background: The Office of Workers' Compensation Programs (OWCP) is the federal agency responsible for administration of the War Hazards Compensation Act (WHCA), 42 U.S.C. 1701 *et seq.* Under section 1704(a) of the WHCA, an insurance carrier or self-insured who has paid workers' compensation benefits to or on account of any person for a war-risk hazard may seek reimbursement for benefits paid (plus expenses) out of the Employment Compensation Fund of the Federal Employees' Compensation Act (FECA) at 5 U.S.C. 8147. Form CA–278 is used by insurance carriers and the self-insured to request reimbursement. The information collected is used by OWCP staff to process requests for reimbursement of WHCA benefit payments and claims expense that are submitted by insurance carriers and self-insureds. The information is also used by OWCP to decide whether it should opt to pay ongoing WHCA benefits directly to the injured worker. This information collection is currently approved for use through July 31, 2023. 5 CFR 1320.3(c)(3) authorizes this information collection. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0006.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: DOL—Office of Workers' Compensation Programs.

Type of Review: Extension.

Title of Collection: Claim for Reimbursement of Benefit Payments and Claims Expense under the War Hazards Compensation Act.

Form: CA–278.

OMB Control Number: 1240–0006.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 1,264.

Frequency: On occasion.

Total Estimated Annual Responses: 1,264.

Estimated Average Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 632.

Total Estimated Annual Other Cost Burden: $2,427.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–01781 Filed 1–27–23; 8:45 am]

BILLING CODE 4510–CH–P

OFFICE OF MANAGEMENT AND BUDGET

Notice; 2022 Statutory Pay-As-You-Go Act Annual Report

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice.

SUMMARY: This report is being published as required by the Statutory Pay-As-You-Go (PAYGO) Act of 2010. The Act requires that OMB issue an annual report and a sequestration order, if necessary.

FOR FURTHER INFORMATION CONTACT: Erin O'Brien. 202–395–3106.

SUPPLEMENTARY INFORMATION: This report can be found at *https://www.whitehouse.gov/omb/paygo/.*

Authority: 2 U.S.C. 934.

Kelly A. Kinneen,

Assistant Director for Budget.

This Report is being published pursuant to section 5 of the Statutory Pay-As-You-Go (PAYGO) Act of 2010, Public Law 111–139, 124 Stat. 8, 2 U.S.C. 934, which requires that OMB issue an annual PAYGO report, including a sequestration order if necessary, no later than 14 working days after the end of a congressional session.

This Report describes the budgetary effects of all PAYGO legislation enacted during the second session of the 117th Congress and presents the 5-year and 10-year PAYGO scorecards maintained by OMB.[1] Because neither the 5-year nor 10-year scorecard shows a debit for the budget year, which for purposes of this Report is fiscal year 2023,[2] a sequestration order under subsection 5(b) of the PAYGO Act, 2 U.S.C 934(b) is not required.

The budget year balance on each of the PAYGO scorecards is zero because the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) shifted the debits on both scorecards from fiscal year 2023 to fiscal year 2025. The change directed by Public Law 117–328 is discussed in more detail in section IV of this report.

During the second session of the 117th Congress, no laws with PAYGO effects were enacted with emergency requirements under section 4(g) of the PAYGO Act, 2 U.S.C. 933(g). Seven laws had estimated budgetary effects on direct spending and/or revenues that were excluded from the calculations of the PAYGO scorecards due to provisions excluding all or part of the law from section 4(d) of the PAYGO Act, 2 U.S.C. 933(d).

I. PAYGO Legislation With Budgetary Effects

PAYGO legislation is authorizing legislation that affects direct spending or revenues, and appropriations legislation that affects direct spending in the years after the budget year or affects revenues in any year.[3] For a more complete description of the Statutory PAYGO Act, see Chapter 8, ''Budget Concepts,'' of the *Analytical Perspectives* volume of the 2023 President's Budget, found on the website of the U.S. Government Printing Office (*https://www.govinfo.gov/app/collection/budget/2023/BUDGET-2023-PER*).

The PAYGO Act's requirement of deficit neutrality is based on two scorecards that tally the cumulative budgetary effects of PAYGO legislation as averaged over rolling 5- and 10- year periods starting with the budget year. The 5-year and 10-year PAYGO scorecards for each congressional session begin with the balances of costs or savings carried over from previous sessions and then tally the costs or savings of PAYGO laws enacted in the most recent session.

The 5-year PAYGO scorecard for the second session of the 117th Congress began with balances of $741,265 million in 2023 and $370,633 million per year for 2024–2026. The 10-year PAYGO scorecard for the second session of the 117th Congress began with balances of $374,039 million in 2023 and $187,020 million per year for 2024–2031.

Laws enacted during the second session of the 117th Congress created balances on the 5- and 10-year scorecards of $72,505 million and $55,709 million in each year, respectively. Public Law 117–328 shifted the fiscal year 2023 debits on both scorecards to fiscal year 2025. Therefore, the 2023 balance on both the 5- and 10-year scorecards is zero. There are balances on the 5-year scorecard of $443,138 million in 2024, $1,256,908 million in 2025, $443,138 million in 2026, and $72,505 million in 2027. There are balances on the 10-year scorecard of $242,729 million in 2024, $672,477 million in 2025, $242,729 million per year for 2026–2031, and $55,709 million in 2032.

In the second session of the 117th Congress, 55 laws were enacted that were determined to constitute PAYGO legislation. Of the 55 enacted PAYGO laws, 15 laws were estimated to have PAYGO budgetary effects (costs or savings) in excess of $500,000 over one or both of the 5-year or 10-year PAYGO windows. These were:

- Public Law 117–103, Consolidated Appropriations Act, 2022;
- Public Law 117–108, Postal Service Reform Act of 2022;
- Public Law 117–109, Ending Importation of Russian Oil Act;
- Public Law 117–110, Suspending Normal Trade Relations with Russia and Belarus Act;
- Public Law 117–128, Additional Ukraine Supplemental Appropriations Act, 2022;
- Public Law 117–139, RECA Extension Act of 2022;
- Public Law 117–158, Keep Kids Fed Act of 2022;
- Public Law 117–160, Formula Act;
- Public Law 117–168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022;
- Public Law 117–169, To provide for reconciliation pursuant to title II of S.

[1] This report encompasses laws enacted between January 3, 2022 at noon and January 3, 2023 at 11:57 a.m. (Pub. L. 117–82 through Pub. L. 117–328).

[2] References to years on the PAYGO scorecards are to fiscal years.

[3] Provisions in appropriations acts that affect direct spending in the years after the budget year (also known as ''outyears'') or affect revenues in any year are considered to be budgetary effects for the purposes of the PAYGO scorecards except if the provisions produce outlay changes that net to zero over the current year, budget year, and the four subsequent years. As specified in section 3 of the PAYGO Act, off-budget effects are not counted as budgetary effects. Off-budget effects refer to effects on the Social Security trust funds (Old-Age and Survivors Insurance and Disability Insurance) and the Postal Service.

Con. Res. 14 (Inflation Reduction Act);

- Public Law 117–172, Public Safety Officer Support Act of 2022;
- Public Law 117–180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023;
- Public Law 117–225, First Responder Fair Return for Employees on Their Initial Retirement Earned Act;
- Public Law 117–263, James M. Inhofe National Defense Authorization Act for Fiscal Year 2023; and
- Public Law 117–328, Consolidated Appropriations Act, 2023.

In addition to the laws identified above, 40 laws enacted in this session were estimated to have negligible budgetary effects on the PAYGO scorecards—costs or savings of less than $500,000 over both the 5-year and 10-year PAYGO windows.

II. Budgetary Effects Excluded From the Scorecard Balances

A. Legislation Designated as Emergency Requirements

No laws were enacted in the second session of the 117th Congress with an emergency designation under the Statutory PAYGO Act.

B. Statutory Provisions Excluding Legislation From the Scorecards

Seven laws enacted in the second session of the 117th Congress had estimated budgetary effects on direct spending and revenues that were excluded from the calculations for the PAYGO scorecards due to provisions in law excluding all or part of the law from section 4(d) of the PAYGO Act.

All of the budgetary effects in 4 laws were excluded from the scorecards:

- Public Law 117–86, Further Additional Extending Government Funding Act;
- Public Law 117–159, Bipartisan Safer Communities Act;
- Public Law 117–264, Further Additional Continuing Appropriations and Extensions Act, 2023; and
- Public Law 117–167, Making appropriations for Legislative Branch for the fiscal year ending September 30, 2022, and for other purposes.

In addition, certain portions of the budgetary effects in 3 laws were excluded from the scorecards:

- Public Law 117–103, Consolidated Appropriations Act, 2022;
- Public Law 117–229, Further Continuing Appropriations and Extensions Act, 2023; and
- Public Law 117–328, Consolidated Appropriations Act, 2023.

III. PAYGO Scorecards

BILLING CODE 3110–01–P

BILLING CODE 3110–01–C

IV. Legislative Revisions to the PAYGO Scorecards

Section 1001(d)(1) of division O of Public Law 117–328, the Consolidated Omnibus Appropriations Act, 2023, states, "For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of

STATUTORY PAY-AS-YOU-GO SCORECARDS

(In millions of dollars; negative amounts portray decreases in deficits)

	2023	2024	2025	2026	2027
Second Session of the 117th Congress	72,505	72,505	72,505	72,505	72,505
Balances from Previous Sessions	741,265	370,633	370,633	370,633	0
Change in balances pursuant to Sec. 1001(d)(1) of Division O of P.L. 117-328	-813,770	0	813,770	0	0
5-year PAYGO Scorecard	0	443,138	1,256,908	443,138	72,505

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Second Session of the 117th Congress	55,709	55,709	55,709	55,709	55,709	55,709	55,709	55,709	55,709	55,709
Balances from Previous Sessions	347,039	187,020	187,020	187,020	187,020	187,020	187,020	187,020	187,020	0
Change in balances pursuant to Sec. 1001(d)(1) of Division O of P.L. 117-328	-429,748	0	429,748	0	0	0	0	0	0	0
10-year PAYGO Scorecard	0	242,729	672,477	242,729	242,729	242,729	242,729	242,729	242,729	55,709

the second session of the 117th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecards in 2023 and added to such scorecards in 2025.'' Accordingly, both the 5- and 10-year scorecards deduct the debit from 2023 and add that debit to 2025.

Section 1001(d)(2) of division O of Public Law 117–328 directs that, at the end of the first session of the 118th Congress, any debits on the scorecards in 2024 be deducted from 2024 and added to 2025. That action will be reflected in next year's report if such debits exist.

V. Sequestration Order

As shown on the scorecards, the budgetary effects of PAYGO legislation enacted in the second session of the 117th Congress, combined with section 1001(d)(1) of division O of Public Law 117–328, resulted in no costs on either the 5-year or the 10-year scorecard in the budget year, which is 2023 for the purposes of this Report. Because the costs for the budget year, as shown on the scorecards, were set to zero for the budget year, there is no ''debit'' on either scorecard under section 3 of the PAYGO Act, 2 U.S.C. 932, and a sequestration order is not required.[4]

[FR Doc. 2023–01771 Filed 1–27–23; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–001]

New Conflict of Interest and Conflict of Commitment Policy for Recipients of NASA Financial Assistance Awards

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comment.

SUMMARY: To address undue foreign influence in NASA-supported research and ensure responsible stewardship of taxpayer dollars, NASA has developed a new conflict of interest (COI) and conflict of commitment (COC) disclosure policy and an associated term and condition applicable to entities implementing NASA financial assistance awards (*i.e.,* grants or cooperative agreements). Grants Policy and Compliance (GPC) in NASA's Office of Procurement is soliciting public comment on the Agency's proposed policy and term and condition. After obtaining and considering public comment, it is NASA's intention to implement the new policy and term and condition through a revision to the NASA *Grant and Cooperative Agreement Manual* (GCAM).

DATES: Comments must be received by March 1, 2023.

ADDRESSES: Please address comments to Christopher Murguia, Senior Analyst, National Aeronautics and Space Administration Headquarters, 300 E Street SW, Rm. 5L32, Washington, DC 20546; telephone 202–909–5918; or email *christopher.e.murguia@nasa.gov*. We encourage respondents to submit comments via email to ensure timely receipt. We cannot guarantee that mailed comments will be received before the comment closing date. Please include ''COI/COC Policy'' in the subject line of email messages.

FOR FURTHER INFORMATION CONTACT: Christopher Murguia, email: *christopher.e.murguia@nasa.gov*; telephone 202–909–5918.

SUPPLEMENTARY INFORMATION: In response to U.S. Government Accountability Office (GAO) recommendations in the report GAO–21–130 *Federal Research: Agencies Need to Enhance Policies to Address Foreign Influence,* NASA is taking steps to address undue foreign influence in research and ensure responsible stewardship of taxpayer dollars. NASA is proposing a new policy that requires financial assistance award recipients to (1) maintain written and enforced policies that require covered individuals to disclose COI and COC to the recipient entity; (2) eliminate or, where appropriate, manage or reduce the disclosed conflict; and (3) disclose to NASA any conflict that cannot be eliminated, managed, or reduced. NASA's policy also describes how the Agency will address disclosures and the enforcement actions the Agency may take if a covered individual knowingly fails to disclose required information. The policy is accompanied by a term and condition requiring award recipients to comply with the COI and COC disclosure requirements that will be placed into all NASA financial assistance awards after the policy is implemented.

The policy will be implemented as a revision to GCAM section 3.3, Conflicts of Interest Policy, and the term and condition will be implemented as an addition to NASA's standard grant and cooperative agreement terms and conditions template located in GCAM, Appendix D, Award Terms and Conditions. The full text of the policy and term and condition is provided below.

The GCAM, section 3.3, Conflicts of Interest Policy, will be revised in its entirety as follows:

[Begin Provision]

1. For the purposes of section 3.3, the following definitions apply:

a. The term ''conflict of interest,'' or ''COI,'' means a situation in which an individual, or the individual's spouse or dependent children, has a significant financial interest or financial relationship, whether with a domestic or foreign entity, that could directly and significantly affect the design, conduct, reporting, or funding of research or other award-related activities. Examples of potential COI include, but are not limited to, holding an executive position, director position, or equity over a certain dollar amount in a company that stands to benefit from award-related activities, receiving financial compensation in the form of consulting payments or payment for services from a company that stands to benefit from award-related activities, or intellectual property rights or royalties from such rights whose value may be affected by the outcome of award-related activities.

b. The term ''conflict of commitment,'' or ''COC,'' means a non-financial conflict of interest in which an individual accepts or incurs conflicting obligations, whether domestic or foreign, between or among multiple employers or other entities. COC includes conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies or commitments. COC also includes obligations to improperly share information with, or to withhold information from, an employer or NASA, as well as other conflicting obligations that threaten research security and integrity. Examples of potential COC include, but are not limited to, current or pending employment; positions, appointments, or affiliations such as titled academic, professional, or institutional appointments, whether remuneration is received and whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary positions); and participation in or applications to foreign government-sponsored talent recruitment or similar programs.

[4] Sequestration reductions pursuant to the Balanced Budget and Deficit Control Act (BBEDCA) Section 251A for 2023 were calculated and ordered in a separate report and are not affected by this determination. See: *https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA_251A_Sequestration_Report_FY2023.pdf.*

c. The term ''covered individual'' means an individual who (a) contributes in a substantive, meaningful way to the scientific development or execution of a project proposed to be carried out with an award from a Federal research agency and (b) is designated as a covered individual by the Federal research agency concerned. NASA designates as covered individuals any principal investigator (PI), project director (PD), co-principal investigator (Co-PI), co-project director (Co-PD), and/or any other person listed as a team member in Section VI, Team Members, of the Cover Page for Proposal Submitted to the National Aeronautics and Space Administration (form NRESS–300).

2. All NASA grant and cooperative agreement recipients shall maintain a written and enforced policy addressing actual, apparent, and potential COI and COC, both foreign and domestic. A prime or pass-through award recipient shall be responsible for ensuring that its subrecipients, if any, follow the requirements of this section.

a. Each recipient entity's policy shall designate an official(s) to solicit and review COI and COC disclosures from each covered individual who is planning to participate in, or is participating in, a NASA-funded award. The designated official(s) shall review all covered individuals' disclosures; determine whether an actual, apparent, or potential COI or COC exists; and, if so, determine the actions that have been and shall be taken to eliminate or, where appropriate, manage or reduce the conflict. Examples of conditions or restrictions that a recipient or subrecipient might impose to manage, reduce, or eliminate a conflict include, but are not limited to:

i. Public disclosure of the COI or COC;

ii. Monitoring of research by independent evaluators;

iii. Modification of the research plan;

iv. Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the NASA-funded activity;

v. Divestiture of significant financial interests that create the COI or COC (*e.g.,* sale of an equity interest); or

vi. Severance of relationships that create the COI or COC.

b. The entity's policy shall ensure that covered individuals have provided all required disclosures to the entity at the time a proposal is submitted to NASA. It shall also require that covered individuals update those disclosures on an annual basis or as soon as any new actual, apparent, or potential COI or COC arises. The policy shall include adequate enforcement mechanisms and provide for sanctions where appropriate.

3. Consistent with title 2 of the Code of Federal Regulation (CFR) 200.112, Conflict of interest, an entity applying for or currently receiving NASA grant or cooperative agreement funding shall disclose to NASA in writing any actual, apparent, or potential COI or COC if such conflict cannot be eliminated or appropriately managed or reduced in accordance with the entity's policy. In addition, such entity shall disclose to NASA in writing any actual, apparent, or potential COI or COC involving any foreign governments, their instrumentalities, or any other entities owned, funded, or otherwise controlled by a foreign government, as well as any measures the entity has taken to eliminate or, where appropriate, manage or reduce the COI or COC.

a. An entity currently implementing a NASA grant or cooperative agreement shall disclose via email the actual, apparent, or potential conflict to the cognizant NASA Grant Officer and Technical Officer listed on their award. If an award recipient needs to correct inaccurate or incomplete COI or COC disclosures, they shall inform the cognizant NASA Grant Officer and Technical Officer listed on their award via email as soon as possible.

b. An entity applying for a NASA grant or cooperative agreement shall clearly and explicitly disclose the conflict in its proposal. If an applicant needs to correct inaccurate or incomplete COI or COC disclosures in a submitted proposal, they shall inform the NASA technical point of contact listed in the relevant Notice of Funding Opportunity via email as soon as possible.

4. When an entity discloses to NASA a COI or COC that cannot be eliminated, managed, or reduced, the cognizant Grant Officer (if the conflict pertains to an active award) or program official (if the conflict pertains to a proposal that is under consideration), or one of their delegates, will report the conflict to OGC as follows:

a. For disclosures pertaining to active awards, the Grant Officer will report the conflict to the NASA Shared Services Center's (NSSC) Office of the General Counsel (OGC) and copy the award's Technical Officer. The NSSC OGC will then inform HQ OGC of the reported conflict. In consultation with OGC, the Grant Officer must assess whether the circumstances disqualify an entity or individual from holding the award and adhere to the policy in paragraph (i) below if enforcement or other actions are necessary.

i. If a Grant Officer must take enforcement or other actions after conducting the review described above, then they will do so in accordance with the remedies for noncompliance and termination provisions in 2 CFR 200.339 through 200.343. Remedies for noncompliance include but are not limited to, temporarily withholding payment, disallowing all or part of the cost of an award activity, wholly or partly suspending or terminating the award, initiating referrals for consideration of suspension or debarment proceedings, and withholding further Federal awards.

ii. A Grant Officer intending to take enforcement or other action per paragraph (i) above will notify each entity subject to such action about the specific reason for the action and will adhere to the requirements in GCAM section 7.13, Appealing a Suspended or Terminated Award, as necessary.

b. For disclosures pertaining to proposals under consideration, the program official must report the conflict to the appropriate OGC. In consultation with OGC, the program official will assess whether the circumstances disqualify an entity or individual from participating in the competition for award and reject the proposal if necessary.

i. A program official intending to take enforcement action per paragraph (b) above will notify each entity subject to such action about the specific reason for the action and will adhere to the requirements in GCAM section 7.13, Appealing a Suspended or Terminated Award, as necessary.

c. When an entity discloses to NASA that it has a foreign government COI or COC, as directed above, the cognizant Grant Officer (if the conflict pertains to an active award) or program official (if the conflict pertains to a proposal that is under consideration), or one of their delegates, must assess and determine whether the circumstances should disqualify the entity from continuing to hold the award or participating in the competition for award. This determination is to be made by the relevant Grant Officer or program official in consultation with OGC and the NASA Office of International and Interagency Relations (OIIR), as appropriate. If NASA determines that an applicant or recipient will be disqualified from participating in a competition for award or continuing to hold an award due to a foreign government conflict, then NASA will offer the applicant or recipient an opportunity to address the conflict or affiliation prior to removing a proposal

from consideration or taking action on an award.

d. If fraud, misrepresentation, or related misconduct is suspected in relation to any disclosure submitted to NASA, then the Grant Officer or program official also will refer the matter to the NASA Office of Inspector General (OIG) and the OGC Acquisition Integrity Program.

5. Enforcement.

a. If a covered individual knowingly fails to disclose required information, NASA may take one or more of the following enforcement or other actions:

i. Reject a proposal,

ii. Suspend or terminate an award,

iii. Temporarily or permanently discontinue any or all funding for the covered individual or entity,

iv. Refer recipients for consideration of suspension or debarment proceedings;

v. Refer the failure to disclose to the NASA OIG for further investigation or to Federal law enforcement authorities to determine whether any criminal or civil laws were violated;

vi. Report the entity in the Contractor Performance Assessment Reporting System (CPARS) to alert other Federal agencies to the noncompliance;

vii. Take one or more of the actions described in 2 CFR 200.339, Remedies for noncompliance; or

viii. Take such other actions against the covered individual or entity as authorized under applicable law or regulations.

b. If an enforcement or other action is necessary, NASA will adhere to the regulations in 2 CFR 200.340, Termination; § 200.341, Notification of termination requirement; and § 200.342, Opportunities to object, hearings, and appeals.

[End Provision]

The GCAM, Appendix D, Award Terms and Conditions, will be revised to include the following:

[Begin Provision]

D39. Disclosure Requirements

(a) All NASA grant and cooperative agreement recipients shall comply with the conflict of interest and conflict of commitment disclosure requirements in section 3.3, Conflicts of Interest Policy, of the NASA *Grant and Cooperative Agreement Manual* (GCAM).

[End Provision]

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2023–00890 Filed 1–27–23; 8:45 am]

BILLING CODE 7510–13–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Thursday, February 9, 2023, at 9:00 a.m.; Thursday, February 9, 2023, at 4:00 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Thursday, February 9, 2023, at 9:00 a.m.–Closed. Thursday, February 9, 2023, at 4:00 p.m.–Open.

MATTERS TO BE CONSIDERED:

Thursday, February 9, 2023, at 9:00 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Executive Session.
4. Administrative Items.

Thursday, February 9, 2023, at 4:00 p.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of the Minutes.
4. Committee Reports.
5. Quarterly Financial Report.
6. Quarterly Service Performance Report.
7. Approval of Tentative Agenda for May 9 Meeting.

A public comment period will begin immediately following the adjournment of the open session on February 9, 2023. During the public comment period, which shall not exceed 45 minutes, members of the public may comment on any item or subject listed on the agenda for the open session. Registration of speakers at the public comment period is required. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at *https://www.surveymonkey.com/r/BOG-02-09-2023.* No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Registration for the public comment period, either in person or via teleconference, will end on February 7 at noon ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2023–01949 Filed 1–26–23; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96744; File No. SR–BOX–2023–04]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Limited Liability Company Agreement, in Connection With the Name Change of Unit Holder and Make Conforming Changes to the Amended and Restated Limited Liability Company Agreement of Its Facility BOX Market LLC

January 24, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2023, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Limited Liability Company Agreement (the ''Exchange LLC Agreement''), in connection with the name change of Unit Holder. Lastly, the Exchange proposes to make conforming changes to the Amended and Restated Limited Liability Company Agreement of its facility BOX Market LLC Agreement (the ''Market LLC Agreement''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to reflect in the Exchange's governing documents changes to the corporate structure of an Exchange Unit Holder—MX US 2, Inc. (''MX US 2''). Specifically, on December 15, 2022, MX US 2 Inc. converted from a Delaware Corporation to a Delaware Limited Liability Company and is now known as MX US 2 LLC. The Exchange intends for these changes to be effective upon filing.

As proposed, all references to MX US 2, Inc. will be deleted and revised to state the new name, MX US 2 LLC. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3).

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[3] in general, and section 6(b)(5) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(1)[5] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associate with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that the Exchange and Market LLC Agreements accurately reflect the new legal name of a Unit Holder, the proposed rule change would reduce potential investor or market participant confusion.

Further, the Exchange believes that the changes to the Exchange and Market LLC Agreements would 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 because the change would accurately reflect the new legal name of a Unit Holder, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Exchange and Market LLC Agreements documents to reflect the change in name of a Unit Holder.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because the proposed change seeks to accurately reflect the new legal name of a Unit Holder which could, in turn, reduce any potential investor confusion. For this reason, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2023–04 on the subject line.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(1).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2023–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2023–04 and should be submitted on or before February 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01746 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96742; File No. SR–CBOE–2023–007]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule

January 24, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with certain surcharges, the S&P 500 Index (''SPX'') options and SPX weekly (''SPXW'') options Lead Market Maker (''LMM'') Incentive Programs, and footnote 49 related to transaction fees in Mini-SPX Index (''XSP'') options.[3]

First, the Exchange proposes to increase the Index License Surcharge applicable to orders executed MSCI Emerging Markets Index (''MXEF'') options and MSCI EAFE Index (''MXEA'') options (collectively, ''MSCI options'') in Rate Table—All Products Excluding Underlying Symbol List and to orders executed in A SPX (including SPXW) options in Rate Table—Underlying Symbol List A. Specifically, the Exchange currently assesses an Index License Surcharge fee of $0.18 per contract for non-Customer orders executed in SPX/SPXW and an Index License Surcharge of $0.12 per contract for non-Customer orders executed in MSCI options. The proposed rule change increases the Index License Surcharge fee applicable to orders executed in SPX/SPXW from $0.18 per contract to $0.20 per contract and the Index License Surcharge fee applicable to orders executed in MSCI options from $0.12 to $0.15. The Exchange notes that the Index License Surcharge fees in place for SPX/SPXW and MSCI options are designed to recoup some of the costs associated with the licenses for these indexes.[4] The cost of the license however still works out to more than the current SPX/SPXW and MSCI Index License Surcharge fees and the Exchange therefore proposes changes to the current Index License Surcharge fees for SPX/SPXW and MSCI options in order to continue to offset some of the costs associated with the licenses for these indexes.

The Exchange proposes to next adopt a Floor Broker Solicitation Surcharge Fee in Rate Table—Underlying Symbol List A of the Fees Schedule. Specifically, the Exchange proposes to assess $0.15 per contract which would apply to solicited SPX and SPXW orders where one side is a Customer and both

[3] The Exchange initially filed the proposed fee changes on January 3, 2023 (SR–CBOE–2023–003). On January 17, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] *See* Securities Exchange Release Nos. 74854 (April 30, 2015), 80 FR 26124 (May 6, 2015) (SR–CBOE–2015–041); and 74422 (March 4, 2015), 80 FR 12680 (March 10, 2015) (SR–CBOE–2015–020).

sides are crossed in open outcry by the same Floor Broker (*i.e.,* the executing Floor Broker acronym is the same on both the buy and sell side of the order). The surcharge fee will be assessed to the EFID of the buy (sell) side contra to the Customer sell (buy) side of the order. The proposed surcharge fee will not apply to customer-to-customer orders, facilitation orders, solicited orders executed as part of a box or jelly roll strategy or as a FLEX transaction. ''Facilitation orders'' for this purpose are defined as any order in which a Clearing Trading Permit Holder (''F'' capacity code) or Non-Trading Permit Holder Affiliate (''L'' capacity code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the transaction for open outcry following any post-trade changes made on the trade date. The proposed rule change appends footnote 40 to the line item containing the proposed Floor Broker Solicitation Surcharge Fee. Proposed footnote 40 will describe the proposed surcharge and exceptions. Over the past year, the Exchange has observed an increase in solicitations in SPX/SPXW by Floor Brokers in open outcry. A solicited order represented by a Floor Broker may receive certain participation advantages, including priority status.[5] Additionally, the Exchange notes that solicited orders represented by a Floor Broker may originate from off-floor participants, who do not pay for a Floor Permit or other floor related facility fees as on-floor participants do. The proposed surcharge fee therefore only applies to solicited orders as to not discourage non-solicited participants on the trading floor from continuing to submit bids and offers in response to orders represented by Floor Brokers on the trading floor. As such, the proposed surcharge fee aims to balance incentives between the provision of solicited orders via a Floor Broker, which may originate from off-floor participants, and the provision of non-solicited responses originating from market participants on the trading floor, which the Exchange believes will maintain robust hybrid markets and continue to incentivize the provision of liquidity to its trading floor environment in order to support price discovery and increased execution opportunities in SPX/SPXW on the Exchange's trading floor to the benefit of all market participants.

Next, the Exchange proposes to amend its SPX/SPXW LMM Incentive Programs during the Global Trading Hours (''GTH'') session. In particular, the Exchange offers, among other LMM incentive programs, a GTH1 SPX/SPXW LMM Incentive Program that applies during GTH from 7:15 p.m. CST to 2:00 a.m. CST (''GTH1'') and a GTH2 SPX/SPXW LMM Incentive Program that apply during GTH from 2:00 a.m. CST to 8:15 a.m. CST (''GTH2''). The Exchange notes that these LMM incentive programs in the Fees Schedule provide a rebate to Trading Permit Holders (''TPHs'') with LMM appointments that meet certain quoting standards in SPX/SPXW in a month during GTH. The Exchange notes that meeting or exceeding the quoting standards in SPX/SPXW to receive the applicable rebates (as currently offered and as proposed; described in further detail below) is optional for an LMM appointed to one of the SPX/SPXW LMM Incentive Programs. Rather, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards (as currently offered and as proposed; described in further detail below), which the Exchange believes encourages an LMM to provide liquidity in the applicable program's products during GTH. The Exchange may consider other exceptions to the program's quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to a GTH1 SPX/SPXW or GTH2 SPX/SPXW incentive program meets the applicable program's quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of series.

Currently, an LMM appointed to one of the GTH SPX/SPXW LMM Incentive Programs must provide continuous electronic quotes during GTH1 or GTH2, as applicable, that meet or exceed the quoting standards set forth in the Fees Schedule in at least 85% of each of the SPX and SPXW series, 90% of the time in a given month, in order to receive a rebate for that month in the amount of $15,000 for SPX and $35,000 for SPXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. The Exchange now proposes to combine the quoting requirements for SPX and SPXW and provide a single, instead of separate, rebate for meeting or exceeding the quoting standards. Specifically, in order to receive the proposed rebate during GTH1 and/or GTH2, an LMM no longer must meet the quoting standards in each of SPX and SPXW, but rather meet the quoting standard across both classes. As proposed, the SPX/SPXW LMM Incentive Program would provide a rebate of $40,000 to LMMs that meet the quoting standards during GTH1 and/or GTH2 in the collective SPX and SPXW series. The Exchange notes that no changes are being made to the quoting standards under the GTH1 or GTH2 SPX/SPXW LMM Incentive Program.

Finally, the Exchange proposes to delete Footnote 49 from the Fees Schedule. Currently, pursuant to Footnote 49, transaction fees for Market-Maker orders in the XSP options are waived through December 31, 2022. The waiver was designed to encourage additional Market-Maker order flow in XSP options during the fourth calendar quarter of 2022. Therefore, as the waiver has expired and is no longer applicable, the Exchange proposes to remove Footnote 49 from the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to increase the amount of the Index License Surcharge fees for orders in SPX/SPXW and MSCI options as the proposed increases are consistent with the purpose of such surcharge fees as they are intended to continue to help recoup some of the costs associated with

[5] As of January 3, 2023, the open outcry entitlement for solicitations in SPX and SPX is 40% in accordance with Exchange Rule 5.87(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

the license for such products in light of recently renewed license arrangements between the Exchange and the applicable index providers. The proposed Index License Surcharge fees are also equitable and not unfairly discriminatory because the surcharge fees will continue to be assessed uniformly for all non-Customer orders in SPX/SPXW and MSCI options.

The Exchange believes the proposed Floor Broker Solicitation Surcharge Fee is equitable and reasonable. The proposed surcharge fee is within the range of the existing surcharge fees in place for various orders in SPX/SPXW.[9] Further, as described above, the Exchange believes that the proposed surcharge fee is reasonably designed to not discourage non-solicited market participants on the Exchange's trading floor from continuing to provide bids and offers in response to orders represented by Floor Brokers, particularly in light of the recent influx of solicited order executions (which are represented by Floor Brokers and may originate from off-floor participants) in SPX/SPXW in open outcry. More specifically, the Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory as solicited orders represented by Floor Brokers may receive certain participation advantages, including priority status that non-solicited market participants on the Exchange's trading floor do not.[10] Additionally, as noted above, solicited orders represented by a Floor Broker may originate from off-floor participants, who do not pay for a Floor Permit or other floor related facility fees as on-floor participants do. The Exchange believes that the proposed surcharge fee will therefore not preclude economic opportunities for non-solicited participants on the trading floor to continue to, and potentially increase, bids and offers in response to SPX/SPXW orders represented by a Floor Broker. As such, the proposed surcharge fee aims to balance incentives between the provision of solicited orders and the provision of non-solicited responses originating from market participants on the trading floor, which the Exchange believes will maintain robust hybrid markets and continue to encourage the provision of liquidity, execution opportunities, and improved pricing opportunities in SPX/SPXW on the Exchange's trading floor to the benefit of all market participants. The Exchange notes that it is reasonable, equitable and not unfairly discriminatory to not assess the proposed surcharge fee to solicited customer-to-customer orders, facilitation orders, or solicited orders that are executed as part of a box or jelly roll strategy or as a FLEX transaction (pursuant to proposed footnote 40). The Exchange notes that with respect to not assessing the proposed surcharge to Customer-to-Customer orders, there is a history in the options markets of providing preferential treatment to customers and customer order flow attracts additional liquidity to the Exchange, providing market participants with more trading opportunities and signaling an increase in Market-Maker activity, which facilitates tighter spreads. This may cause an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem. The Exchange believes it's equitable and not unfairly discriminatory to exclude solicitation orders executed as part of a box or jelly roll strategy or as a FLEX transaction as such orders do not generally receive the same participant advantages as solicited orders that are not otherwise a part of complex strategies and FLEX transactions. Further, the Exchange does not wish to discourage the user of such orders. The Exchange also believes its equitable and not unfairly discriminatory to exclude facilitation orders as the Exchange recognizes that Firms are acting as important sources of liquidity in these instances by facilitating their own customers' trading activity and the Exchange does not wish to assess such orders an additional surcharge. The Exchange believes the proposed surcharge fee generally is equitable and not unfairly discriminatory as the proposed surcharge fee will otherwise apply uniformly to all solicited orders in SPX/SPXW where one side is a Customer and where the order was represented by the same Floor Broker and executed in open outcry.

Regarding the SPX/SPXW LMM Incentive Programs, generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to continue to offer these financial incentives, including as amended, to LMMs appointed to the programs, because it benefits all market participants trading in SPX/SPXW during GTH. These incentive programs encourage LMMs appointed to such programs to satisfy the applicable quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade SPX/SPXW options, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Programs, as amended, to sufficiently incentivize LMMs appointed to the programs to provide key liquidity and active markets in the program's products during the corresponding trading sessions. The Exchange believes that these incentive programs, as amended, will continue to encourage increased quoting to add liquidity in SPX and SPXW during GTH, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity).

The Exchange believes that the proposed change to the rebates under the SPX/SPXW GTH LMM Programs is reasonable as a SPX GTH LMMs will still be eligible to receive the proposed financial payment (albeit at a slightly lesser amount and across both SPX and SPXW). The Exchange believes that, even as amended, the SPX/SPXW GTH LMM Incentive Programs are reasonably designed to incentivize an appointed LMM to meet the applicable quoting standards for SPX/SPXW options during GTH, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants. Further, the Exchange believes the monthly payment continues to be commensurate with the heightened quoting standard, even as amended. Further, the Exchange believes the proposed rebates applicable to the GTH SPX/SPXW LMM Incentive Programs are equitable and not unfairly discriminatory because they will continue to apply equally to any TPH that is appointed as an LMM to the GTH1 and GTH2 SPX/SPXW LMM Incentive Program. Additionally, the Exchange notes if an LMM appointed to either of the GTH SPX/SPXW LMM Incentive Programs does not satisfy the corresponding quoting standards for any given month, then it simply will not receive the rebate offered by the program for that month.

The Exchange believes that the proposed rule change to eliminate the waiver for Market-Maker XSP orders executed during GTH is reasonable as

[9] *See e.g.,* Cboe Options Fees Schedule, Rate Tables.

[10] As of January 3, 2023, the open outcry entitlement for solicitations in SPX and SPX is 40% in accordance with Exchange Rule 5.87(f).

the waiver is no longer applicable and was set to expire on December 31, 2022. Eliminating the now obsolete waiver language from the Fees Schedule avoids potential confusion. The proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all Market-Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes in connection with License Index Surcharges fees will impose any burden on intramarket competition because each applies uniformly to all similarly situated TPHs in a uniform manner (*i.e.,* to all non-Customer executions in SPX/SPXW or MSCI options). The Exchange does not believe that the proposed rule changes in connection with the Floor Broker Solicitation Surcharge will impose any burden on intramarket competition because it applies uniformly to all similarly situated market participants in a uniform manner. Additionally, the proposed changes to the existing GTH SPX/SPXW LMM Incentive Programs will apply to all LMMs appointed to the either of the programs in a uniform manner. To the extent these LMMs appointed to an incentive program receive a benefit that other market participants do not, as stated, these LMMs in their role as Mark-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month that it needs to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity). The Exchange also notes that the incentive programs are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity. Finally, the Exchange does not believe that the proposed rule change to remove Footnote 49 will impose any burden on intramarket competition because it simply removes a reference to a waiver that is expired and thus no longer applicable.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed amendments to the surcharges, LMM Incentive Programs, and standard applicable transaction fees for XSP during GTH apply only to Exchange proprietary products, which are traded exclusively on Cboe Options.

Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 19% of the market share.[11] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[13] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [14] and paragraph (f) of Rule 19b–4 [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2023–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[11] See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (December 20, 2022), available at *https://www.cboe.com/us/options/market_statistics/*.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[13] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–CBOE–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2023–007 and should be submitted on or before February 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01744 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 2, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 26, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–01972 Filed 1–26–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Advisers Act Release No. 6224/File No. 803–00248]

AEW Capital Management, L.P.

January 24, 2023.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the ''Act'') and rule 206(4)–5(e) under the Act.

Applicant: AEW Capital Management, L.P. (''Applicant'' or ''Adviser'')

Summary of Application: Applicant requests that the Commission issue an order under section 206A of the Act and rule 206(4)–5(e) under the Act exempting them from rule 206(4)–5(a)(1) under the Act to permit Applicant to receive compensation from a government entity for investment advisory services provided to the government entity within the two-year period following a contribution by a covered associate of Applicant to an official of the government entity.

Filing Dates: The application was filed on July 28, 2022, and an amended and restated application was filed on September 28, 2022.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 21, 2023 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicant: AEW Capital Management, L.P., Two Seaport Lane, Boston, MA 02210–2021.

FOR FURTHER INFORMATION CONTACT: Juliet Han, Attorney-Adviser, at (202) 551–5213 or Kyle R. Ahlgren, Branch Chief, at (202) 551–6857 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website at *http://www.sec.gov/rules/iareleases.shtml* or by calling (202) 551–8090.

Applicant's Representations

1. Applicant is a Delaware limited partnership registered with the Commission as an investment adviser under the Act. Applicant provides discretionary investment advisory services relating to direct and indirect investments in real estate and real estate related services including providing

[16] 17 CFR 200.30–3(a)(12).

discretionary investment advisory services to private funds (the ''Funds'').

2. The individual who made the campaign contribution that triggered the two-year compensation ban (the ''Contribution'') is Lauren O'Neill Goff (the ''Contributor''). At the time of the Contribution, the Contributor was a senior managing director and co-head of the Boston office for Jones Lang LaSalle Incorporated (''JLL''), a real estate firm that provides leasing, property and integrated facility management, and capital market services. The Contributor was not a covered associate, and she did not provide services to the Adviser at the time of the Contribution. The Contributor was offered employment by the Adviser on October 26, 2021 to serve as chief operating officer of the Adviser's private equity group. The COO role for which the Contributor was hired includes overseeing the Adviser's asset management and reporting finance teams and evaluating, establishing and monitoring operational standards for the Adviser's private equity platform. Although the Contributor was not hired to be a marketer, her role would ordinarily require attending diligence meetings with current and prospective investors and participating in efforts to increase and maintain capital commitments to the Adviser's Funds. Since joining the Adviser, the Contributor has not solicited government entities. The Contributor is not responsible for overseeing the Adviser's business development function, but members of her team do participate in solicitation meetings from time to time. Since starting employment with the Adviser on January 24, 2022, the Contributor has assumed an executive officer position. As such, the Contributor is a covered associate as defined in rule 206(4)–5(f)(2)(i).

3. An investor in the Funds is a public pension plan identified as a government entity, as defined in rule 206(4)–5(f)(5)(ii), with respect to the City of Boston (the ''Client'').

4. The recipient of the Contribution was Kim Janey (the ''Recipient''), a Boston city council member who, at the time of the Contribution, was acting mayor of Boston and a candidate for re-election as mayor. The investment decisions for the Client, including the hiring of an investment adviser, are overseen by a five-member board, with two mayoral appointments. Due to the mayor's power of appointment, a candidate for mayor such as the Recipient is an ''official'' of the Client as defined in rule 206(4)–5(f)(6)(ii). The Contribution that triggered rule 206(4)–5's prohibition on compensation under rule 206(4)–5(a)(1) was made on July 23, 2021, for the amount of $1,000. The Recipient called the Contributor directly to solicit the donation in question and to ask her to host an event. The Contributor declined to host an event, but made a contribution. As a resident of Boston, the Contributor decided to make the Contribution based on her having a legitimate personal interest in the outcome of the campaign. Applicant represents that the Contributor had no intention of soliciting investment advisory business from the Client or any other government entity of which the Recipient was an official.

5. The Client has been an investor in the Adviser's Funds since 2006, with additional investments having been made in 2017 and April 2020. Applicant represents that: the Contributor has never presented for, or met with, any of the Client's representatives over the course of the relationship; the Contributor is not directly involved with the Client; the Contributor has had no contact with any representative of the Client and no contact with any member of the Client's board; and at no time did any employees of the Adviser other than the Contributor have any knowledge that the Contribution had been made prior to its discovery by the Adviser in October 2021.

6. Applicant learned of the Contribution in late October 2021 in the course of prospective employee vetting that included review of a pre-hire political contribution declaration on which the Contributor disclosed the Contribution. The Adviser informed the Contributor that she would need to seek a refund, which she did in November 2021. The Contribution was refunded by the campaign on December 23, 2021. The Adviser determined that although the Contributor would be a covered associate under rule 206(4)–5, she is only subject to the 6-month lookback under rule 206(4)–5(b)(2). She did not become a covered associate until more than six months had elapsed since the date of her contribution. However, the Contributor's role would ordinarily involve soliciting government entities. She is refraining from such solicitation, but in the event she were to solicit a government entity, the full two-year lookback would apply and trigger a ban. Applicant represents that at the point of such solicitation, the portion of management fees and carried interest attributable to the Client's investments in the Funds from the date the Contributor became a covered associate until two years after the date of the contribution would be held by the Funds or placed in escrow and not distributed to the Adviser. Applicant further represents that the Adviser also took steps to limit the Contributor's contact with any representative of the Client for the duration of the two-year period beginning July 23, 2021, including informing the Contributor that she could have no contact with any representative of the Client.

7. Applicant's Pay-to-Play Policies and Procedures (the ''Policy'') were adopted and implemented before the Contribution was made. The Policy requires that all contributions to federal, state and local office incumbents and candidates are subject to pre-clearance by employees. There is no *de minimis* exemption from the pre-clearance for small contributions to these state and local officials. All employees of the Adviser are subject to the Policy; its application is not limited to the Adviser's managing members, executive officers and other ''covered associates'' under the rule. When hiring an individual, the Adviser makes its job offer conditional on the individual disclosing any political contributions within the past two years. If any contributions are reported, the Adviser's human resources team will escalate to the legal and compliance team for review and action. At time of hire, all new employees are provided with the Adviser's compliance training which includes the Policy. Annually, all employees must certify to their adherence to all policies in the compliance manual and code of ethics and specifically the Policy. As part of this annual certification, employees confirm that no political contributions were made other than those pre-cleared through the Adviser's compliance system. The Adviser conducts periodic forensic testing to confirm that the Policy is being followed.

Applicant's Legal Analysis

1. Rule 206(4)–5(a)(1) under the Act prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of a government entity is made by the investment adviser or any covered associate of the investment adviser. The Client is a ''government entity,'' as defined in rule 206(4)–5(f)(5), the Contributor is a ''covered associate'' as defined in rule 206(4)–5(f)(2), and the Official is an ''official'' as defined in rule 206(4)–5(f)(6).

2. Section 206A of the Act authorizes the Commission to ''conditionally or unconditionally exempt any person or transaction . . . from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary

or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].''

3. Rule 206(4)–5(e) provides that the Commission may conditionally or unconditionally grant an exemption to an investment adviser from the prohibition under rule 206(4)–5(a)(1) upon consideration of the factors listed below, among others:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(2) Whether the investment adviser: (i) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of the rule; (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (*e.g.,* federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to Section 206A and rule 206(4)–5(e), exempting them from the two-year prohibition on compensation imposed by rule 206(4)–5(a)(1) with respect to investment advisory services provided to the Client within the two-year period following the Contribution.

5. Applicant submits that the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that the other factors set forth in rule 206(4)–5(e) similarly weigh in favor of granting an exemption to Applicant to avoid consequences disproportionate to the violation.

6. Applicant contends that, given the nature of the Contribution, and the lack of any evidence that the Adviser or the Contributor intended to, or actually did, interfere with the Client's merit-based process for the selection or retention of advisory services, the interests of the Client are best served by allowing the Adviser and the Client to continue their relationship uninterrupted. Applicant states that causing the Adviser to serve without compensation for the remainder of the two-year period could result in a financial loss that is more than 600 times the amount of the Contribution. Applicant suggests that the policy underlying rule 206(4)–5 is served by ensuring that no improper influence is exercised over investment decisions by governmental entities as a result of campaign contributions, and not by withholding compensation as a result of unintentional violations.

7. Applicant represents that the Adviser adopted and implemented the Policy which is fully compliant with, and more rigorous than, the rule's requirements before the rule's initial proposal by the Commission and substantially before the rule's adoption or dates for required compliance. Applicant represents that the Adviser implemented a mandatory political contribution declaration for all employees provided a conditional offer of employment. It was this declaration that was effective in identifying the Contribution before the Contributor became a covered associate.

8. Applicant asserts that actual knowledge of the Contribution at the time of its making cannot be imputed to the Adviser, given that the Contributor was not an employee of the Adviser. Applicant also represents that at no time did any employees of the Adviser other than the Contributor have any knowledge that the Contribution had been made prior to its discovery by the Adviser in October 2021.

9. Applicant asserts that, after learning of the Contribution, the Adviser and the Contributor took all available steps to obtain a return of the Contribution. Before the Contributor began work with the Adviser, the Contributor had obtained a full refund of the Contribution. The Adviser has restricted the Contributor from soliciting the Client and is carefully monitoring the Contributor to ensure that it will begin restricting compensation related to the Client if the Contributor solicits any government entity.

10. Applicant states that after learning of the Contribution, the Adviser took steps to limit the Contributor's contact with any representative of the Client for the remainder of the two-year period beginning July 23, 2021. The Adviser informed the Contributor that she could have no contact with any representative of the Client. However, she may solicit other government entities in the course of her duties, at which point, the two-year lookback would apply and a compensation ban would begin.

11. Applicant states that the Adviser has had investments from the Client that predate the Contributor's employment with the Adviser. Applicant further states that the Contribution was consistent with the political affiliation of the Contributor and her history of contributions. Applicant also submits that the apparent intent in making the Contribution was not to influence the selection or retention of the Adviser. Applicant represents that the Contributor has a long history of backing candidates that share the political views of the Recipient by voting for them and contributing to their campaigns. Applicant also represents that the amount of the Contribution, profile of the candidate, and characteristics of the campaign fall squarely within the pattern of the Contributor's political leanings, and that the Contributor also had a legitimate interest in the outcome of the campaign given that she lives in Boston. Applicant states that the Contributor had no intention of soliciting investment advisory business from the Client or any other government entity of which the Recipient was an official.

12. Applicant submits that neither the Adviser nor the Contributor sought to interfere with the Client's merit-based selection process for advisory services, nor did they seek to negotiate higher fees or greater ancillary benefits than would be achieved in arms' length transactions. Applicant further submits that there was no violation of the Adviser's fiduciary duty to deal fairly or disclose material conflicts given the absence of any intent or action by the Adviser or the Contributor to influence the selection process. Applicant contends that in the case of the Contribution, the imposition of the two-year prohibition on compensation does not achieve rule 206(4)–5's purposes and would result in consequences disproportionate to the mistake that was made.

Applicant's Conditions

Applicant agrees that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Contributor will be prohibited from discussing any business of the

Adviser with any ''government entity'' client or prospective client for which the Recipient is an ''official,'' as defined in rule 206(4)–5(f) until July 23, 2023.

2. The Contributor will receive a written notification of this condition and will provide a quarterly certification of compliance until July 23, 2023. Copies of the certifications will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Adviser, and be available for inspection by the staff of the Commission.

3. The Adviser will conduct testing reasonably designed to prevent violations of the conditions of the Order and maintain records regarding such testing, which will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Adviser, and be available for inspection by the staff of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01737 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–606, OMB Control No. 3235–0670]

Submission for OMB Review; Comment Request; Extension: Rule 201 and Rule 200(g) of Regulation SHO

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 201 (17 CFR 242.201) and Rule 200(g) (17 CFR 242.200(g)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 201 is a short sale-related circuit breaker rule that, if triggered, imposes a restriction on the prices at which securities may be sold short. Rule 200(g) provides that a broker-dealer may mark certain qualifying sell orders ''short exempt.'' The information collected under Rule 201's written policies and procedures requirement applicable to trading centers, the written policies and procedures requirement of the broker-dealer provision of Rule 201(c), the written policies and procedures requirement of the riskless principal provision of Rule 201(d)(6), and the ''short exempt'' marking requirement of Rule 200(g) enable the Commission and self-regulatory organizations (''SROs'') to examine and monitor for compliance with the requirements of Rule 201 and Rule 200(g).

In addition, the information collected under Rule 201's written policies and procedures requirement applicable to trading centers helps ensure that trading centers do not execute or display any impermissibly priced short sale orders, unless an order is marked ''short exempt,'' in accordance with the Rule's requirements. Similarly, the information collected under the written policies and procedures requirement of the broker-dealer provision of Rule 201(c) and the riskless principal provision of Rule 201(d)(6) helps to ensure that broker-dealers comply with the requirements of these provisions. The information collected pursuant to the ''short exempt'' marking requirement of Rule 200(g) also provides an indication to a trading center when it must execute or display a short sale order without regard to whether the short sale order is at a price that is less than or equal to the current national best bid.

It is estimated that SRO and non-SRO respondents registered with the Commission and subject to the collection of information requirements of Rule 201 and Rule 200(g) incur an aggregate annual burden of 1,556,049 hours to comply with the Rules and an aggregate annual external cost of $370,933.

Any records generated in connection with Rule 201's requirements that trading centers and broker-dealers (with respect to the broker-dealer and riskless principal provisions) establish written policies and procedures must be preserved in accordance with, and for the periods specified in, Exchange Act Rules 17a–1 for SRO trading centers and 17a–4(e)(7) for non-SRO trading centers and registered broker-dealers. The amendments to Rule 200(g) and Rule 200(g)(2) do not contain any new record retention requirements. All registered broker-dealers that are subject to the amendments are currently required to retain records in accordance with Rule 17a–4(e)(7) under the Exchange Act.

Compliance with Rule 201 and Rule 200(g) is mandatory. We expect that the information collected pursuant to Rule 201's required policies and procedures for trading centers will be communicated to the members, subscribers, and employees (as applicable) of all trading centers. In addition, the information collected pursuant to Rule 201's required policies and procedures for trading centers will be retained by the trading centers and will be available to the Commission and SRO examiners upon request, but not subject to public availability. The information collected pursuant to Rule 201's broker-dealer provision and the riskless principal exception will be retained by the broker-dealers and will be available to the Commission and SRO examiners upon request, but not subject to public availability. The information collected pursuant to the ''short exempt'' marking requirements in Rule 200(g) and Rule 200(g)(2) will be submitted to trading centers and will be available to the Commission and SRO examiners upon request. The information collected pursuant to the ''short exempt'' marking requirement may be publicly available because it may be published, in a form that would not identify individual broker-dealers, by SROs that publish on their internet websites aggregate short selling volume data in each individual equity security for that day and, on a one-month delayed basis, information regarding individual short sale transactions in all exchange-listed equity securities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: <*www.reginfo.gov*>. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by March 1, 2023 to (i) <*MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov*> and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 24, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01739 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96743; File No. SR–NYSEAMER–2023–08]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

January 24, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 13, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding (1) fees and credits for Qualified Contingent Cross (''QCC'') transactions and (2) the Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program''). The Exchange proposes to implement the fee change effective January 13, 2023.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange previously filed to amend the Fee Schedule on December 30, 2022 (SR–NYSEAMER–2022–58) and withdrew such filing on January 13, 2023.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing to amend the Fee Schedule to (1) modify the fees and credits for QCC transactions [5] and (2) modify the FB Prepay Program. The Exchange proposes to implement the rule change on January 13, 2023.

Modifications to QCC Fees and Credits

The table in Section I.F. of the Fee Schedule sets forth the per contract fees and credits applicable to volume executed as part of a QCC trade.[6] Currently, Customers and Professional Customers do not incur a fee or earn a credit; Non-Customers, excluding Specialists and e-Specialists, are subject to a $0.20 per contract fee; and Specialists and e-Specialists are subject to a $0.13 per contract fee. Floor Brokers earn a credit for executed QCC orders of ($0.11) per contract for the first 500,000 contracts or ($0.14) per contract in excess of 500,000.[7]

The Exchange proposes to modify the table in Section I.F. to replace the term ''Non-Customer'' with ''Market Maker, Firm, or Broker Dealer'' and eliminate the exception of Specialists and e-Specialists, which would add clarity to the Fee Schedule regarding which market participants are considered ''Non-Customers'' for purposes of QCC fees and credits. The table would thus provide for a $0.20 fee on QCC transactions by a Market Maker, Firm, or Broker-Dealer (as such terms are defined in the KEY TERMS and DEFINITIONS section of the Fee Schedule). Consistent with this change, the Exchange also proposes to eliminate the $0.13 fee currently applicable to QCC transactions by Specialists and e-Specialists; as Specialists and e-Specialists are registered with the Exchange as Market Makers, they would, as proposed, be charged as such for QCC transactions.

The Exchange further proposes to modify the table in Section I.F. regarding credits applicable to Floor Brokers' QCC transactions and proposes to provide Floor Brokers with credits based on the account type of the parties to the trade.[8] Specifically, the Exchange proposes that Floor Brokers may earn a credit of ($0.12) per contract for QCC transactions of a Customer or Professional Customer vs. a Market Maker, Firm, or Broker Dealer, and a credit of ($0.18) per contract for QCC transactions of a Market Maker, Firm, or Broker Dealer vs. a Market Maker, Firm, or Broker Dealer.

Finally, the Exchange proposes to modify the last sentence of Footnote 1 to Section I.F., which currently provides that the maximum Floor Broker credit paid for QCC transactions is $525,000 per month per Floor Broker firm. The Exchange proposes to amend Footnote 1 to instead provide that Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program (as proposed below) shall not combine to exceed $2,000,000 per month per Floor Broker firm.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their QCC volume, the Exchange believes that the proposed change would continue to incent additional QCC executions by Floor Brokers by offering increased credits on QCC transactions and raising the maximum monthly amount that a Floor Broker firm could earn from Floor Broker QCC credits (or rebates via the proposed Manual Billable Rebate Program), and all Floor Brokers are eligible for the proposed credits, including the proposed higher credit on QCC transactions with a Market Maker, Firm or Broker on both sides of the trade, without any minimum volume requirement. The Exchange also believes that the proposed change with respect to the fee for QCC transactions by a Market Maker (including a Specialist or e-Specialist), Firm, or Broker-Dealer would improve the clarity of the Fee Schedule and, although the proposed change would increase the fee for QCC transactions by Specialists and e-Specialists, is reasonable and equitable because it would provide for the same fee on QCC transactions for all Market Makers, Firms, and Broker-Dealers.

[5] A QCC is defined as an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-options contracts, that is identified as being part of a qualified contingent trade (as that term is defined in Commentary .01 to Rule 900.3NY), coupled with a contra side order or orders totaling an equal number of contracts. *See* Rule 900.3NY(y).

[6] *See* Fee Schedule, Section I.F., QCC Fees & Credits.

[7] QCC executions in which a Customer or Professional Customer, or both, is on both sides of the QCC trade are not eligible for the Floor Broker credit. The current Floor Broker credit is paid only on volume within the applicable tier and is not retroactive to the first contract traded. *See* Fee Schedule, Section I.F., QCC Fees & Credits at Footnote 1.

[8] The Exchange also proposes to delete the sentence in Footnote 1 to Section I.F. providing that the Floor Broker credit is paid only on volume within the applicable tier and is not retroactive to the first contract traded, as such concept would not apply to the proposed Floor Broker credits.

FB Prepay Program

The Exchange also proposes to modify the FB Prepay Program, a prepayment incentive program that allows Floor Brokers to prepay certain of their annual Eligible Fixed Costs in exchange for volume rebates.[9]

Currently, the FB Prepay Program offers participating Floor Brokers an opportunity to qualify for rebates by achieving growth in billable manual volume by a certain percentage as measured against one of two benchmarks (the ''Percentage Growth Incentive''). Specifically, the Percentage Growth Incentive is designed to encourage Floor Brokers to increase their average daily volume (''ADV'') in billable manual contract sides to qualify for a Tier; each Tier of the FB Prepay Program corresponds to an annual rebate equal to the greater of the ''Total Percentage Reduction of pre-paid annual Eligible Fixed Costs'' or the annualization of the monthly ''Alternative Rebate.'' [10] In either case, participating Floor Brokers receive their annual rebate amount in the following January.[11] Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.[12]

The Exchange now proposes to modify the FB Prepay Program to eliminate the Percentage Growth Incentive and accompanying annual rebates [13] and instead provide Floor Brokers participating in the program with monthly rebates based on manual billable transaction volume (the ''Manual Billable Rebate Program''). The calculation of volume on which rebates earned through the Manual Billable Rebate Program would be paid is based on transactions including at least one side for which manual transaction fees are applicable and excludes volume from QCC transactions.[14] The Exchange proposes to continue to exclude any volume calculated to achieve the Strategy Execution Fee Cap, regardless of whether the cap is achieved, from the Manual Billable Rebate Program because fees on such volume are already capped and therefore such volume does not increase billable manual volume.[15]

Participants in the FB Prepay Program that achieve the following monthly qualifications will be eligible for rebates through the Manual Billable Rebate Program, payable on a monthly basis:

Manual billable rebate qualification	Rebate per billable side
Execute 1 million combined manual billable and QCC billable contracts	($0.05)
Execute 3 million combined manual billable and QCC billable contracts	(0.08)
Execute 5 million combined manual billable and QCC billable contracts	(0.10)

The FB Prepay Program also currently offers participating Floor Brokers that increase their QCC credit eligible contracts in a month by at least 20% over the greater of their second half of 2021 average monthly QCC credit eligible volume or 1,500,000 contracts an additional credit of $0.04 per contract on the first 300,000 QCC credit eligible QCC trades and an additional credit of $0.01 per contract on all QCC credit eligible QCC trades above 300,000, subject to the monthly maximum credit per Floor Broker firm. The Exchange now proposes to eliminate these QCC credits currently offered through the FB Prepay Program, and provide that program participants would instead be eligible to qualify for monthly rebates on QCC transactions in addition to the credits set forth in Section I.F. (as modified in this filing) (the ''QCC Billable Bonus Rebate''), as described in the table below, provided that they execute the required number of billable QCC transactions in a month. The Exchange proposes that the QCC Billable Bonus Rebate (including the Additional Bonus) would be payable back to the first billable side.

QCC billable bonus rebate qualification	Additional rebate on single billable side QCC contract	Additional rebate on two billable side QCC contract
Prepay Bonus Level—achieved with 2 million QCC billable contracts	($0.02)	($0.04)
Additional Bonus Level—achieved with 100% above Prepay Bonus Level	(0.04)	(0.06)

The Exchange further proposes to provide in Section III.E.1., consistent with Section I.F., that the maximum Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program shall not combine to exceed $2,000,000 per month per Floor Broker firm.

Finally, the Exchange proposes to modify the date it will use for the calculation of a Floor Broker's Eligible Fixed Costs for the following calendar

[9] *See* Fee Schedule, Section III.E.1., Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program''). ''Eligible Fixed Costs'' include monthly ATP Fees, the Floor Access Fee, and certain monthly Floor communication, connectivity, equipment and booth or podia fees, as set forth in the table in Section III.E.1.

[10] *See id.* The Percentage Growth Incentive excludes Customer volume, Firm Facilitation trades, and QCCs. Any volume calculated to achieve the Firm Monthly Fee Cap and the Strategy Execution Fee Cap, regardless of whether either of these caps is achieved, will likewise be excluded from the Percentage Growth Incentive because fees on such volume are already capped and therefore do not increase billable manual volume. *See id.*

[11] *See* Fee Schedule, Section III.E.1.

[12] *See id.*

[13] To effect the proposed change to eliminate the Percentage Growth Incentive and related rebates, the Exchange also proposes to delete the last sentence in Section III.E.1., which currently provides that Floor Brokers in the FB Prepay Program will receive their rebate in the following January, as no longer applicable.

[14] The Exchange proposes to continue to exclude volume from QCC transactions from the calculation of eligible volume for rebates paid through the Manual Billable Rebate Program, as proposed, because Floor Brokers would be eligible for separate credits and rebates for QCC transactions.

[15] The Exchange proposes to remove references to the exclusion of Customer volume and Firm Facilitation trades as redundant because such volume is not billable. The Exchange also proposes that it would no longer exclude volume calculated to achieve the Firm Monthly Fee Cap from the Manual Billable Rebate Program and proposes conforming changes to reflect the deletion of the reference to the Firm Monthly Fee Cap in Section III.E.1. The Exchange proposes to include volume calculated to achieve the Firm Monthly Fee Cap in calculations for the Manual Billable Rebate Program in light of the recent change to increase the amount of the Firm Monthly Fee Cap and eliminate lower fee caps for firms that qualify for American Customer Engagement Program tiers, which results in more non-facilitation Firm volume being subject to regular transaction fees. *See* Securities Exchange Act Release No. 96501 (December 15, 2022) (SR–NYSEAMER–2022–55) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the NYSE American Options Fee Schedule).

year. The FB Prepay Program currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in November 2020. The Exchange proposes to modify the Fee Schedule to specify that the annualization of Eligible Fixed Costs would be based on costs incurred in November 2022, which the Exchange believes would more accurately reflect Eligible Fixed Costs for the coming calendar year.

Although the Exchange cannot predict with certainty whether the proposed changes to the FB Prepay Program would encourage Floor Brokers to participate in the program or to increase either their manual billable volume or QCC volume, the Exchange believes that the proposed changes would continue to incentivize Floor Brokers to participate in the FB Prepay Program by simplifying the structure of the program, modifying the qualifying criteria and rebates offered through the program to be on a monthly (rather than annual) basis, and offering rebates on manual billable volume and QCC transactions, thereby encouraging additional manual billable volume and QCC executions by Floor Brokers. All Floor Brokers are eligible to participate in the FB Prepay Program and qualify for the proposed rebates, and the rebates are achievable in any given month without regard to volumes from any other month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[16] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[19] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2022, the Exchange had less than 7% market share of executed volume of multiply-listed equity and ETF options trades.[20]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed credits offered to Floor Brokers on QCC transactions, as well as the additional rebates on QCC transactions and manual billable volume offered through the FB Prepay Program, as proposed, are reasonable because they are designed to continue to incent Floor Brokers to increase the number of QCC transactions and manual billable orders executed on the Exchange. The Exchange also believes that the proposed increase in the maximum monthly amount that a Floor Broker firm could earn from Floor Broker QCC credits or from rebates via the proposed Manual Billable Rebate Program is reasonable because it is likewise intended to encourage Floor Brokers to direct QCC transactions and manual billable volume to the Exchange.

The Exchange believes that the proposed changes to QCC transaction fees and credits, as set forth in Section I.F., are reasonable because they are designed to improve the clarity of the Fee Schedule regarding the fee applicable to ''Non-Customer'' QCC transactions and to apply a consistent fee to QCC transactions by Market Makers (including Specialists and e-Specialists), Firms, and Broker-Dealers. The Exchange also believes it is reasonable to provide an increased credit to Floor Brokers on QCC transactions with a Market Maker, Firm, or Broker-Dealer on both sides because such transactions are billable on both sides. To the extent that the proposed change attracts more volume to the Exchange and does not disincentivize Specialists and e-Specialists from directing orders to the Exchange, this order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

With respect to the FB Prepay Program, the Exchange also believes that the proposed changes are reasonable because participation in the program is optional, and Floor Brokers can elect to participate in the program to be eligible to earn the proposed rebates on manual billable transactions and QCC transactions or not. The Exchange also believes that the proposed modification of the FB Prepay Program is reasonable because it is designed to simplify the program, to continue to encourage Floor Brokers to participate in the FB Prepay Program, and to provide liquidity on the Exchange. Specifically, the Exchange believes that the proposed qualifying thresholds for the Manual Billable Rebate Program and QCC Bonus Rebate are achievable by Floor Broker firms based on recent Floor Broker activity and in consideration of the proposed changes in this filing (including the proposed modification to Floor Broker QCC credits). The Exchange further believes that the proposed change to focus the FB Prepay Program on manual billable volume and QCC transactions is reasonable because it is intended to encourage Floor Brokers to increase manual billable volume and QCC transactions to the Exchange, and any increase in such volume would benefit all market participants. The Exchange also believes that the proposed rebate amounts are reasonable and comparable to rebate amounts offered by another options exchange to Floor Brokers on

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[19] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[20] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 7.06% for the month of November 2021 and 6.98% for the month of November 2022.

manual transactions.[21] Finally, the Exchange believes that the proposed modification of the qualifying criteria for and rebates offered through the FB Prepay Program to be on a monthly basis is reasonable and could increase opportunities for participating Floor Brokers to qualify for and receive the benefit of the incentives offered. To the extent that the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange also believes that the proposed change to update the date used for the calculation of Eligible Fixed Costs from November 2020 to November 2022 is reasonable because it expects Floor Broker organizations' more recent November 2022 costs to provide a more accurate basis for annualizing Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2023.

Finally, to the extent the proposed changes continue to attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC orders[22] and Floor Broker rebates on manual billable orders.[23] Thus, Floor Brokers have a choice of where they direct their order flow, including their QCC transactions and manual billable orders. The proposed rule changes are designed to continue to incent Floor Brokers to direct liquidity (and, in particular, QCC orders and manual billable orders) to the Exchange; to the extent Floor Brokers are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange; Floor Brokers are not obligated to participate in the FB Prepay Program and can choose to execute QCC transactions or manual billable transactions to earn the various proposed credits and rebates or not. In addition, the proposed credits and rebates are available to all Floor Brokers equally, and the proposed monthly limit on the amount that Floor Brokers could earn from credits and rebates on QCC transactions and manual billable transactions would apply to all Floor Brokers equally. The Exchange also believes that the proposed modification of the qualifying criteria for and rebates offered through the FB Prepay Program to be on a monthly basis is equitable because it could provide participating Floor Brokers opportunities each month to qualify for and receive the benefit of the incentives offered through the program.

The Exchange also believes that the proposed increased credit for QCC transactions with a Market Maker, Firm, or Broker-Dealer on both sides is equitable because such transactions are billable on both sides (whereas a QCC transaction with a Customer or Professional Customer on one side is only billable on one side). In addition, the Exchange believes that the proposed changes with respect to the fees for QCC transactions executed by Market Makers (including Specialists and e-Specialists), Firms, and Broker-Dealers modify the Fee Schedule to provide clarity regarding QCC transaction fees for ''Non-Customers'' and are equitable because they provide that these similarly-situated market participants would be equally subject to a $0.20 fee on their QCC transactions.

The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program. Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits because they would apply to participating Floor Brokers equally and are intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants. The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is equitable because it would continue to be based on each Floor Broker organization's annualized costs and because the November 2022 basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2023.

Moreover, the proposed changes are designed to continue to incent Floor Brokers to encourage ATP Holders to aggregate their executions—including QCC transactions and manual orders—at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more Floor Broker volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

[21] *See, e.g.,* BOX Options Exchange Fee Schedule, Section V.C. (offering rebates to Floor Brokers on orders presented on the Trading Floor, including a $0.075 rebate for Broker Dealer and Market Maker orders).

[22] *See, e.g.,* EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or ($0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or ($0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer or ($0.22) per contract when both sides of the QCC transaction are non-customers).

[23] *See* note 21, *supra.*

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed fees, credits, and rebates applicable to Floor Brokers on QCC transactions and manual billable transactions are not unfairly discriminatory because they are based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute QCC or manual billable volume, or to participate in the FB Prepay Program. Rather, the proposal is designed to streamline the structure of the FB Prepay Program and to encourage Floor Brokers to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously) and increase QCC and manual billable volume sent to the Exchange. In addition, the proposed changes, including the modification of the monthly maximum Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program, would apply to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed credits and rebates are also not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The Exchange also believes that the proposed change relating to ''Non-Customer'' QCC transactions is not unfairly discriminatory because it is intended to clarify that the existing $0.20 fee is applicable to QCC transactions by Market Makers, Firms, and Broker-Dealers and further believes that the proposed change with respect to Specialists and e-Specialists is not unfairly discriminatory because it would modify the Fee Schedule to charge the same fee on any QCC transactions executed by Market Makers (including Specialists and e-Specialists), Firms, and Broker-Dealers.

The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is not unfairly discriminatory because it would continue to be based on each Floor Broker organization's annualized costs and because the Exchange expects that using November 2022 as the basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year.

To the extent that the proposed changes attract more QCC orders and manual orders to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, 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.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[24] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [25]

Intramarket Competition. The proposed modification of the FB Prepay Program and the proposed credits and rebates offered to Floor Brokers on QCC transactions and manual billable orders are designed to incent participation in the FB Prepay Program and to attract additional order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC and manual billable transactions could increase opportunities for execution of other trading interest. The proposed QCC credits would be available to all similarly-situated Floor Brokers that execute QCC trades and the rebates available through the Manual Billable Rebate Program and QCC Billable Bonus Rebate would be available to all Floor Brokers that choose to participate in the FB Prepay Program and meet the qualifying criteria for such rebates. The modification of the monthly maximum Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program, would likewise apply equally to all similarly-situated Floor Brokers. To the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants. Finally, the Exchange believes the elimination of a lower QCC fee for Specialists and e-Specialists could also promote intramarket competition by establishing the same fee for all Market Makers, Firms, and Broker Dealers on QCC transactions.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[26] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2022, the Exchange had less than 7% market share of executed volume of multiply-listed equity and ETF options trades.[27]

The Exchange believes that the proposed changes reflect this competitive environment because they modify the Exchange's fees and credits in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly QCC transactions and manual orders) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are encouraged to participate in the FB Prepay Program and/or incentivized to

[24] *See* 15 U.S.C. 78f(b)(8).

[25] *See* Reg NMS Adopting Release, *supra* note 18, at 37499.

[26] *See* note 19, *supra.*

[27] *See* note 20, *supra.*

utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions and Floor Broker rebates on manual billable volume,[28] by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[29] of the Act and subparagraph (f)(2) of Rule 19b–4[30] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[31] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2023–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2023–08, and should be submitted on or before February 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01745 Filed 1–27–23; 8:45 am]

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[28] *See* notes 21 & 22, *supra.*

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(2).

[31] 15 U.S.C. 78s(b)(2)(B).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34814; File No. 812–15375]

Fidelity Private Credit Fund and Fidelity Diversifying Solutions LLC

January 24, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) and section 61(a) of the Act.

Summary of Application: Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies (''BDCs'') to issue multiple classes of shares with varying sales loads and asset-based service and/or distribution fees.

Applicants: Fidelity Private Credit Fund and Fidelity Diversifying Solutions LLC.

Filing Dates: The application was filed on July 28, 2022 and amended on August 19, 2022, and January 9, 2023.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on February 17, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish

to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *Cynthia.Lo.Bessette@fmr.com.*

FOR FURTHER INFORMATION CONTACT: Seth Davis, Senior Counsel or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated January 9, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01735 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96741; File No. SR–NYSEARCA–2023–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 7.44–E Relating to the Retail Liquidity Program

January 24, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 10, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.44–E relating to the Retail Liquidity Program. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.44–E, which sets forth the Exchange's Retail Liquidity Program (the ''Program'').[4] The purpose of the Program is to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement. Rule 7.44–E currently provides for a class of market participant called Retail Liquidity Providers (''RLPs'') who, along with non-RLP ETP Holders, are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order (''RPI Order'').[5] When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.[6] Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions.[7] The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers. The Exchange recently modified the Program to be available for all securities traded on the Exchange.[8]

As described in further detail below, the Exchange now proposes to substantively amend the Program to (1) modify the Program to provide Retail Orders with price improvement at the midpoint or better by proposing that both RPI Orders and Retail Orders would function as Mid-Point Liquidity Orders (''MPL Orders'') and (2) eliminate the role of RLPs.[9]

Proposed Midpoint Program

The Exchange proposes to modify the Program to provide Retail Orders with price improvement at the midpoint or better, which change the Exchange believes would further the purpose of the Program to offer price improvement opportunities to retail order flow. The Exchange believes that the proposed change would provide more deterministic price improvement opportunities for Retail Orders and could attract additional retail order flow to the Exchange.

RPI Orders

Rule 7.44–E(a)(4) currently provides that an RPI Order consists of non-displayed interest that would trade at prices better than the PBB or PBO by at least $0.001 and that is identified as

[4] The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. *See* Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR–NYSEArca–2019–63). In connection with the Commission's approval of the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (the ''Sub-Penny Rule''), which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01. *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

[5] *See* Rules 7.44–E(a)(1) (defining an RLP) and 7.44–E(a)(4) (defining RPI Order).

[6] *See* Rule 7.44–E(j).

[7] *See* Rule 7.44–E(a)(2) (defining RMO); Rules 7.44–E(a)(3) and 7.44–E(k) (describing Retail Orders).

[8] *See* Securities Exchange Act Release No. 96111 (October 20, 2022), 87 FR 64830 (October 26, 2022) (SR–NYSEARCA–2022–70) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7.44–E).

[9] The Exchange notes that, with the proposed modification of the Program to provide Retail Orders with price improvement at the midpoint or better, the Exchange would no longer accept and rank RPI Orders in increments smaller than $0.01, as ordinarily prohibited by the Sub-Penny Rule. Accordingly, the operation of the Program, as proposed, would no longer be dependent on the exemptive relief from the Sub-Penny Rule previously granted by the Commission in connection with its original approval of the Program.

such.[10] RPI Orders are non-displayed and are ranked Priority 3—Non-Display Orders.[11] Currently, Exchange systems monitor whether RPI buy or sell interest is eligible to trade with incoming Retail Orders, and an RPI Order to buy (sell) with a limit price at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will not be eligible to trade with incoming Retail Orders to sell (buy), and such an RPI will cancel if a Retail Order to sell (buy) trades with all displayed liquidity at the PBB (PBO) and then attempts to trade with the RPI. If not cancelled, an RPI to buy (sell) with a limit price that is no longer at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will again be eligible to trade with incoming Retail Orders.[12] An RPI Order may be an odd lot, round lot, or mixed lot, may be designated as either a Limit Non-Displayed Order or an MPL Order, and will not interact with Type 2—Retail Orders resting on the NYSE Arca Book.[13]

To effect the proposed change that the Program would function to provide Retail Orders with price improvement at the midpoint or better, the Exchange proposes to modify RPI Orders to function only as MPL Orders. An MPL Order is defined in Rule 7.31–E(d)(3) as a Limit Order to buy (sell) that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the PBBO or its limit price.[14] The Exchange believes that modifying RPI Orders to function as MPL Orders would increase the potential pool of midpoint-eligible liquidity with which a Retail Order could interact. In addition, because all RPI Orders would be priced at the midpoint, the Retail Liquidity Identifier would provide more deterministic information about the potential liquidity available to interact with Retail Orders at the midpoint.

To effect this change, the Exchange first proposes to modify current Rule 7.44–E(a)(4) (which, as discussed below, would be renumbered as 7.44–E(a)(3)) and to combine current Rule 7.44–E(a)(4)(A) into new Rule 7.44–E(a)(3), with non-substantive changes to improve the clarity of the rule text. Rule 7.44–E(a)(3), as proposed, would thus define an RPI Order as an MPL Order that is eligible to trade only with incoming Retail Orders submitted by an RMO. The Exchange also proposes to add text to new Rule 7.44–E(a)(3) to clarify that an RPI Order may not be designated IOC, ALO, or with a Minimum Trade Size (''MTS'') Modifier.[15] In addition, the Exchange proposes to delete current Rules 7.44–E(a)(4)(B) and 7.44–E(a)(4)(D) because the text of those rules would no longer be necessary.[16] Specifically, the provisions of Rule 7.44–E(a)(4)(B) would no longer apply in light of the Exchange's proposal to modify RPI Orders to function as MPL Orders and the provisions of Rule 7.44–E(a)(4)(D) are either duplicative of proposed Rule 7.44–E(a)(3) (as renumbered) or no longer applicable based on the proposed elimination Type 2 Retail Orders (as further discussed below).[17]

The Exchange also proposes to modify current Rule 7.44–E(j) (to be renumbered as Rule 7.44–E(e), as discussed below), which describes the Retail Liquidity Identifier that is currently disseminated via the Consolidated Quotation System or the UTP Quote Data Feed, as applicable, when RPI interest priced at least $0.001 better than the PBB or PBO for a particular security is available in Exchange systems. Consistent with the proposed change to modify RPI Orders to operate as MPL Orders only, the Exchange proposes that new Rule 7.44–E(e) would provide that the Retail Liquidity Identifier would be disseminated when RPI interest is eligible to trade at the midpoint of the PBBO. The dissemination of the Retail Liquidity Identifier would thus alert RMOs to the availability of trading opportunities at the midpoint of the PBBO.

Retail Orders

Current Rule 7.44–E(a)(3), which as described below would be renumbered as Rule 7.44–E(a)(2), defines a Retail Order as an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. Current Rule 7.44–E(a)(3) also provides that a Retail Order will operate in accordance with Rule 7.44–E(k) and may be an odd lot, round lot, or mixed lot.[18]

Rule 7.44–E(k) currently describes how RMOs can designate how a Retail Order would interact with available contra-side interest and provides for Type 1—Retail Orders and Type 2—Retail Orders. Type 1—Retail Orders are Limit IOC Orders to buy (sell) that will trade only with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book and will not route. The quantity of a Type 1—Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. Type 2—Retail Orders may be Limit Orders designated IOC or Day or Market Orders. A Type 2—Retail Order IOC is a Limit IOC Order to buy (sell) that will trade first with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order will trade with orders to sell (buy) on the NYSE Arca Book at prices equal to or above

[10] Rule 7.44–E(a)(4)(C) currently provides that an RLP may only enter an RPI in its RLP capacity for securities to which it is assigned and is permitted, but not required, to submit RPIs for securities to which it is not assigned (and would be treated as a non-RLP ETP Holder with respect to those securities). As discussed below, the Exchange proposes to delete current Rule 7.44–E(a)(4)(C) in connection with the proposed elimination of the RLP function.

[11] *See* Rule 7.44–E(a)(4)(A).

[12] *See* Rule 7.44–E(a)(4)(B).

[13] *See* Rule 7.44–E(a)(4)(D).

[14] An MPL Order may be entered during any Exchange trading session, is ranked Priority 3—Non-Display Orders, and does not participate in auctions. *See* Rule 7.31–E(d)(3). An MPL Order to buy (sell) must be designated with a limit price in the minimum price variation for the security and will be eligible to trade at its working price. *See* Rule 7.31–E(d)(3)(A). If there is no PBB or PBO, or if the PBBO is locked or crossed, an arriving or resting MPL Order will not be eligible to trade until the PBBO is not locked or crossed. *See* Rule 7.31–E(d)(3)(B). An Aggressing MPL Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price at or below (above) the working price of the MPL Order. Resting MPL Orders to buy (sell) will trade against all Aggressing Orders to sell (buy) priced at or below (above) the working price of the MPL Order. *See* Rule 7.31–E(d)(3)(C).

[15] *See* Rules 7.31–E(b)(2) (providing that an order with an IOC Modifier will be traded in whole or in part on the NYSE Arca Marketplace as soon as such order is received, with any untraded quantity cancelled); 7.31–E(e)(2) (providing that an ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the NYSE Arca Book); 7.31–E(i)(3) (providing that the MTS Modifier designates an order with a minimum trade size and an order with an MTS Modifier will be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order).

[16] The proposed deletion of Rule 7.44–E(a)(4)(C) is discussed below in connection with the proposed elimination of RLPs.

[17] The Exchange also proposes to delete text in Rule 7.44–E(a)(4)(D) providing that an RPI Order may be an odd lot, round lot, or mixed lot as extraneous, because Exchange rules provide that orders are accepted in any size unless otherwise provided. *See* Rule 7.38–E(a). The Exchange further proposes a conforming change to Rule 7.38–E(a) to delete its reference to Rule 7.44–E, as Rule 7.44–E does not specify that an order may not be entered as an odd lot or mixed lot.

[18] Consistent with the proposed change to Rule 7.44–E(a)(4)(D) regarding odd lots, round lots, or mixed lots, *see id.*, the Exchange also proposes to delete the similar provision in current Rule 7.44–E(a)(3) for the same reasons.

(below) the PBO (PBB) and will be traded as a Limit IOC Order and will not route. A Type 2—Retail Order Day is a Limit Order to buy (sell) that will trade first with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order, if marketable, will trade with orders to sell (buy) on the NYSE Arca Book or route, and if non-marketable, will be ranked in the NYSE Arca Book as a Limit Order. Finally, a Type 2—Retail Order Market is a Market Order that will trade first with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the NBO (NBB). Any remaining quantity of the Retail Order will function as a Market Order.

To effect the change that Retail Orders in the Program would be eligible to trade at the midpoint or better, the Exchange proposes to amend Rule 7.44–E(k) (which is proposed to be renumbered as Rule 7.44–E(f)). In new Rule 7.44–E(f), the Exchange proposes to both rename the section ''Retail Order Operation'' rather than ''Retail Order Designation'' and reflect the Exchange's proposal to offer only one type of Retail Order, which, as noted above, would function as an MPL Order.[19] The Exchange proposes to delete text in current Rule 7.44–E(k) providing that an RMO may designate how a Retail Order would trade with contra-side interest, as such text would no longer apply with only one type of Retail Order. The Exchange also proposes to move text in current Rule 7.44–E(k)(1) into new Rule 7.44–E(f) and to modify the description of a Type 1 Retail Order in current Rule 7.44–E(k)(1) to describe the only Retail Order that would be available, as proposed.

New Rule 7.44–E(f) would thus provide that a Retail Order to buy (sell) would be an MPL IOC Order with a working price at the lower (higher) of the midpoint of the PBBO or its limit price and that will trade only with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) or equal to the midpoint of the PBBO on the NYSE Arca Book and will not route. New Rule 7.44–E(f) would also continue to provide that the quantity of a Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. The Exchange proposes to delete references to Type 1 Retail Orders in current Rule 7.44–E(k)(1), as the proposed change would result in only one type of Retail Order. The Exchange also proposes to update the remainder of current Rule 7.44–E(k)(1) such that new Rule 7.44–E(f) would provide that the quantity of a Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be rejected on arrival if there is no PBBO or the PBBO is locked or crossed. The Exchange believes this proposed change would simplify the Program by offering only one type of Retail Order and, similar to the proposed change to RPI Orders, would modify the Program to provide price improvement opportunities for Retail Orders priced at the midpoint or better.

The Exchange further proposes to add new text to new Rule 7.44–E(f) to provide additional options to ETP Holders with respect to Retail Orders. First, the Exchange proposes to add text to new Rule 7.44–E(f) providing that a Retail Order may be designated with an MTS Modifier, at the ETP Holder's option.[20] The Exchange also proposes to add text to new Rule 7.44–E(f) to introduce a new ''No Retail Modifier'' for use at an ETP Holder's discretion. Proposed Rule 7.44–E(f) would provide that the No Retail Modifier is available for use with MPL Orders and MPL–ALO Orders only, and orders designated with the No Retail Modifier would not trade with Retail Orders.[21] Specifically, as proposed, an incoming Retail Order would not interact with an MPL Order or MPL–ALO Order designated with the No Retail Modifier and may trade through such MPL Order or MPL–ALO Order.

The Exchange also proposes to delete current Rule 7.44–E(k)(2), which currently describes Type 2 Retail Orders, as such order types would no longer be offered, as proposed.[22]

Finally, the Exchange proposes to modify Rule 7.44–E(l) (proposed to be renumbered as Rule 7.44–E(g)), which currently describes priority and order allocation of RPI Orders and Retail Orders, to reflect the changes described above. Under current Rule 7.44–E(l), RPI Orders in the same security will be ranked together with all other interest ranked as Priority 3—Non-Display Orders. Odd-lot orders ranked as Priority 2—Display Orders will have priority over orders ranked Priority 3—Non-Display Orders at each price. Any remaining unexecuted RPI interest will remain available to trade with other incoming Retail Orders. Currently, any remaining unfilled quantity of the Retail Order will cancel, execute, or post to the NYSE Arca Book in accordance with Rule 7.44–E(k).

The Exchange proposes to delete text from the last sentence of the first paragraph under current Rule 7.44–E(l) referring to an unfilled quantity of a Retail Order executing or posting to the NYSE Arca Book. The Exchange proposes to eliminate this text because Retail Orders would, as proposed, function as IOC orders only, and any remaining unfilled quantity of a Retail Order would thus be cancelled. The Exchange also proposes to delete the examples currently provided in Rule 7.44–E(l) to illustrate priority and order allocation of RPI Orders and Retail Orders. With the changes proposed in this filing to modify RPI Orders and Retail Orders to function only as MPL Orders and to offer only one type of Retail Order, RPI Orders and Retail Orders would simply trade according to price/time priority as described in Rule 7.36–E. The Exchange thus believes that new Rule 7.44–E(g) clearly describes the ranking and priority of RPI Orders and Retail Orders and that no examples are needed to further illustrate how such orders would trade. The Exchange believes that removing unnecessary examples from current Rule 7.44–E(l) would improve the clarity of the rule.

Proposed Elimination of Retail Liquidity Providers

NYSE Arca Rules 7.44–E(a)(1), 7.44–E(a)(4)(C), and 7.44–E(c) through (i) currently set forth rules pertaining to RLPs:

- Rule 7.44–E(a)(1) provides that RLPs are ETP Holders that are approved by the Exchange and required to submit RPIs.
- Rule 7.44–E(a)(4)(C) describes how RLPs may enter RPIs for their assigned and non-assigned securities.
- Rule 7.44–E(c) describes how an ETP Holder may qualify to become an RLP.

[19] *See* note 14, *supra* and accompanying text.

[20] Consistent with this proposed change, the Exchange proposes to delete text in Rule 7.44–E(k) currently providing that a Retail Order may not be designated with a minimum trade size.

[21] The Exchange also proposes to modify Rule 7.31–E(d)(3), which defines MPL Orders, to add new subparagraph (G) regarding the No Retail Modifier. Subparagraph (G) would, consistent with the proposed addition to new Rule 7.44–E(f), provide that MPL Orders and MPL–ALO Orders may be designated with a No Retail Modifier and that orders so designated would not trade with Retail Orders. The Exchange proposes to offer the No Retail Modifier to provide ETP Holders with the ability to designate their MPL Orders and MPL–ALO Orders to not interact with Retail Orders, which some ETP Holders may choose to do based on their desired trading strategy.

[22] The Exchange also proposes a conforming change in the final paragraph of new Rule 7.44–E(g) to reflect the proposed elimination of Type 2 Retail Orders. The Exchange proposes to delete the second sentence in the final paragraph of current Rule 7.44–E(l), which relates to Type 2 Market Retail Orders, as such rule text would no longer have application following the elimination of Type 2 Retail Orders.

• Rule 7.44–E(d) sets forth the process by which an ETP Holder may apply to become an RLP, subject to the Exchange's approval of such application.

• Rule 7.44–E(e) provides for an RLP's voluntary withdrawal from RLP status.

• Rule 7.44–E(f) sets forth an RLP's obligations with respect to entering RPIs.

• Rule 7.44–E(g) describes action the Exchange may take with respect to an RLP that fails to meet the requirements of Rule 7.44–E.

• Rule 7.44–E(i) describes the process through which an ETP Holder may appeal the Exchange's decision to disapprove or disqualify it as an RLP.

The Exchange proposes to modify the Program to eliminate the role of RLPs, as there are no ETP Holders currently registered as RLPs. Accordingly, the Exchange does not believe that modifying Rule 7.44–E to remove text providing for the RLP function would impact the effectiveness of the Program and notes that other exchanges currently operate retail price improvement programs that do not include an RLP function.[23] To effect this change, the Exchange proposes to delete Rules 7.44–E(a)(1), 7.44–E(a)(4)(C), and 7.44–E(c) through (g) in their entirety and to modify Rule 7.44–E(i) to remove text relating to the disapproval or disqualification of an RLP.[24] The Exchange also proposes to renumber current Rules 7.44–E(a)(2) through (4) as Rules 7.44–E(a)(1) through (3) to reflect the deletion of current Rule 7.44–E(a)(1) and to renumber Rules 7.44–E(h) through (l) as Rules 7.44–E(c) through (g) to reflect the proposed deletion of current Rules 7.44–E(c) through (g).[25] The Exchange believes that the proposed change would simplify and add clarity to its Rules by removing the description of an unutilized aspect of the Program.

Subject to approval of this proposed rule change, the Exchange will implement this change no later than in the second quarter of 2023 and announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[26] in general, and furthers the objectives of section 6(b)(5),[27] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to both Retail Orders and RPI Orders in the Program would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system because modifying RPI Orders and Retail Orders to function as MPL Orders would further the purpose of the Program by providing Retail Orders with price improvement opportunities at the midpoint or better. The Exchange believes that providing more deterministic price improvement opportunities for Retail Orders would attract additional retail order flow to the Exchange. The Exchange also believes that the proposed change to the Program would allow it to compete with other exchanges that operate retail price improvement programs that are priced at the midpoint.[28] The Exchange believes that the proposed change to streamline how Retail Orders function would also promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system by simplifying the operation of the Program.

The Exchange also believes that the proposed change to eliminate RLPs as a class under the Program would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because there are no ETP Holders currently registered as RLPs and, accordingly, deleting rule text providing for RLPs would not have any impact on any existing ETP Holders. Moreover, because any ETP Holder may enter RPI Orders, eliminating RLPs as a class would not impact the ability of ETP Holders to enter RPI Orders on the Exchange. The Exchange further notes that other exchanges currently operate retail price improvement programs that do not include RLPs.[29]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change could promote competition by modifying RPI Orders and Retail Orders to function as MPL Orders, thereby encouraging additional trading opportunities at the midpoint and supporting price improvement opportunities at the midpoint of the PBBO or better for retail investors. The Exchange also believes that the proposed change to eliminate the RLP function would not impose any burden on competition, as no ETP Holders are currently registered as RLPs. The Exchange further believes that the proposed change could promote competition between the Exchange and other exchanges that offer retail price improvement programs, including an exchange that operates a retail price improvement program intended to provide additional trading opportunities at the midpoint.[30]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[23] *See, e.g.,* Investors Exchange LLC (''IEX'') Rule 11.232 (describing IEX Retail Price Improvement Program); Nasdaq BX, Inc. (''Nasdaq BX'') Rule 4780 (describing Nasdaq BX Retail Price Improvement Program).

[24] In Rule 7.44–E(i) (which is proposed to be renumbered as Rule 7.44–E(d)), the Exchange proposes to delete references to Rules 7.44–E(d) and 7.44–E(g), which currently provide for the process by which an ETP Holder may apply to become an RLP and actions the Exchange may take with respect to an RLP that fails to meet the requirements of Rule 7.44–E, respectively. The Exchange also proposes a conforming change to replace the reference to Rule 7.44–E(h) with a reference to Rule 7.44–E(c) to reflect the proposed renumbering of Rules 7.44–E(h) through (l). The Exchange also proposes to delete current Rule 7.44–E(i)(1)(A) (which describes the reassignment of securities from an RLP that has been disqualified) because the rule would no longer have application. The Exchange further proposes to delete the defined term ''appellant'' in current Rule 7.44–E(i)(1), as such term would no longer be used following the elimination of Rule 7.44–E(i)(1)(A).

[25] The Exchange also proposes conforming changes to renumbered Rules 7.44–E(a)(2) (Retail Order) and 7.44–E(g) (Priority and Order Allocation) to update references to Rule 7.44–E(k) to refer instead to Rule 7.44–E(f), to account for the proposed renumbering described above in connection with the elimination of RLPs.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *See, e.g.,* IEX Rule 11.232 (providing for Retail Price Improvement Program with Retail Order defined as a Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK, that is only eligible to trade at a price between the NBB and the Midpoint Price (for bids) or between the NBO and the Midpoint Price (for offers)).

[29] *See* note 23, *supra.*

[30] *See* note 28, *supra; see also, e.g.,* Nasdaq BX Rule 4780 (describing BX's Retail Price Improvement Program); Cboe BYX Exchange, Inc. (''BYX'') Rule 11.24 (describing BYX's Retail Price Improvement Program).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2023–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2023–06 and should be submitted on or before February 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01743 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–187, OMB Control No. 3235–0211]

Submission for OMB Review; Comment Request; Extension: Rule 18f–1 and Form N–18f–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 18f–1 (17 CFR 270.18f–1) enables a registered open-end management investment company (''fund'') that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)). A fund relying on the rule must file Form N–18F–1 (17 CFR 274.51) to notify the Commission of this election. The Commission staff estimates that 12 funds file Form N–18F–1 annually, and that each response takes one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 12 hours. The estimated burden hours associated with rule 18f–1 and Form 18F–1 have decreased by 10 hours from the current allocation of 22 hours. This decrease is due to a decrease in the estimated number of investment companies filing Form N–18F–1 annually. There is no external cost associated with this collection of information.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 18f–1 is necessary to obtain the benefits of the rule. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by March 1, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: January 24, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01741 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–404, OMB Control No. 3235–0461]

Submission for OMB Review; Comment Request; Extension: Rule 602

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the

[31] 17 CFR 200.30–3(a)(12).

Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 602 of Regulation NMS (17 CFR 240.602), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 602 of Regulation NMS, Dissemination of Quotations in NMS securities, contains two related collections. The first collection of information is found in Rule 602(a).[1] This third-party disclosure requirement obligates each national securities exchange and national securities association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each ''subject security,'' as defined under the Rule. The second collection of information is found in Rule 602(b).[2] This disclosure requirement obligates any exchange member and over-the-counter (''OTC'') market maker that is a ''responsible broker or dealer,'' as defined under the Rule, to communicate to an exchange or association their best bids, best offers, and quotation sizes for subject securities.[3]

It is anticipated that 25 respondents, consisting of 24 national securities exchanges and one national securities association, will collectively respond approximately 19,093,763,801,315 times per year pursuant to Rule 602(a) at 18.22 microseconds per response, resulting in a total annual burden of approximately 96,625 hours. It is anticipated that no respondents will have a reporting burden pursuant to Rule 602(b).[4]

Thus, the aggregate third-party disclosure burden under Rule 602 is approximately 96,625 hours annually which is comprised of 96,625 hours relating to Rule 602(a) and 0 hours relating to Rule 602(b).

Compliance with Rule 602 of Regulation NMS is mandatory and the information collected is made available to the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by March 1, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 24, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01740 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 242.602(a).

[2] 17 CFR 242.602(b).

[3] Under Rule 602(b)(5), electronic communications networks (''ECNs'') have the option of reporting to an exchange or association for public dissemination, on behalf of customers that are OTC market makers or exchange market makers, the best-priced orders and the full size for such orders entered by market makers on the ECN, to satisfy such market makers' reporting obligation under Rule 602(b). Since this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act (''PRA'').

[4] For the reporting obligation under Rule 602(b), the respondents are exchange members and OTC market makers. The Commission believes that communication of quotations through an exchange's electronic trading system effectively means that exchange members currently have no reporting burden under Rule 602(b) for these quotations. The Commission also believes that there are presently no OTC market makers that quote other than on an exchange.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96740; File No. SR–NSCC–2022–015]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Make Certain Enhancements to the Gap Risk Measure and the VaR Charge

January 24, 2023.

On December 2, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–015 (the ''Proposed Rule Change'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 21, 2022,[3] and the Commission has received one comment regarding the changes proposed in the Proposed Rule Change.[4]

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is February 4, 2023.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to section 19(b)(2) of the Act [6] and for the reasons stated above, the Commission designates March 21, 2023, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–NSCC–2022–015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01742 Filed 1–27–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96511 (Dec. 15, 2022), 87 FR 78157 (Dec. 21, 2022) (File No. SR–NSCC–2022–015) (''Notice of Filing'').

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-015/srnscc2022015.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF STATE

[Public Notice: 11981]

Overseas Security Advisory Council (OSAC) Renewal

The Department of State has renewed the Charter of the Overseas Security Advisory Council. This federal advisory committee will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The Council's initiatives and security publications provide a unique contribution to protecting American

private sector interests abroad. The Under Secretary for Management determined that renewal of the Charter is necessary and in the public interest.

The Council consists of representatives from three U.S. Government agencies and 31 American private sector companies and organizations. The Council follows the procedures prescribed by the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Meetings will be open to the public unless a determination is made in accordance with Section 10(d) of the FACA and 5 U.S.C. 552b that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting.

For more information contact Ellen Tannor, Overseas Security Advisory Council, Bureau of Diplomatic Security, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Authority: 22 U.S.C. 2651a and 5 U.S.C. Appendix.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2023–01813 Filed 1–27–23; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 11982]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Gego: Measuring Infinity'' 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 ''Gego: Measuring Infinity'' at the Solomon R. Guggenheim Museum, New York, New York, 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. 2023–01765 Filed 1–27–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11980]

Notice of Public Meeting in Preparation for International Maritime Organization SSE 9 Meeting

The Department of State will conduct a public meeting at 1:00 p.m. on Thursday, February 16, 2023, both in-person at Coast Guard Headquarters in Washington, DC, and Microsoft Teams meeting, with the option for online or phone (audio only) participation. The primary purpose of the meeting is to prepare for the 9th session of the International Maritime Organization's (IMO) Sub-Committee on Ship Systems and Equipment (SSE 9) to be held at IMO Headquarters, in London, United Kingdom, from February 27 to March 3, 2023.

Members of the public may participate in-person up to the capacity of the room or up to the capacity of the Microsoft Teams meeting, which can handle 1,000 participants. To RSVP, participants should contact the meeting coordinator, LT Christopher Reimer, by email at *Christopher.P.Reimer@uscg.mil.* The meeting location will be the United States Coast Guard Headquarters, 4R14–18 Conference Room. LT Reimer will provide access information for in-person and Microsoft Teams attendance.

The agenda items to be considered at this meeting mirror those to be considered at SSE 9, and include:

- Adoption of the agenda
- Decision of other IMO bodies
- New requirements for ventilation of survival craft
- Development of amendments to the LSA Code to revise the lowering speed of survival craft and rescue boats for cargo ships
- Revision of SOLAS chapter III and the LSA Code
- Review of SOLAS chapter II–2 and associated codes to minimize the incidence and consequences of fires on ro-ro spaces and special category spaces of new and existing ro-ro passenger ships
- Development of amendments to the LSA code for thermal performance of immersion suits
- Development of amendments to the LSA code and resolution MSC.81(70) to address the in-water performance of SOLAS lifejackets
- Revision of the provisions for helicopter facilities in SOLAS and the MODU Code
- Development of amendments to SOLAS chapter II–2 and the FSS Code concerning detection and control of fires in cargo holds and on the cargo deck of containerships
- Development of amendments to SOLAS chapter II–2 and MSC.1/Circ. 1456 addressing fire protection of control stations on cargo ships
- Revision of the Code of Safety for Diving Systems (resolution A.831(19)) and the *Guidelines and specifications for hyperbaric evacuation systems* (resolution A.692(17))
- Validated model training courses
- Unified interpretation of provisions of IMO safety, security and environment-related conventions
- Development of provisions to prohibit the use of fire-fighting foams containing perfluorooctane sulfonic acid (PFOS) for fire-fighting on board ships
- Amendments to the LSA Code concerning single fall and hook systems with on-load release capability
- Biennial status report and provisional agenda for SSE 10
- Election of Chair and Vice-Chair for 2024
- Any other business
- Report to the Maritime Safety Committee

Please note: The IMO may, on short notice, adjust the SSE 9 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate may contact the meeting coordinator, LT Christopher Reimer, by email at *Christopher.P.Reimer@uscg.mil,* or in writing at United States Coast Guard (CG–ENG–4), ATTN: LT Christopher Reimer, 2703 Martin Luther King Jr. Ave. SE Stop 7509, Washington, DC 20593–7509. Members of the public needing reasonable accommodation

should advise LT Reimer not later than February 2, 2023. Requests made after that date will be considered but might not be possible to fulfill.

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552.)

Emily A. Rose,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2023–01732 Filed 1–27–23; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2023–0203]

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Primary, Cargo, and Nonprimary Entitlement Funds Available to Date for Fiscal Year 2023

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: **Federal Register** notice.

SUMMARY: This action announces February 28, 2023, as the deadline for each airport sponsor to notify the FAA if it will use its Fiscal Year (FY) 2023 entitlement funds to accomplish Airport Improvement Program (AIP) eligible projects. Each sponsor has previously identified to the FAA such projects through the Airports Capital Improvement Plan process. This action further announces May 5, 2023, as the deadline for an airport sponsor to submit a final grant application, based on bids, for grants that will be funded with FY 2023 entitlement funds only.

FOR FURTHER INFORMATION CONTACT: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500, at (202) 267–8827.

SUPPLEMENTARY INFORMATION: Title 49 U.S.C. 47105(f) provides that the sponsor of an airport for which entitlement funds (referred to as apportionments in 49 U.S.C. 47114) are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the airport sponsor's intent to submit a grant application for its available entitlement funds. Therefore, the FAA is hereby notifying such airport sponsors of the steps required to ensure that the FAA has sufficient time to carry over and convert remaining entitlement funds.

The AIP grant program is authorized by Public Law 115–254, the ''FAA Reauthorization Act of 2018,'' enacted on October 5, 2018, which permits the FAA to make grants for planning and airport development and airport noise compatibility under the AIP through September 30, 2023. The funds allocated to the FAA to fund the AIP grant program are appropriated by an annual Appropriations Act. Apportioned funds will be subject to allocation formulas prescribed by 49 U.S.C. 47114 and any other applicable legislative text.

This notice applies only to sponsors of airports that have entitlement funds appropriated for FY 2023 to use on eligible and justified projects. State aviation agencies participating in the FAA's State Block Grant Program, as prescribed by 49 U.S.C. 47128, are responsible for notifying the FAA which covered nonprimary airports in their programs will be using their entitlement funds for eligible and justified projects.

An airport sponsor intending to apply for any of its available entitlement funds, including those unused, but still available in accordance with 49 U.S.C. 47117 from prior years, must notify the FAA of its intent to submit a grant application by 12:00 p.m. prevailing local time on Tuesday, February 28, 2023.

This notice must be in writing and stipulate the total amount the sponsor intends to use for eligible and justified projects during FY 2023, including those entitlement funds not obligated from prior years that remain available in accordance with 49 U.S.C. 47117 (also known as protected carryover). These notifications are critical to ensure efficient planning and administration of the AIP. Absent the notification of intent to submit a grant application by the above-mentioned deadline, the FAA will carry over the available entitlement funds on March 10, 2023. These funds will not be available again to the airport sponsor until the beginning of FY 2024.

The final grant application deadline for entitlement funds only is Friday, May 5, 2023. The final grant application funding requests should be based on bids, not estimates. As prescribed under 49 U.S.C. 47117, the FAA will carryover the remainder of available entitlement funds after June 9, 2023. These funds will not be available again to the airport sponsor until the beginning of FY 2024. Dates are subject to possible adjustment based on future legislation. As of the publication of this notice, the appropriations and the authorization legislation for the FAA both expire on September 30, 2023.

The FAA has determined these deadlines will expedite and facilitate the FY 2023 grant-making process.

Issued in Washington, DC, on January 24, 2023.

Juan C. Brown,

Director (Acting), Office of Airport Planning and Programming.

[FR Doc. 2023–01733 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0212; Summary Notice No. 2022–46]

Petition for Exemption; Summary of Petition Received; Lyla G. Coyne

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 21, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–0212 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as

described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jimeca Callaham, (202) 267–0312, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0212.

Petitioner: James Coyne.

Section of 14 CFR Affected: § 121.311(b).

Description of Relief Sought: The petitioner requests an exemption from § 121.311(b) of Title 14 of the Code of Federal Regulations (14 CFR) to the extent necessary to allow the use of Child Restraint System (Firefly GoTo Seat, manufactured by Leckey). The Firefly GoTo Seat is not certified for use aboard a United States (U.S.) aircraft, during all phases of flight, including movement on the surface and takeoff and landing. If granted, the petitioner also requests that any air carrier operating under part 121 while this device is on aboard its aircraft is granted an exemption from 14 CFR 121.311(c).

[FR Doc. 2023–01843 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2120–0720]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Human Space Flight Requirements for Crew/Space Flight Participants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information demonstrating that a launch or reentry operation involving human participants will meet the risk criteria and requirement to ensure public safety.

DATES: Written comments should be submitted by November 28, 2022.

ADDRESSES: Please send written comments:

By electronic docket: www.regulations.gov (Enter docket number into search field).

By mail: Charles Huet, 800 Independence Avenue SW, Room 331, Washington, DC 20591.

By fax: 202–267–5463.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: *charles.huet@faa.gov* or; phone: (202) 267–7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0720.

Title: Human Space Flight Requirements for Crew/Space Flight Participants.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2019 (84 FR 27391). There were no comments. The FAA established requirements for human space flight and space flight participants required by the Commercial Launch Amendment of 2004. The information collected is used by the FAA, A licensee or permittee, a space flight participant.

Respondents: All commercial space entities that propose to conduct a launch or reentry with flight crew or space flight participants on board must comply with this collection.

Frequency: On occasion.

Estimated Average Burden per Response: 4 Hours.

Estimated Total Annual Burden: 632 Hours.

Issued in Washington, DC.

James A. Hatt,

Space Policy Division Manager, Office of Commercial Space Transportation.

[FR Doc. 2023–01777 Filed 1–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0502; Summary Notice No. 2022–44]

Petition for Exemption; Summary of Petition Received; Unconventional Concepts, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 21, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–0502 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments,

without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean O'Tormey (202–267–4044), Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0502.

Petitioner: Unconventional Concepts, Inc.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i), 91.7(a), 91.109, 91.119, 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a) and 91.417(b).

Description of Relief Sought: The petitioner seeks an exemption from §§ 61.3(a)(1)(i), 91.7(a), 91.109, 91.119, 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a) and 91.417(b) in order to use an unmanned aircraft system to support research and development operations that will support and inform law enforcement.

[FR Doc. 2023–01729 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1384; Summary Notice No. 2022–45]

Petition for Exemption; Summary of Petition Received; Venture Travel, LLC dba Taquan Air

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 21, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1384 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeremy Nelson, (202) 267–3314, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–1384.

Petitioner: Venture Travel, LLC dba Taquan Air (Taquan Air).

Section(s) of 14 CFR Affected: § 119.73.

Description of Relief Sought: Taquan Air requests an exemption in order to employ a former Federal Aviation Administration (FAA) aviation safety inspector (ASI) who had responsibility to oversee the operations of the petitioner from February 17, 2021 until May 26, 2021.

[FR Doc. 2023–01758 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2022–0038]

Notice of Availability: Proposed Updates to Joint Development Circular

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability: proposed updates to joint development Circular.

SUMMARY: The Federal Transit Administration (FTA) is seeking public comment on proposed changes to Circular 7050.1B regarding joint development projects using FTA funds or FTA-funded property. The purpose of these proposed changes is to incorporate changes made by the Bipartisan Infrastructure Law (BIL), implemented as the Infrastructure Investment and Jobs Act that amended the definition of a ''Capital Project.''

DATES: Comments must be received on or before March 31, 2023. Late filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by any of the following methods, identifying your submission by DOT Docket Number FTA–2022–0038. All electronic submissions must be made to the U.S. Government electronic site at *https://www.regulations.gov/.*

Federal e-Rulemaking Portal: Go to *https://www.regulations.gov/* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200

New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2022–0038) for this notice at the beginning of each submission of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. All comments received will be posted without change to *https://www.regulations.gov/* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to *https://www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For policy guidance questions, contact Margaret Schilling, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E52–315, Washington, DC 20590, phone: (202) 366–1487, or email: *margaret.schilling@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice provides a summary of the proposed changes to Circular 7050.1B. The Circular itself is not included in this notice; instead, a redline version of the updated Circular showing the proposed changes is posted in Docket FTA–2022–0038.

FTA is proposing to update Circular 7050.1B, to add ''technology to fuel a zero-emission vehicle'' as an eligible joint development improvement under FTA programs. Recipients of assistance for these improvements must collect fees for the use of the charging facilities unless exceptions apply.

Sec. 30001 of the BIL amended section 5302 of title 49, United States Code, by adding section 5302(4)(G)(vi)(XV); revising section 5302(4)(G)(iv); and reordering Sections 5302(4)(G)(i–vi).[1] Section 5302(4)(G)(vi)(XV) added ''technology to fuel a zero-emission vehicle'' as an eligible joint development improvement under the definition of a ''Capital Project.''

Section 5302(4)(G)(iv) provides that ''if equipment to fuel privately owned zero-emission passenger vehicles is installed, the recipient of assistance shall collect fees from users of the equipment in order to recover the costs of construction, maintenance, and operation of the equipment.'' FTA is proposing to add this language to the Circular on pages III–7 and VI–4—VI–5, with the following clarifying language: ''The recipient of assistance shall be required to collect fees from usage only if the equipment is used primarily by privately-owned passenger vehicles. Fee collection may also be waived if the recipient demonstrates in the joint development application that the cost to install a fee collection system is more than the recipient anticipates collecting from users of the equipment. The method of fee collection in all circumstances is at the discretion of the site host and/or recipient of FTA assistance.''

This update of Circular 7050.1B is a direct implementation of a statutory change. FTA recommends that interested stakeholders review the proposed changes to the Circular and provide comment on any impacts these proposed changes may have on future joint development projects.

After a review and consideration of the comments provided on these changes, FTA will publish the updated Circular on its website. No other changes to the Circular are being proposed at this time.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–01830 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–57–P

[1] Previously section 5302(3)(G).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2023–0012]

Notice of Establishment of the Intelligent Transportation Systems Program Advisory Committee and To Solicit Individuals Who Wish To Be Considered as Members

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of establishment of the Intelligent Transportation Systems Program Advisory Committee and to solicit individuals who wish to be considered as members.

SUMMARY: The Office of the Secretary of Transportation (OST) announces the intent to establish the Intelligent Transportation Systems Program Advisory Committee (ITSPAC). The Secretary has determined that establishing the ITSPAC is necessary and in the public interest. The OST is publishing this notice to solicit individuals who wish to be considered as members within the ITSPAC.

DATES: Nominations for ITSPAC members must be received on or before 30 days after posting.

ADDRESSES: All nomination materials should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* ITS JPO, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, Room E84–432 (HOIT), Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: ITSPAC Designated Federal Officer, c/o Robert Sheehan, Program Manager, Intelligent Transportation Systems Joint Program Office (ITS JPO), *ITSPAC@dot.gov* or (202) 366–6817.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Transportation (OST) announces the intent to establish the ITSPAC as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2) to provide information, advice, and recommendations to the Secretary on matters relating to Intelligent Transportation Systems (ITS) program needs, objectives, plans, approaches, contents, and progress.

This notice announces the intent of the U.S. Secretary of Transportation (Secretary) to solicit members for the ITSPAC.

This notice is provided in accordance with the Federal Advisory Committee Act (FACA). Please see the ITSPAC website for additional information at. *https://its.dot.gov/itspac.*

Committee's Official Designation: The Committee's official designation is the Intelligent Transportation Systems Program Advisory Committee.

Authority: Pursuant to 23 U.S.C. 515 (h)(1) as amended by Sections 13008 and 25001 of the Infrastructure Investment and Jobs Act (November 16,

2021)—''The Secretary shall establish an Advisory Committee (referred to in this subsection as the 'Advisory Committee') to advise the Secretary on carrying out sections 512 through 518.''. The U.S. Secretary of Transportation (Secretary) establishes ITSPAC as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2).

Scope of Activities: The ITSPAC is tasked with providing advice and recommendations to the Secretary on matters relating to ITS. The Secretary, or designee, shall present ITSPAC with tasks on matters relating to the study, development, and implementation of ITS. The Secretary may withdraw a task being considered by ITSPAC at any time. The ITSPAC shall act solely in an advisory capacity to the Secretary. Through the ITS JPO, the ITSPAC will make recommendations to the Secretary regarding ITS program needs, objectives, plans, approaches, contents, and progress. The Secretary may accept or reject a recommendation made by ITSPAC and is not bound to pursue any recommendation from ITSPAC. The ITSPAC will provide a forum for national discussion and recommendations on ITS activities and will work to promote the coordination of external ITS activities with those of the U.S. Department of Transportation (DOT).

Description of Duties: The ITSPAC shall be responsive to specific assignments and may conduct studies, inquiries, and workshops as the Secretary may authorize or direct. At a minimum, the ITSPAC will be expected to perform the following duties:

1. Provide input into the development of ITS aspects of the U.S. DOT Strategic Plan under 49 U.S.C. 6503.

2. Review, at least annually, areas of ITS programs and research being considered for funding by the Department, to determine:

a. whether these activities are likely to advance either the state-of-the-practice or state-of-the-art in ITS;

b. whether the ITS technologies are likely to be deployed by users, and if not, to determine the barriers to deployment; and,

c. the appropriate roles for Government and the private sector in investing in the programs, research, and technologies being considered.

Agency or official to whom the ITSPAC reports: The ITSPAC shall report to the Secretary of Transportation through the ITS JPO.

Support: The ITS JPO will serve as the sponsor of the ITSPAC and shall provide necessary administrative support. ITSPAC members will not be paid for their time spent on ITSPAC duties. Travel costs will be reimbursed for in-person meetings.

Designated Federal Officer: The ITS JPO shall appoint a full-time or permanent part-time employee to serve as the ITSPAC Designated Federal Officer (DFO) (or designee). The DFO will approve and call all committee and subcommittee meetings, prepare and approve all meeting agendas (in consultation with the ITSPAC Chair), attend all committee and subcommittee meetings, adjourn any meeting whenever such action is in the public interest, chair meetings when directed to do so by the Secretary of Transportation, and furnish detailed minutes of each meeting.

Duration and Termination: The ITSPAC charter shall terminate 3 years after its effective date unless renewed in accordance with FACA and other applicable requirements.

Estimated Number and Frequency of Meetings: The ITSPAC will meet no less than two (2) times each year. The ITSPAC may convene with the use of remote video conference technology. As necessary, special meetings and subcommittee meetings may be called by the DFO. Notice of each scheduled meeting shall be published in the **Federal Register** at least 15 calendar days prior to the date of the meeting. Notice shall include the agenda, date, time, location, and purpose of the meeting. All meetings shall be open to the public, except as provided under section 10(d) of FACA, as implemented by 41 CFR 101–6.10, the Government in the Sunshine Act (5 U.S.C. 522b(c)), 41 CFR part 102–3, and DOT Order 1120.3B. Members of the public shall be permitted to appear before or file statements with the ITSPAC.

Subcommittees: The ITS JPO shall be authorized to establish subcommittees. Subcommittees shall not work independently of the chartered ITSPAC and shall report all recommendations and advice to the full ITSPAC for deliberation and discussion. Subcommittees must not provide advice or work products directly to the Secretary or to the ITS JPO.

Recordkeeping: The records, reports, minutes, agenda, and other documents made available to or by the ITSPAC shall be handled in accordance with General Records Schedule 26, Item 2, and other approved agency records disposition schedule. The records shall be made available for public inspection and duplication in the ITS JPO at 1200 New Jersey Ave. SE, Room E84–412 (HOIT), Washington, DC 20590, or through the ITSPAC website at *http://www.its.dot.gov/itspac.*

Membership

Membership Balance Plan: The ITSPAC shall comprise not more than 25 individuals appointed by the Secretary of Transportation upon recommendation by the Deputy Assistant Secretary for Research and Technology. In order to reflect the diverse nature of the ITS program, ITSPAC membership shall be composed of individuals representing the categories of organizations listed is subparagraph 1 below. The ITS JPO may consult with applicable organizations to determine the appropriate individuals to be recommended. Also, due to the rapid evolution of ITS-related technologies and the emphasis that must be placed on deployment, ITSPAC membership shall reflect experience in and familiarity with future innovations in technology, business development, and strategic planning issues.

1. The ITSPAC membership shall be balanced between metropolitan and rural interests, and include, at minimum:

(a) a representative from a State highway department;

(b) a representative from a local highway department who is not from a metropolitan planning organization;

(c) a representative from a State, local, or regional transit agency;

(d) a representative from a State, local, or regional wildlife, land use, or resource management agency;

(e) a representative from a metropolitan planning organization;

(f) a representative of a national transit association;

(g) a representative of a national, State, or local transportation agency or association;

(h) a private sector user of intelligent transportation system technologies;

(i) a private sector developer of intelligent transportation system technologies, which may include emerging vehicle technologies;

(j) an academic researcher with expertise in computer science or another information science field related to intelligent transportation systems, and who is not an expert on transportation issues;

(k) an academic researcher who is a civil engineer;

(l) an academic researcher who is a social scientist with expertise in transportation issues;

(m) an academic researcher who is a biological or ecological scientist with expertise in transportation issues;

(n) a representative from a nonprofit group representing the intelligent transportation system industry;

(o) a representative from a public interest group concerned with safety;

(p) a representative of a labor organization;

(q) a representative of a mobility-providing entity;

(r) an expert in traffic management;

(s) a representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns;

(t) a representative from a public interest group concerned with the impact of the transportation system on terrestrial and aquatic species and the habitat of those species; and

(u) members with expertise in planning, safety, telecommunications, and operations;

(v) an expert in cybersecurity; and

(w) an automobile manufacturer.

2. Members appointed solely for their expertise will be considered for appointment as Special Government Employees, and members appointed to represent specific stakeholder groups will be appointed as Representative Members.

3. To the extent practicable, ITSPAC membership will include senior policy-level representatives of their respective organizations. Additionally, to ensure that the recommendations of the ITSPAC have taken into account the needs of diverse groups served by the Department, membership shall include, to the extent practicable, individuals and/or organizations that represent minorities, women, and persons with disabilities.

Membership Terms:

(a) In general—The term of a member of the Advisory Committee shall be 3 years.

(b) Renewal—On expiration of the term of a member of the Advisory Committee, the member—

i. may be reappointed; or

ii. if the member is not reappointed under clause (i), may serve until a new member is appointed.

(b) Replacement—Nonparticipation by any member in ITSPAC activities will be sufficient reason for the appointment of a replacement member by the Secretary of Transportation.

Membership Nomination Process: The Secretary is seeking individual nominations for membership to the ITSPAC. Any interested person may nominate one or more qualified individuals for membership on ITSPAC. Self-nominations are also accepted. Nominations must include, in full, the following materials to be considered for membership. Failure to submit the required information may disqualify a candidate from the review process.

a. A biography, including professional and academic credentials.

b. A résumé or curriculum vitae, which must include relevant job experience, qualifications, as well as contact information (full legal name, email, telephone, and mailing address).

c. A one-page statement describing how the candidate will benefit the ITSPAC, considering the candidate's unique perspective.

d. Identify the stakeholder group that the candidate would represent and state the level of expertise in the stakeholder group that is being represented.

e. If applicable, state any previous experience on a Federal Advisory Committee.

The Secretary reserves the right to appoint members to serve on the ITSPAC who were not nominated in response to this notice if necessary to meet Departmental needs and in a manner to ensure an appropriate balance of membership.

Signed in Washington, DC, on January 24, 2023.

Robert Sheehan,

Program Manager, Intelligent Transportation Systems Joint Program Office.

[FR Doc. 2023–01769 Filed 1–27–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies as of September 30, 2022; Report to Congressional Committees

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Report to Congressional committees.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences among the accounting and capital standards used by the agencies for insured depository institutions (institutions). Section 37(c) requires that this report be published in the **Federal Register**. The agencies have not identified any material differences among the agencies' accounting and capital standards applicable to the institutions they regulate and supervise.

FOR FURTHER INFORMATION CONTACT: *OCC:* Diana Wei, Risk Expert, Capital Policy, (202) 649–5554, Rima Kundnani, Counsel, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Brian Chernoff, Manager, (202) 452–2952, Jennifer McClean, Senior Financial Institution Policy Analyst II, (202) 785–6033, Sarah Dunning, Financial Institution Policy Analyst II, (202) 475–6660, Division of Supervision and Regulation, and Jasmin Keskinen, Attorney, (202) 475–6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For the hearing impaired and users of Telecommunications Device for the Deaf (TDD) and TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, (703) 245–0778, Christine Bouvier, Assistant Chief Accountant, (202) 898–7289, Richard Smith, Capital Policy Analyst, Capital Policy Section, (703) 254–0782, Division of Risk Management Supervision, Mark Handzlik, Counsel, (202) 898–7362, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

In accordance with section 37(c) of the Federal Deposit Insurance Act,[1] the agencies are submitting this joint report, which covers differences among their accounting and capital standards existing as of September 30, 2022, applicable to institutions.[2] In recent

[1] 12 U.S.C. 1831n(c)(1) and (3).

[2] Although not required under section 37(c), this report includes descriptions of certain of the

years, the agencies have acted together to harmonize their accounting and capital standards and eliminate as many differences as possible. As of September 30, 2022, the agencies have not identified any material differences among the agencies' accounting standards applicable to institutions.

In 2013, the agencies revised the risk-based and leverage capital rule for institutions (capital rule),[3] which harmonized the agencies' capital rule in a comprehensive manner.[4] Since 2013, the agencies have revised the capital rule on several occasions, further reducing the number of differences in the agencies' capital rule.[5] Today, only a few differences remain, which are statutorily mandated for certain categories of institutions or which reflect certain technical, generally nonmaterial differences among the agencies' capital rule. No new material differences were identified in the capital standards applicable to institutions in this report compared to the previous report submitted by the agencies pursuant to section 37(c).

Differences in the Standards Among the Federal Banking Agencies

Differences in Accounting Standards

As of September 30, 2022, the agencies have not identified any material differences among themselves in the accounting standards applicable to institutions.

Differences in Capital Standards

The following are the remaining technical differences among the capital standards of the agencies' capital rule.[6]

Definitions

The agencies' capital rule largely contains the same definitions.[7] The differences that exist generally serve to accommodate the different needs of the institutions that each agency charters, regulates, and/or supervises.

The agencies' capital rule has differing definitions of a pre-sold construction loan. The capital rule of all three agencies provides that a pre-sold construction loan means any ''one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (12 U.S.C. 1831n), and, in addition to other criteria, the purchaser has not terminated the contract.'' [8] The Board's definition provides further clarification that, if a purchaser has terminated the contract, the institution must immediately apply a 100 percent risk weight to the loan and report the revised risk weight in the next quarterly Consolidated Reports of Condition and Income (Call Report).[9] Similarly, if the purchaser has terminated the contract, the OCC and FDIC capital rule would immediately disqualify the loan from receiving a 50 percent risk weight, and would apply a 100 percent risk weight to the loan. The change in risk weight would be reflected in the next quarterly Call Report. Thus, the minor wording difference between the agencies should have no practical consequence.

Capital Components and Eligibility Criteria for Regulatory Capital Instruments

While the capital rule generally provides uniform eligibility criteria for regulatory capital instruments, there are some textual differences among the agencies' capital rule. The capital rule of each of the three agencies requires that, for an instrument to qualify as common equity tier 1 or additional tier 1 capital, cash dividend payments be paid out of net income and retained earnings, but the Board's capital rule also allows cash dividend payments to be paid out of related surplus.[10] The provision in the Board's capital rule that allows dividends to be paid out of related surplus is a difference in substance among the agencies' capital rule. However, due to the restrictions on institutions regulated by the Board in separate regulations, this additional language in the Board's rule has a practical impact only on bank holding companies (BHCs) and savings and loan holding companies (SLHCs) and is not a difference as applied to institutions. The agencies apply the criteria for determining eligibility of regulatory capital instruments in a manner that ensures consistent outcomes for institutions.

Both the Board's capital rule and the FDIC's capital rule also include an additional sentence noting that institutions regulated by each agency are subject to restrictions independent of the capital rule on paying dividends out of surplus and/or that would result in a reduction of capital stock.[11] These additional sentences do not create differences in substance between the agencies' capital standards, but rather note that restrictions apply under separate regulations.

In addition, the Board's capital rule includes a requirement that a Board-regulated institution [12] must obtain prior approval before redeeming regulatory capital instruments.[13] This requirement effectively applies only to a BHC or an SLHC and is, therefore, not included in the OCC's and FDIC's capital rule. All three agencies require institutions to obtain prior approval before redeeming regulatory capital instruments in other regulations.[14] The additional provision in the Board's capital rule, therefore, only has a practical impact on BHCs and SLHCs and is not a difference as applied to institutions.

Capital Deductions

There is a technical difference between the FDIC's capital rule and the OCC's and Board's capital rule with

Board's capital standards applicable to depository institution holding companies where such descriptions are relevant to the discussion of capital standards applicable to institutions.

[3] See 78 FR 62,018 (October 11, 2013) (final rule issued by the OCC and the Board); 78 FR 55340 (September 10, 2013) (interim final rule issued by the FDIC). The FDIC later issued its final rule in 79 FR 20754 (April 14, 2014). The agencies' respective capital rule is at 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC). The capital rule applies to institutions, as well as to certain bank holding companies (BHCs) and savings and loan holding companies (SLHCs). *See also* 12 CFR 217.1(c).

[4] The capital rule reflects the scope of each agency's regulatory jurisdiction. For example, the Board's capital rule includes requirements related to BHCs, SLHCs, and state member banks (SMBs), while the FDIC's capital rule includes provisions for state nonmember banks and state savings associations, and the OCC's capital rule includes provisions for national banks and federal savings associations.

[5] See *e.g.*, 84 FR 35234 (July 22, 2019). The OCC and FDIC revised their capital rule to conform with language in the Board's capital rule related to the qualification criteria for additional tier 1 capital instruments and the definition of corporate exposures. As a result, these differences, which were included in previous reports submitted by the agencies pursuant to section 37(c), have been eliminated.

[6] Certain minor differences, such as terminology specific to each agency for the institutions that it supervises, are not included in this report.

[7] See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[8] 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[9] 12 CFR 217.2.

[10] 12 CFR 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board).

[11] 12 CFR 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board); 12 CFR 324.20(b)(1)(v) and 324.20(c)(1)(viii) (FDIC). Although not referenced in the capital rule, the OCC has similar restrictions on dividends; 12 CFR 5.55 and 12 CFR 5.63. Certain restrictions on the payment of dividends that apply under separate regulations, and therefore not discussed in this report, are different among the agencies. *Compare* 12 CFR 208.5 (Board) and 12 CFR 5.64 (OCC) with 12 CFR 303.241 (FDIC).

[12] Board-regulated institution refers to an SMB, a BHC, or an SLHC. *See* 12. CFR 217.2.

[13] 12 CFR 217.20(f); *see also* 12 CFR 217.20(b)(1)(iii).

[14] See 12 CFR 5.46, 5.47, 5.55, and 5.56 (OCC); 12 CFR 208.5 (Board); 12 CFR 303.241 (FDIC).

regard to an explicit requirement for deduction of examiner-identified losses. The agencies require their examiners to determine whether their respective supervised institutions have appropriately identified losses. The FDIC's capital rule, however, explicitly requires FDIC-supervised institutions to deduct identified losses from common equity tier 1 capital elements, to the extent that the institutions' common equity tier 1 capital would have been reduced if the appropriate accounting entries had been recorded.[15] Generally, identified losses are those items that an examiner determines to be chargeable against income, capital, or general valuation allowances.

For example, identified losses may include, among other items, assets classified as loss, off-balance-sheet items classified as loss, any expenses that are necessary for the institution to record in order to replenish its general valuation allowances to an adequate level, and estimated losses on contingent liabilities. The Board and the OCC expect their supervised institutions to promptly recognize examiner-identified losses, but the requirement is not explicit under their capital rule. Instead, the Board and the OCC apply their supervisory authorities to ensure that their supervised institutions charge off any identified losses.

Subsidiaries of Savings Associations

There are special statutory requirements for the agencies' capital treatment of a savings association's investment in or credit to its subsidiaries as compared with the capital treatment of such transactions between other types of institutions and their subsidiaries. Specifically, the Home Owners' Loan Act (HOLA) distinguishes between subsidiaries of savings associations engaged in activities that are permissible for national banks and those engaged in activities that are not permissible for national banks.[16]

When subsidiaries of a savings association are engaged in activities that are not permissible for national banks,[17] the parent savings association generally must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent savings association. If a subsidiary of a savings association engages solely in activities permissible for national banks, no deduction is required, and investments in and loans to that organization may be assigned the risk weight appropriate for the activity.[18] As the appropriate federal banking agencies for federal and state savings associations, respectively, the OCC and the FDIC apply this capital treatment to those types of institutions. The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

Tangible Capital Requirement

Federal law subjects savings associations to a specific tangible capital requirement but does not similarly do so with respect to banks. Under section 5(t)(2)(B) of HOLA, savings associations are required to maintain tangible capital in an amount not less than 1.5 percent of total assets.[19] The capital rule of the OCC and the FDIC includes a requirement that savings associations maintain a tangible capital ratio of 1.5 percent.[20] This statutory requirement does not apply to banks and, thus, there is no comparable regulatory provision for banks. The distinction is of little practical consequence, however, because under the Prompt Corrective Action (PCA) framework, all institutions are considered critically undercapitalized if their tangible equity falls below 2 percent of total assets.[21] Generally speaking, the appropriate federal banking agency must appoint a receiver within 90 days after an institution becomes critically undercapitalized.[22]

Enhanced Supplementary Leverage Ratio

The agencies adopted enhanced supplementary leverage ratio standards that took effect beginning on January 1, 2018.[23] These standards require certain BHCs to exceed a 5 percent supplementary leverage ratio to avoid limitations on distributions and certain discretionary bonus payments and also require the subsidiary institutions of these BHCs to meet a 6 percent supplementary leverage ratio to be considered ''well capitalized'' under the PCA framework.[24] The rule text establishing the scope of application for the enhanced supplementary leverage ratio differs among the agencies. The Board and the FDIC apply the enhanced supplementary leverage ratio standards for institutions based on parent BHCs being identified as global systemically important BHCs as defined in 12 CFR 217.2.[25] The OCC applies enhanced supplementary leverage ratio standards to the institution subsidiaries under their supervisory jurisdiction of a top-tier BHC that has more than $700 billion in total assets or more than $10 trillion in assets under custody.[26]

Michael J. Hsu,

Acting Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 12, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–01697 Filed 1–27–23; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[15] 12 CFR 324.22(a)(9).

[16] 12 U.S.C. 1464(t)(5).

[17] Subsidiaries engaged in activities not permissible for national banks are considered non-includable subsidiaries.

[18] A deduction from capital is only required to the extent that the savings association's investment exceeds the generally applicable thresholds for deduction of investments in the capital of an unconsolidated financial institution.

[19] 12 U.S.C. 1464(t)(1)(A)(ii) and (t)(2)(B).

[20] 12 CFR 3.10(a)(6) (OCC); 12 CFR 324.10(a)(1)(vi) (FDIC). The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

[21] See 12 U.S.C. 1831o(c)(3); see also 12 CFR 6.4 (OCC); 12 CFR 208.45 (Board); 12 CFR 324.403 (FDIC).

[22] 12 U.S.C. 1831o(h)(3)(A).

[23] See 79 FR 24528 (May 1, 2014).

[24] 12 CFR 6.4(b)(1)(i)(D)(2) (OCC); 12 CFR 208.43(b)(1)(iv)(B) (Board); 12 CFR 324.403(b)(1)(v) (FDIC).

[25] 12 CFR 208.43(b)(1)(iv)(B) (Board); 12 CFR 324.403(b)(1)(ii) (FDIC).

[26] 12 CFR 6.4(b)(1)(i)(D)(2) (OCC).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2011–34, Rules for Certain Rental Real Estate Activities

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. The IRS is soliciting comments concerning Revenue Procedure 2011–34, Rules for Certain Rental Real Estate Activities.

DATES: Written comments should be received on or before March 31, 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 No. 1545–2194 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 (202) 317–5744, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *sara.l.covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2011–34 Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–2194.

Abstract: This revenue procedure grants relief under Section 1.469–9(g) for certain taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,000.

Estimated Time per Response: 30 mins.

Estimated Total Annual Burden Hours: 1,000.

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 24, 2023.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2023–01793 Filed 1–27–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

DATES: Comments should be received on or before March 1, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

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:

Office of Foreign Assets Control (OFAC)

Title: Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

OMB Number: 1505–0255.

Type of Review: Extension without change of a currently approved collection.

Description: Section 566.504(b) of the Hizballah Financial Sanctions Regulations, *31 CFR part 566* (HFSR) provides that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (the ''CAPTA List'') on OFAC's website (*www.treasury.gov/ofac*) as subject to a prohibition on the maintaining of such accounts, must file a report with OFAC that provides full details on the closing of each such account, and on all transactions processed or executed through the account pursuant to § 566.504, including the account outside of the United States to which funds remaining in the account were transferred. This report must be filed with OFAC within 30 days of closure of the account. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable-through accounts for foreign financial institutions listed on the CAPTA List pursuant to *31 CFR part 566.* The reports will be reviewed by OFAC and may be used for compliance and enforcement purposes by the agency.

Affected Public: The likely respondents affected by this collection of information are U.S. financial institutions maintaining correspondent accounts or payable-through accounts for foreign financial institutions.

Estimated Number of Respondents: OFAC assesses that the estimate for the number of unique reporting respondents is approximately 1.

Frequency of Response: The estimated annual frequency of responses is approximately 1 response per respondent.

Estimated Total Number of Annual Responses: The estimated total number of responses per year is approximately 1.

Estimated Time per Response: OFAC assesses that there is an average time estimate of 2 hours per response.

Estimated Total Annual Burden Hours: The estimated total annual reporting burden is approximately 2 hours.

Authority: 44 U.S.C. 3501 et seq.

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–01757 Filed 1–27–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Bank Enterprise Award (BEA) Program Application

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The U.S. Department of the Treasury, as part of a 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 (PRA) of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Bank Enterprise Award Program (BEA Program) Application (Application). The Application is an online form submitted through the CDFI Fund's Awards Management Information System (AMIS).

DATES: Comments should be received on or before March 1, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.* Other information regarding the CDFI Fund and its programs may be obtained on the CDFI Fund website at *https://www.cdfifund.gov.* The BEA Program Application Template, which presents the questions that will comprise the online Application, may be obtained from the BEA Program page of the CDFI Fund website at *https://www.cdfifund.gov/bea.*

SUPPLEMENTARY INFORMATION:

Community Development Financial Institutions (CDFI)

Title: BEA Program Application.

OMB Number: 1559–0005.

Abstract: The purpose of the Bank Enterprise Award Program (BEA Program) is to provide an incentive to Federal Deposit Insurance Corporation-insured (FDIC-insured) depository institutions to increase their lending, investment, and financial services to residents and businesses located in economically distressed communities, and provide assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The CDFI Fund will make awards through the BEA Program to FDIC-insured depository institutions, based upon such institutions' demonstrated increase of qualified activities, as reported in the Application. The Application will solicit information concerning: applicants' eligibility to participate in the BEA Program; the increase in total dollar value of applicants' qualified activities; impact of qualified activities; and appropriate supporting documentation. The questions that the Application contains, and the information generated thereby, will enable the CDFI Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for BEA Program Awards.

Type of Review: Extension without change of currently approved collection.

Affected Public: Businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

Estimated Number of Respondents: 141.

Estimated Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 141.

Estimated Annual Time per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 11,280.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–01811 Filed 1–27–23; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (5 U.S.C. 10), that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board (hereinafter the Board) will be held on Wednesday, March 8, 2023, via Webex. The meeting will be held between 1–1:30 p.m. EST. The meeting will be partially closed to the public from 1:10–1:30 p.m. EST for the discussion, examination and reference to the research applications and scientific review.

Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will also deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), as amended by Public Law 94–409, closing the Board meeting is in accordance with 5 U.S.C. 552b(c) (6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure that the VA Rehabilitation Research and Development program promotes functional independence and improves the quality of life for impaired and disabled Veterans.

Board members advise the Director, Rehabilitation Research and Development Service and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects of Rehabilitation Research and Development proposals. The Board does

not consider grants, contracts or other forms of extramural research.

Members of the public who wish to attend the open portion of the Webex session from 1–1:10 p.m. EST may join by dialing the Webex USA Toll-free Number 1–833–558–0712 and entering the meeting number (access code): Written comments from the public must be sent prior to the meeting to Kristy Benton-Grover, Designated Federal Officer, Rehabilitation Research and Development Service, Department of Veterans Affairs (14RDR), 810 Vermont Avenue NW, Washington, DC 20420, or to *Kristy.Benton-Grover@va.gov.* Those who plan to attend the open portion of the meeting must contact Ms. Benton-Grover at least five (5) days before the meeting. For further information, please call Ms. Benton-Grover at 202–465–6537.

Dated: January 25, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–01837 Filed 1–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10 that the National Research Advisory Council will hold a meeting on Wednesday, March 1, 2023, by Teams. The teleconference number is 1–872–701–0185, conference ID 902 966 740# or the meeting link is *https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjM0N2YzYmItZDk0Zi00YTU4LThlOWEtNDczZDcyNDdiZmQw%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%22d6b5aa61-05b0-47c1-b7fa-73e87c8c0cd2%22%7d.*

The meeting will convene at 11 a.m. and end at 2 p.m. Eastern daylight time. This meeting is open to the public.

The purpose of the National Research Advisory Council is to advise the Secretary on research conducted by the Veterans Health Administration, including policies and programs targeting the high priority of Veterans' health care needs.

On March 1, 2023, the agenda will include follow up discussion of Diversity, Equity and Inclusion Work Group activities; overview of the VA Research Annual Report; updates on the Research Enterprise Initiative; and updates on Expanding VA Research Reach, Brain Health and Veteran Royalty Subcommittees.

No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend, have questions or presentations to present may contact Rashelle Robinson, Designated Federal Officer, Office of Research and Development (14RD), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–443–5768, or *Rashelle.robinson@va.gov* no later than close of business on February 22, 2023. All questions and presentations will be presented during the public comment section of the meeting. Any member of the public seeking additional information should contact Rashelle Robinson at the above phone number or email address noted above.

Dated: January 25, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–01838 Filed 1–27–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,

No. 19 January 30, 2023

Part II

Department of the Interior

Bureau of Ocean Energy Management

30 CFR Part 585

Renewable Energy Modernization Rule; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 585

[Docket No. BOEM–2023–0005]

RIN 1010–AE04

Renewable Energy Modernization Rule

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The first Outer Continental Shelf (OCS) renewable energy regulations were promulgated in 2009 by BOEM's predecessor, the Minerals Management Service (MMS). BOEM's renewable energy program has matured over the past 13 years, during which time BOEM conducted eleven auctions and issued and managed 27 active commercial leases. Based on this experience, the Department has identified opportunities to modernize its regulations to facilitate the development of offshore wind energy resources to meet U.S. climate and renewable energy objectives. This proposed rule contains reforms identified by the Department and recommended by industry since 2010, including proposals for incremental funding of decommissioning accounts; more flexible geophysical and geotechnical survey submission requirements; streamlined approval of meteorological (met) buoys; revised project verification procedures; reform of BOEM's renewable energy auction process; and greater clarity regarding safety requirements. This proposed rule would advance the Department of the Interior's (DOI) energy policies in a safe and environmentally sound manner that would provide a fair return to the U.S. taxpayer.

DATES: Submit comments regarding the substance of this proposed rule to BOEM on or before March 31, 2023. Submit comments regarding the information collection burden of this proposed rule to the Office of Management and Budget (OMB) and to BOEM on or before March 1, 2023. Comments received after these dates might not be considered.

ADDRESSES: You may send comments regarding the substance of this proposed rule, identified by docket number BOEM–2022–0019 and regulation identifier number (RIN) 1010–AE04, using any of the following methods:

- *Federal e-rulemaking portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Helpful search terms are ''RIN 1010–AE04'' or ''BOEM–2022–0019.''
- *U.S. Postal Service or other mail delivery service:* Address comments to Office of Regulations, Bureau of Ocean Energy Management, Department of the Interior, Attention: Georgeann Smale, 45600 Woodland Road, Mailstop: DIR–BOEM, Sterling, VA 20166.
- *Information Collection Addresses:* Written comments and recommendations for this particular proposed information collection should be submitted within 30 days of this notice's publication to *https://www.reginfo.gov/public/do/PRAMain.* From this main web page, you can find and submit comments on this particular information collection by proceeding to the boldface heading ''Currently under Review,'' selecting ''Department of the Interior'' in the ''Select Agency'' pull down menu, clicking ''Submit,'' then, checking the box ''Only Show ICR for Public Comment'' on the next web page, scrolling to OMB Control Number 1010–0176, and clicking ''Comment'' button at the right margin. Or, you may use the search function on the main web page. Please provide a copy of your comments to the Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, VA 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0176 in the subject line of your comments.

Instructions: All comments submitted regarding this proposed rule and its information collection requirements should reference the docket number BOEM–2022–0019 or RIN 1010–AE04. All comments received by BOEM will be reviewed and may be posted to *https://www.regulations.gov,* including any personal information provided with the submission. For further instructions on submitting comments and protecting personally identifiable information, see ''What Should I Consider as I Prepare My Comments?'' in section II.A under the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To access this proposed rule's docket to read related documents and public comments, visit *https://www.regulations.gov* and enter the docket number BOEM–2020–0033 into the search engine.

FOR FURTHER INFORMATION CONTACT: Georgeann Smale, Renewable Energy Modernization Rule Lead, Office of Regulations, BOEM, at telephone number 703–544–9246 or email address *Georgeann.Smale@boem.gov;* or Karen Thundiyil, Chief, Office of Regulations, BOEM, at telephone number 202–742–0970, or email address *Karen.Thundiyil@boem.gov.*

To obtain a copy of the information collection supporting statement, contact: Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, VA 20166.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Executive Summary

This proposed rule would facilitate the development of OCS renewable energy and would promote U.S. climate and renewable energy objectives in a safe and environmentally sound manner while providing a fair return to the U.S. taxpayer. These important goals would be accomplished by modernizing regulations, streamlining overly complex and burdensome processes, clarifying ambiguous provisions, enhancing compliance provisions, and correcting technical errors and inconsistencies. Through these changes, the Department aims to reduce administrative burdens for both developers and the Department's staff, reduce developer [1] costs and uncertainty, and introduce greater regulatory flexibility in a rapidly changing industry to foster the supply of OCS renewable energy to meet increasing demand, while maintaining environmental safeguards. This proposed rule is a major modernization of the regulations, reflects lessons learned from the past 13 years, and is projected to save the renewable energy industry $1 billion over 20 years.[2]

These updates are necessary to ensure a durable and appropriate process is in place to advance renewable energy on the OCS.

The proposed rule contains eight major components:

1. *Eliminating unnecessary requirements for the deployment of meteorological (met) buoys.*

BOEM requires a site assessment plan (SAP) for data collection activities that measure met conditions and that aid the siting and design of an offshore renewable energy project. Such activities include the use of met towers and buoys. BOEM first formulated the SAP requirement in 2009, when the offshore wind industry gathered meteorological data primarily from towers fixed in place by foundations pile-driven into the seafloor. The industry has since transitioned to buoys anchored to the seafloor that gather the same data at lower cost and with less environmental impact.

The U.S. Army Corps of Engineers (USACE) permits scientific measurement devices used for a variety of purposes deployed in U.S. navigable waters and on the OCS, including met towers and met buoys. The USACE permitting process is tailored to buoys and is subject to the same Federal environmental laws [3] as BOEM's SAP process. BOEM's existing SAP process is well suited for the complexities involved with installing met towers but has proven to be unreasonably burdensome for simply anchoring met buoys on the seafloor and redundant with USACE's process.

This proposed rule would eliminate both the SAP requirement for met buoys and the limited lease requirement for installing off-lease met towers and met buoys.[4] Off-lease met towers and met buoys would continue to require USACE permits, given that agency's jurisdiction over obstructions deployed in U.S. navigable waters under section 10 of the Rivers and Harbors Act.

2. *Increasing survey flexibility.*

Before constructing an offshore renewable energy project, lessees and grant holders must conduct geotechnical, geophysical, and archaeological surveys. The primary purposes of these surveys are to ensure the site is suitable for construction, avoid seafloor hazards, and identify historic and cultural resources. Currently, BOEM requires detailed geotechnical survey data for each proposed wind turbine location in the construction and operations plan (COP) submitted by the lessee before project construction is authorized. However, the Department has learned that the precise location of each wind turbine

[1] As used in this preamble, the term ''developer'' includes those interested in constructing, operating, and maintaining OCS facilities to produce, transport, or support the generation of energy from renewable resources. Developers may include applicants seeking noncompetitive leases and grants, bidders in competitive auctions, holders of BOEM-issued leases (lessees) and grants (grant holders), and operators of facilities and support contractors.

[2] For the supporting economic analyses, see section VII.B.2 of this preamble, including the associated tables, that summarizes BOEM's estimated 20-year compliance cost savings as well as the initial regulatory impact analysis available in this proposed rule's docket at *https://www.regulations.gov/docket?D=BOEM-2020-0033*. The estimated cost reduction is expressed in net present value of 2022 dollars estimated over a 20-year period at a 7 percent discount rate. The estimated annualized cost reduction at the 7 percent discount rate is about $95 million. At a 3 percent discount rate, the estimated cost reduction over a 20-year period is about $1.4 billion in net present value of 2022 dollars. The estimated annualized cost reduction at the 3 percent discount rate is about $93 million.

[3] *E.g.,* National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act.

[4] As used throughout this notice, ''off-lease'' means activities occurring on the OCS that are conducted outside the leasehold of a commercial lease issued by BOEM. ''On-lease'' means activities occurring on the OCS within the boundaries of a commercial lease issued by BOEM.

may be uncertain at the COP submittal stage, and geotechnical data collected primarily for engineering purposes are more relevant to the review process after COP approval. Consequently, lessees have requested permission to submit geotechnical data for each turbine location after COP approval, but before construction.

This proposed rule would defer certain geotechnical survey requirements, such as engineering site-specific surveys (*e.g.,* boreholes, vibracores, grab samplers, cone penetrometer tests and other penetrative methods). This proposed change would allow more time to complete the required surveys and would provide greater flexibility in designing projects. BOEM's guidelines for geotechnical surveys are available online.[5]

3. *Improving the project design and installation verification process.*

A certified verification agent (CVA) provides independent third-party review of a project's design, fabrication, and installation. The proposed rule would expand the CVA's role to include verification of the design and commissioning of the critical safety systems to assist the Department in meeting requirements of the Outer Continental Shelf Lands Act (OCS Lands Act; 43 U.S.C. 1331 *et seq.*), and its implementing regulations at 30 CFR 585.102(a), to ensure that any activities authorized by BOEM are carried out safely. BOEM's regulations require CVAs to ''certify'' projects, but CVAs have informed BOEM that the proper industry standard is ''verification.'' This proposed rule would change the regulatory language defining the CVA's role from ''certify'' and ''certification'' to ''verify'' and ''verification.'' This proposed change likely would encourage additional firms to participate in offshore renewable energy projects as CVAs. Industry also has suggested changes that would enable BOEM to approve CVA nominations before COP submittal and would allow separate facility design reports (FDRs) and fabrication and installation reports (FIRs) for major project components. These changes would encourage developers to seek CVA review throughout their project design process and would permit the use of specialized CVAs to verify specific project components.

4. *Establishing a Public Renewable Energy Leasing Schedule.*

This proposed rule would introduce a new commitment by the Secretary of the Interior (Secretary) to publish a schedule of anticipated lease sales that BOEM intends to hold in the subsequent 5 years. This provision is intended to provide advance notice to stakeholders of areas being considered for future lease sales. The proposed schedule for leasing would provide increased certainty and enhanced transparency. This is intended to facilitate planning by industry, the States, and other stakeholders. Comments on the timing and scope of a scheduled lease sale can be made during the public comment opportunities afforded by BOEM during the planning process for each particular lease sale scheduled (*e.g.,* Request for Interest, Call for Information and Nominations, etc.). The proposed schedule would be updated at least once every 2 years to reflect any changes. This proposed schedule would include a general description of the area of each proposed lease sale, the anticipated quarter of each sale, and reasons for changes made to the previously issued leasing schedule, if any.

5. *Reforming BOEM's renewable energy auction regulations.*

In response to lessons learned from eleven auctions, BOEM proposes to reorganize and clarify its pre- and post-auction procedures. These changes would also address the use of bidding credits, deter potential bidder collusion, and more clearly outline auction processes and requirements. They also would specify actions to be taken if a provisional winner fails to meet its obligations, or if an existing lease is relinquished, contracted, or cancelled. The proposed rule would preserve the option to use multiple factor auctions.

6. *Tailoring financial assurance requirements and instruments.*

BOEM requires financial assurances from lessees and grant holders to protect the U.S. taxpayer against potential liabilities arising from any default on lessee or grant holder regulatory obligations. The proposed rule would tailor the financial assurance requirements to better align those requirements with actual risk by allowing incremental funding of decommissioning accounts in accordance with a BOEM-approved schedule during the lease term and by expanding the acceptable categories of financial assurance instruments.

7. *Clarifying safety management system regulations.*

The proposed rule would clarify the information requirements for safety management systems and would add two safety reporting requirements. The proposed rule would incentivize lessees and grant holders to obtain a safety management certification from an accredited conformity assessment body (CAB) as a means to reduce the frequency and intensity of regulatory oversight activities.

8. *Revising other provisions and making technical corrections.*

The proposed rule contains numerous additional provisions that do not fit within the categories described above. The most significant of these provisions would: restructure commercial lease terms into four periods tied to activities required to develop the lease; explicitly allow regulatory departures before and after a lease or grant is issued or made; authorize civil penalties without either notice or a time period for corrective action when violations cause or threaten to cause serious, irreparable, or immediate harm or damage; add specific procedures regarding lease segregation and consolidation; and standardize the annual rental rate per acre across most grants. The proposed rule would correct technical errors in the existing regulations and would make corrections to ensure consistency between the proposed changes and existing practice.

The Department has authority to promulgate OCS renewable energy regulations under the OCS Lands Act. The proposed rule would be consistent with and would advance DOI's energy policies as outlined in various executive orders.

II. General Information

A. What should I consider as I prepare my comments?

1. Contact Information

Please include your name, address, and telephone number or email address so BOEM can contact you with any questions regarding your submission. BOEM will not consider anonymous comments.

2. Public Availability of Comments

Responses will be posted on *https://www.regulations.gov.* Your entire comment will become publicly available after submission, including your name, address, phone number, email address, and any other personally identifiable information (PII) in your comment.

If you wish to protect the confidentiality of your comments, clearly mark the relevant sections and request that BOEM treat them as confidential. In order for BOEM to withhold from disclosure your PII, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

[5] *https://www.boem.gov/sites/default/files/documents/about-boem/GG-Guidelines.pdf.*

Please label privileged or confidential information as ''Contains Confidential Information,'' and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

While you can request that your PII be withheld from public view, BOEM cannot guarantee that it will be able to do so.

3. Information Collection Comments

OMB is required to provide its comments concerning the information collection in this proposed rule 30–60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of being fully considered if OMB receives it by March 1, 2023. This does not affect the deadline for public comments to BOEM on the proposed rule. To review a copy of the information collection request submitted to OMB, go to *https://www.reginfo.gov,* select ''Information Collection Review.'' Under the heading ''Currently Under Review,'' select ''Department of the Interior'' from the pull-down menu; click ''submit;'' check the box ''Only Show ICR for Public Comment'' on the next web page; scroll to OMB Control Number 1010–0176; and click ''Comment'' button at the right margin. You may obtain a copy of the supporting statement for this proposed information collection by contacting BOEM's information collection clearance officer at (703) 787–1025.

4. Scope of Comments

BOEM seeks public comments on the changes in regulatory text and interpretation contained in this proposed rule. As part of this rulemaking, BOEM will consider whether this proposed rule or any additional modifications would improve, clarify, or streamline its OCS renewable regulations. BOEM also seeks comment on several specific areas of inquiry for which it is not proposing regulatory text. Based on comments received and its experience in administering the OCS renewable energy programs, BOEM may include in the final rule revisions to any provisions in part 585 that are a logical outgrowth of this proposed rule, consistent with the Administrative Procedure Act.

5. Suggestions for Preparing Your Comments

(a) Label your comments on this proposed rule with RIN 1010–AE04 or docket number BOEM–2020–0033.

(b) Organize your comments sequentially by the preamble section heading or by the proposed rule section number when addressing specific rule sections.

(c) Explain why you agree or disagree with specific provisions; suggest alternative provisions or provide substitute language.

(d) Describe your assumptions, information, and data used in formulating your comments.

(e) Provide specific examples to illustrate your concerns and suggested alternatives.

(f) Explain your views clearly and succinctly.

(g) Ensure your comments are submitted by the deadline.

III. Preamble Glossary of Abbreviations, Terms, and Acronyms

The following abbreviations, terms, and acronyms are used in the preamble:

ANCSA Alaska Native Claims Settlement Act
BOEM Bureau of Ocean Energy Management
BSEE Bureau of Safety and Environmental Enforcement
CAA Clean Air Act
CAB Conformity Assessment Body
Call Call for Information and Nominations
CFR Code of Federal Regulations
COP Construction and Operations Plan
CVA Certified Verification Agent
CZMA Coastal Zone Management Act
DNCI Determination of No Competitive Interest
DOE Department of Energy
DOI Department of the Interior
E.O. Executive Order
ESA Endangered Species Act
FDR Facility Design Report
FERC Federal Energy Regulatory Commission
FIR Fabrication and Installation Report
FR Federal Register
FSN Final Sale Notice
GAP General Activities Plan
Met Meteorological
MSA Magnuson-Stevens Act
MMPA Marine Mammal Protection Act
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
NMFS National Marine Fisheries Service
NOAA National Oceanic and Atmospheric Administration
NWP 5 U.S. Corps of Engineers Nationwide Permit 5
OCS Outer Continental Shelf
OCS Lands Act Outer Continental Shelf Lands Act
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
ONRR Office of Natural Resources Revenue
OSHA Occupational Safety and Health Administration
PDE Project Design Envelope
PPA Power Purchase Agreement
PRA Paperwork Reduction Act
PSN Proposed Sale Notice
RIN Regulation Identifier Number
ROW Right-of-Way Grant
RUE Right-of-Use and Easement Grant
SAP Site Assessment Plan
Secretary Secretary of the Interior
SMS Safety Management System
USACE United States Army Corps of Engineers
U.S.C. United States Code
USCG United States Coast Guard
USEPA United States Environmental Protection Agency

IV. Background

A. Statutory Authority

Congress authorized the Secretary to grant OCS leases for renewable energy activities when it enacted the Energy Policy Act of 2005, which amended the OCS Lands Act by adding a new subsection 8(p).[6] OCS Lands Act subsection 8(p) authorizes the Secretary to award OCS leases, right-of-way grants (ROWs), and right-of-use and easement grants (RUEs) for activities not authorized by other applicable laws that produce, or that support the production, transportation, or transmission of, energy from sources other than oil and gas. Subsection 8(p) requires the Secretary to competitively award such leases, ROWs, and RUEs unless the Secretary determines following public notice that competitive interest does not exist. Subsection 8(p) also authorizes the Secretary to issue regulations to carry out the subsection's grant of authority. The Secretary first delegated that authority to BOEM's predecessor, MMS.

On April 29, 2009, MMS promulgated regulations for leasing and managing OCS renewable energy activities. On May 19, 2010, the Secretary signed Secretary's Order 3299, dividing MMS into three separate agencies: BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR). Amendment 2 of Secretary's Order 3299 assigned BOEM all renewable energy-related management functions—including resource evaluation, planning, leasing, and safety and environmental enforcement functions—until the ''Assistant Secretary—Land and Minerals Management determines that an increase in activity justifies transferring the inspection and enforcement functions to [BSEE].'' [7] On October 18, 2011, BOEM's regulations were codified at 30 CFR chapter V, and its renewable energy regulations were,

[6] Codified at 43 U.S.C. 1337(p).

[7] Secretary's Order 3299, Amendment No. 2, August 29, 2011, *https://www.doi.gov/sites/doi.gov/files/elips/documents/3299a2-establishment_of_the_bureau_of_ocean_energy_management_the_bureau_of_safety_and_environmental_enforcement_and_the_office_of_natural_resources_revenue.pdf* (last visited Mar. 6, 2019).

and remain, located in 30 CFR part 585.[8]

B. Existing Regulatory Framework

This section provides an overview of BOEM's existing renewable energy regulatory framework.

1. Conducting Renewable Energy Activities on the Outer Continental Shelf

BOEM's regulations specify that a lease, ROW, or RUE is required before a person may construct, operate, or maintain a renewable energy facility on the OCS. A lease authorizes the lessee to propose a plan for development. Following review of the development plans and associated consultations, BOEM may authorize installation and operation of a renewable energy facility on a designated portion of the OCS. A lease also confers the right to one or more project easements necessary for the use of the lease, which in most cases is a corridor from the facility to shore for one or more transmission cables.

BOEM may issue a commercial lease or a non-commercial (or limited) lease for renewable energy activities, subject to obtaining the necessary approvals. A commercial lease specifies the terms and conditions for activities that generate, store, or transmit renewable energy on the OCS for distribution, sale, or other commercial use. These activities include facility construction and project decommissioning.

A limited lease specifies the terms and conditions for activities that support the production of energy on the OCS, but do not produce energy for sale, distribution, or other commercial use exceeding a limit specified in the lease. In addition to commercial and limited leases, a lease may be issued to a Federal agency or a State for research activities supporting future renewable energy development.

A ROW authorizes the installation and maintenance of cables, pipelines, and associated facilities on the OCS that involve the transportation or transmission of any energy product from renewable energy projects. A RUE authorizes the operation of facilities or other installations on the OCS that support the production, transportation, or transmission of electricity or other energy product from any renewable energy source, including shared transmission solutions. The term 'grant,' as used in this document, refers to ROWs or RUEs issued pursuant to the regulations of part 585.

BOEM makes leases, ROWs, and RUEs available on a competitive basis, unless BOEM determines that there is no competitive interest. When competitive interest is absent, BOEM may issue leases, ROWs, and RUEs noncompetitively.

BOEM has discretion to issue departures from its regulations. BOEM may approve departures if they are documented in writing; are consistent with the requirements of the OCS Lands Act; protect the environment, public health, and safety; protect the rights of third parties; and are necessary to facilitate activities on a lease or grant, conserve natural resources, or protect life, property, the environment, or archaeological resources.

2. Issuing Competitive Leases and Grants

Subpart B of 30 CFR part 585 describes the process for issuing a renewable energy lease. BOEM may begin the leasing process by publishing a request for interest to assess interest in leasing all or part of a region of the OCS for renewable energy activities. The request for interest is typically followed by a call for information and nominations (Call) in the **Federal Register**. The Call requests that respondents nominate OCS areas for commercial renewable energy development. BOEM uses the feedback from the request for interest and the Call to assess competitive interest in specified OCS areas.

BOEM also will consider unsolicited requests for a lease on a case-by-case basis. If BOEM determines that competitive interest exists for an area nominated through an unsolicited request, BOEM will use the competitive process if it decides that a lease in that area is appropriate.

After potential OCS renewable energy development areas are identified, BOEM evaluates the potential impacts of leasing those areas on the human, marine, and coastal environments under the OCS Lands Act and consults with Federal agencies and affected States regarding the requirements of other potentially applicable Federal statutes, including the National Environmental Policy Act (NEPA), Coastal Zone Management Act (CZMA), Endangered Species Act (ESA), Magnuson-Stevens Act (MSA), Marine Mammal Protection Act (MMPA), and National Historic Preservation Act (NHPA), National Marine Sanctuaries Act (NMSA), and Native American Graves Protection and Repatriation Act (NAGPRA).

Under the competitive process, BOEM initiates a sale by publishing a proposed sale notice (PSN) in the **Federal Register** detailing the areas proposed for leasing and the competitive leasing process for those areas, including auction procedures and lease provisions and conditions. The PSN also invites public comment on the areas and proposed auction procedures. BOEM assesses the comments received in response to the PSN and may incorporate changes in the final sale notice (FSN) in response to these comments. The FSN is published in the **Federal Register** at least 30-calendar days before the auction date. The FSN finalizes the areas offered for lease, auction procedures, and lease provisions based on the PSN. The FSN also provides details regarding a mock auction, which is an optional practice auction intended to familiarize bidders with auction procedures.

BOEM may end the competitive process for a specific lease area at any time before the FSN if it believes competitive interest no longer exists. BOEM does so by issuing a notice and considering the responsive comments to reassess competitive interest.

If BOEM concludes that competitive interest is absent in a lease area, BOEM may publish a determination of no competitive interest (DNCI) in the **Federal Register**. BOEM then may offer a noncompetitive lease to the sole interested developer, if one exists, after consulting potentially affected Federal agencies, State and local governments, and federally recognized Tribes (Tribes), and, if applicable, Alaska Native Claims Settlement Act (ANCSA) corporations, and after the interested developer submits the requisite certifications, information, and payments.

If BOEM concludes that competitive interest exists, BOEM may proceed with an auction on the date specified in the FSN. Existing regulations specify four auction types and six bidding systems from which BOEM may choose to conduct its auctions. The auction format and bidding system for a specific auction are specified in the FSN. Among the auction types is multiple factor bidding, in which BOEM may allow bids with a non-monetary component based on certain beneficial attributes identified in the FSN, including technical merit, financing and economics, and compatibility with State and local needs.

BOEM conducts an auction for the relevant lease areas in accordance with the FSN. At the end of the auction, BOEM determines the winning bidder for each area to be leased. BOEM may reject any bid if it determines that the bid was inadequate, illegal, or the result of anti-competitive behavior, administrative error, or the presence of unusual bidding patterns.

[8] Reorganization of Title 30: Bureaus of Safety and Environmental Enforcement and Ocean Energy Management, 76 FR 64432 (October 18, 2011).

Once a winning bidder has been identified, BOEM implements a statutorily mandated 30-day antitrust review by the Department of Justice and Federal Trade Commission. If the antitrust review does not raise concerns and no appeals of the auction result are pending, BOEM typically accepts the winning bid within 90-calendar days of the auction and sends three unsigned copies of the lease to the winning bidder. The winning bidder has 10-business days from date of receipt to sign these copies, return them to BOEM, provide financial assurance, and pay the balance due on its bid. BOEM may extend the deadline for good cause. The winner must pay a sum equal to the first 12 months' rent within 45-calendar days of receiving the unsigned copies of the lease. After receiving the signed copies, BOEM executes the lease on behalf of the United States, and sends one fully executed copy to the winning bidder. BOEM reserves the right to withdraw an OCS area at any time prior to lease execution, whereupon BOEM would refund the bid deposit.

A bidder may appeal to the BOEM Director within 15-business days of bid rejection to seek reconsideration. BOEM will send a response either affirming or reversing the final bid decision.

Subpart C of 30 CFR part 585 describes the process for issuing ROWs and RUEs. BOEM conducts the competitive process for awarding a ROW or RUE using procedures similar to those for a lease. This would involve publishing a public notice, describing the parameters of the project in order to give affected and interested parties an opportunity to comment on the proposed ROW grant or RUE grant area. If such interest exists, BOEM would conduct a competitive auction for issuing the ROW grant or RUE grant. The auction process for ROW grants and RUE grants, following the same process for leases set forth in §§ 585.211 through 585.225.

3. Administration of Leases and Grants

Subpart D of 30 CFR part 585 describes the various processes that BOEM can use to enforce the terms of its leases and grants once they have been issued. This subpart also describes the requirements for transferring ownership interests and modifying the duration of a lease or grant.

BOEM has broad enforcement discretion under this subpart and may act whenever a lessee or grant holder has violated a term or condition of a lease or grant, an order or approval, or a regulation. BOEM's potential remedies include corrective actions, a cessation order, civil penalties, and lease or grant termination.

Lessees and grant holders are allowed to designate an operator to act on their behalf to perform activities on a lease or grant. Whenever the regulations in part 585 require the lessee or grant holder to conduct an activity in a prescribed manner, the lessee or grant holder and the operator are jointly and severally responsible for complying with the regulations. Lessees and grant holders may assign all or part of their lease or grant interests using procedures set forth in this subpart; assignors remain jointly and severally liable for liabilities that accrued before BOEM approves the assignment. An assignee must be legally, technically, and financially qualified to hold the lease or grant under 30 CFR part 585.

BOEM's regulations contain several mechanisms for extending the lease duration. The term of a lease or grant can be suspended through request by a lessee or grant holder that is approved by BOEM, through a BOEM order, or when necessary to comply with a judicial decree, avoid an imminent threat of irreparable harm, or for reasons of national security. A suspension has the effect of pausing the running of the term of a lease, thereby extending the termination date by the same length as the pause. In BOEM's discretion, a suspension of the lease may also suspend lease payments. BOEM also may approve the renewal of a lease or grant term requested by a lessee or grant holder based on an enumerated set of criteria.

There are numerous means by which a lease or grant may be terminated in whole or in part. First, it may be terminated through expiration of the lease or grant term without a renewal. Second, BOEM may cancel a lease or grant for reasons enumerated in the regulations, including proof that the lease or grant was obtained fraudulently. Third, BOEM may require a partial cancellation of a lease by reducing the area of the leasehold. Fourth, a lessee or grant holder may voluntarily relinquish some or all of its lease or grant, subject to BOEM approval.

4. Payments and Financial Assurance

Lessees and grant holders are required to make regular payments to the U.S. Treasury in exchange for use of their leases and grants. Under the OCS Lands Act, BOEM is required to ensure that U.S. taxpayers obtain a fair return from OCS renewable energy leases, ROWs, and RUEs.[9] Lessees and grant holders also must provide financial assurance—in the form of a bond or other qualifying instrument—in an amount sufficient to guarantee compliance with terms and conditions of their leases and grants. Subpart E of BOEM's regulations detail these respective obligations.

Before an entity may bid to acquire a lease or grant competitively, it must submit a bid deposit that is applied to the winning bid and refunded to unsuccessful bidders. Obtaining a lease (but not a grant) noncompetitively requires the payment of an acquisition fee. Lessees and grant holders must make annual rental payments that are calculated according to the acreage of the lease or grant. Rental payments for ROWs are based on the length of the right-of-way as well as the acreage. Under a commercial lease, an operating fee replaces rental payments when commercial operations begin. The operating fee is calculated using a formula set forth in the regulations. The regulations provide a mechanism for lessees and grant holders to request a reduction or waiver of their payments. Under OCS Lands Act section 8(g), BOEM will distribute offshore renewable energy revenue among eligible coastal States for OCS projects that are wholly or partially located within three miles seaward of a State's submerged lands.

Financial assurance must be provided at various stages in the commercial development process. A lessee must provide financial assurance in the amount of $100,000 before acquiring a commercial lease and supplemental financial assurance before approval of a site assessment plan (SAP) and a construction and operations plan (COP), and before commencement of construction. BOEM bases its financial assurance requirements on calculations of the lessee's cumulative liabilities and obligations, including payments due the following year, and the cost of decommissioning facilities on the lease. Financial assurance requirements for limited leases and grants are calculated in a similar fashion, although the initial financial assurance requirement is $300,000.

BOEM imposes several general requirements that must be met by any financial assurance and provides guidance on acceptable financial instruments. Such instruments include surety bonds, Treasury securities, AAA-rated securities, insurance, self-insurance, third-party guaranties, and decommissioning accounts funded on a schedule approved by BOEM. Subpart E also sets forth procedures to follow if a lessee's or grant holder's financial assurance lapses or reduces in value or

[9] 43 U.S.C. 1337(p)(2)(A).

if a surety prematurely terminates a lessee's or a grant holder's financial assurance. This subpart also explains when and how BOEM will call for forfeiture of financial assurance. BOEM requires the maintenance of financial assurance until no less than 7 years after a lease or grant ends.

5. Plan Submittal and Review

Once a lease has been issued, a lessee may, but is not required to, conduct site assessment activities to assess the energy potential of a commercial renewable energy project in the lease area and site characterization surveys to inform project design and the preparation of plans. Site assessment activities include the installation and use of meteorological towers and buoys to gather oceanographic and meteorological information. A lessee planning to install site assessment facilities must submit a SAP to BOEM. The SAP must include general structural, design, fabrication, and installation information for each type of facility associated with the proposed site assessment activities, and must also include information about the environment gathered from geological and geophysical surveys, hazard surveys, baseline environmental surveys, and archaeological surveys that the lessee must conduct.

The lessee must submit its SAP or a combined SAP/COP no later than 12 months after the date of lease issuance. BOEM may approve or disapprove the SAP or may approve it with modifications. A commercial lease has a term of five years for the lessee to conduct site assessment activities and to submit a COP; the five-year site assessment term begins upon approval of the SAP. BOEM will determine if the proposed facilities described in the SAP are complex or significant. If BOEM determines that they are not complex or significant, the lessee may begin its proposed site assessment activities when BOEM approves the SAP. If BOEM determines the facilities are complex or significant, the lessee must comply with additional requirements in subpart G of 30 CFR part 585 before beginning its proposed site assessment activities. Implementation of activities described in the SAP, whether or not deemed complex or significant, is required to follow a safety management system (SMS) that accounts for and mitigates risks to personnel and the environment associated with such activities. SAP approval does not authorize the lessee to build and install facilities for commercial energy production.

Before fabricating and installing any facility for commercial operations, a lessee must submit a COP for BOEM review and approval. The COP must be submitted at least 6 months before the five-year site assessment term expires.

The COP must describe the facilities that a lessee will construct or use for its commercial operations, including any project easements and associated onshore and support facilities. The COP also must describe all proposed activities the lessee intends to conduct on its lease, including construction, commercial operations, and decommissioning. The COP must include general structural and project design, fabrication, and installation information for each type of structure associated with the project, as well as the results of geological, geotechnical, biological, and archaeological surveys undertaken in support of the project. BOEM may approve or disapprove the lessee's COP or may approve it with modifications.

Activities conducted under a limited lease, ROW, or RUE must be approved by BOEM under a general activities plan (GAP). Like a SAP, the GAP must be submitted no later than 12 months after the date of lease or grant issuance. The GAP must describe the facilities that a lessee or grant holder will construct or use for its proposed activities, including any project easements and any associated onshore and support facilities. The GAP must describe the design, fabrication, construction, use, and decommissioning of those facilities. The GAP also must include the results of geological, geotechnical, biological, and archaeological surveys undertaken in support of the proposed activities.

BOEM may approve or disapprove the lessee's GAP or may approve it with modifications. BOEM also will determine if the proposed facilities described in the GAP are complex or significant. If BOEM determines that they are not complex or significant, the proposed activities may begin when BOEM approves the GAP. If BOEM determines the facilities are complex or significant, the lessee must comply with additional requirements in subpart G of 30 CFR part 585 before beginning the proposed activities.

6. Design, Fabrication, and Installation of Facilities

Subpart G requires detailed design, fabrication, and installation information for each complex or significant facility that a lessee or grant holder proposes to operate.[10] The purpose of subpart G is to ensure that facilities operate in a safe manner using accepted engineering practices in conformance with approved plans.

The regulations achieve this objective primarily by requiring an independent assessment of a facility's design, fabrication, and installation by one or more outside experts called certified verification agents (CVAs). The CVA should be ''experienced in the design, fabrication, and installation of offshore marine facilities or structures, [and] will conduct specified third-party reviews, inspections, and verifications.'' [11] Although hired by a lessee or grant holder, the CVA reports directly to BOEM. The CVA must not act in a capacity that creates a conflict of interest or the appearance of a conflict of interest. Subpart G outlines the circumstances necessitating a CVA, the CVA nomination and waiver processes, and the duties of the CVA. BOEM regulations contemplate that BOEM will approve or disapprove the CVA nomination or waiver request during its review of the SAP, COP, and GAP. If the CVA requirement is waived, the lessee's or grant holder's project engineer must perform the same duties and responsibilities as the CVA, except that the project engineer would not be acting as an independent third-party reviewer.

After obtaining BOEM's approval of the SAP, COP, or GAP, a lessee or grant holder must submit an FDR to BOEM describing the final design of all proposed facilities. The CVA must certify that the facilities are designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location. The CVA must also use good engineering judgment and practice in conducting independent assessments of the commissioning of critical safety systems.

Before any fabrication (*e.g.,* assembly) or installation of facility components takes place on the OCS, a lessee or grant holder must submit an FIR to BOEM describing how the facilities will be fabricated and installed consistent with accepted industry standards, the approved SAP, COP, or GAP, and the FDR. The FIR must also describe how fabrication of facility components that took place outside of the OCS (*e.g.,* manufacturing) is consistent with accepted industry standards, the approved SAP, COP, or GAP, and the FDR. However, fabrication of facility components outside of the OCS does not

[10] By definition, all facilities proposed in a COP are complex or significant. BOEM makes a case-by-case determination about whether facilities proposed in a SAP or GAP are complex or significant.

[11] 30 CFR 585.112.

require the submittal of an FDR and FIR. The CVA must certify that the facilities were fabricated and installed in such a manner. The lessee or grant holder may begin approved activities 30-calendar days after BOEM deems submitted the fabrication and installation certification from the CVA, unless BOEM objects in the interim. If BOEM objects to the CVA verification report, the lessee or grant holder must resolve those objections to BOEM's satisfaction before commencing approved activities.

7. Facility Operations

The conduct of lease or grant activities under an approved plan is covered by subpart H. BOEM requires that approved activities be conducted in a way that ensures safety, prevents undue harm or damage to natural resources, uses trained personnel, and complies with approved plans. Activities must comply with the various wildlife protection statutes—particularly the MMPA and ESA. Lessees and grant holders also must follow prescribed procedures if they encounter potential archaeological resources while conducting approved activities. This subpart contains numerous operational requirements, including safety management systems, incident reporting, inspections, and self-inspections.

8. Decommissioning

Except when otherwise authorized by BOEM, lessees and grant holders must decommission (*i.e.,* remove) all facilities and clear the seafloor of all obstructions created by their activities within 2 years following termination of their lease or grant or earlier if BOEM determines a facility is no longer useful for operations. Subpart I sets forth BOEM's decommissioning requirements and process.

C. Need for Rulemaking

The existing regulations were finalized in 2009, when the OCS renewable energy industry in the United States was in its infancy. In response to Executive Order (E.O.) 13610, the Department determined that aspects of BOEM's renewable energy regulations could be made less burdensome and costly while clarifying ambiguities and filling gaps that have become apparent during the past 13 years. Through its experience and engagement with industry and other stakeholders, the Department has identified opportunities for reducing burdens, making regulations more efficient, clarifying ambiguities, and correcting errors. E.O. 14008, ''Tackling the Climate Crisis at Home and Abroad,'' states that it is the policy of the U.S. ''to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.'' In furtherance of the goals of E.O. 14008, the Departments of the Interior, Energy, and Commerce established a target to deploy 30 gigawatts (30,000 megawatts) of offshore wind by 2030, creating nearly 80,000 jobs.

These proposed revisions to BOEM's regulations would facilitate safe and environmentally sound renewable energy production in offshore waters and help the Biden-Harris Administration meet its offshore wind energy commitment. This proposed rulemaking would implement reforms identified by BOEM and BSEE or suggested by industry, align regulations to practices that have evolved since 2009, and reduce regulatory uncertainty. The proposed regulations are estimated to save lessees and grant holders about $1 billion over a 20-year period.[12] The proposed changes would continue to protect environmental and cultural resources and to ensure that U.S. taxpayers receive a fair return from OCS renewable energy activities.

The Department also plans to issue another rule related to its OCS renewable energy program. That rule would reorganize the current renewable energy regulations between BOEM and BSEE consistent with Secretary's Order 3299, as amended, and the Departmental Manual. Specifically, that rule would move regulations pertaining to safety, environmental oversight, and enforcement from BOEM to BSEE under 30 CFR part 285. Following that rulemaking, any future OCS renewable energy rulemaking, including any rule that finalizes the provisions of this proposed rule, would reflect the reorganized regulations. The Department will continue to work closely with both BOEM and BSEE in finalizing provisions of this proposed rule within their respective delegated authorities.

[12] *See supra* note 2.

V. Analytical Overview of the Proposed Rule

The proposed rule contains seven main components that would accomplish the following: (1) eliminate site assessment plan requirements for met buoys; (2) adopt a flexible and performance-based approach to geophysical and geotechnical surveying; (3) conform the CVA review standard to industry practice and provide flexibility in the CVA nomination and engineering report submittal process; (4) clarify auction procedures; (5) align financial assurances with the risk to U.S. taxpayers and permit incremental funding of decommissioning accounts; (6) clarify and enhance safety management requirements; and (7) make other revisions and technical corrections that would improve BOEM's OCS renewable regulatory program and fix technical errors and inconsistencies. These components are analyzed below.

A. Site Assessment Facilities

1. Existing Regulations

In its regulations and guidance documents, BOEM uses the term ''site assessment'' to describe the activities used to estimate the OCS renewable energy resource and baseline ocean conditions before any potential development occurs. BOEM's regulations currently contemplate that a lessee will deploy at least one facility, typically a met tower or buoy, to conduct site assessment activities before submitting a COP. Data from these met buoys and towers are used to design the offshore renewable energy project (*e.g.,* the turbine array for a wind project) for a particular OCS area, calculate its energy generation potential, estimate its revenue potential, and obtain project financing. At the time BOEM promulgated its regulations in 2009, the industry standard for site assessment activities was fixed-bottom met towers pile-driven into the seabed. BOEM crafted its requirements for the approval of site assessment activities under the assumption that most lessees would continue to install met towers.

Since 2009, the offshore wind industry has transitioned to met buoys, which are both less costly and less environmentally impactful than fixed bottom structures. Met buoys are typically between 6 and 12 meters in length, attached to the seabed with a chain and mooring anchor, and deployed for no more than 5 years. Met buoys include different types of instrumentation to collect a variety of data, including wind speed and direction; air and water temperature; wave height; water currents; ambient

noise; and the presence of benthic communities, fish, marine mammals, birds, and bats.[13] Scientific devices similar to met buoys are used widely for research and commercial applications and by other Federal agencies (*e.g.,* National Oceanic and Atmospheric Administration and the Department of Energy (DOE)).

Before installing any facilities for site assessment activities on its commercial lease, a lessee must submit a SAP for BOEM approval.[14] The SAP ''describes the activities (*e.g.,* installation of [met] towers, [met] buoys) [the lessee] plan[s] to perform for the characterization of [its] commercial lease, including [its] project easement, or to test technology devices.'' [15] The SAP must include the information required by 30 CFR 585.610 through 585.611.[16] BOEM may request additional information during its review and may specify terms and conditions that must be incorporated into the SAP before approval. In BOEM's experience, a lessee invests substantial time preparing the SAP and awaiting BOEM's approval. BOEM requires SAP facilities to be decommissioned under subpart I of the current part 585 and requires financial assurance to cover the cost of their decommissioning.[17]

If a developer wants to conduct site assessment activities at a particular OCS location without a commercial lease, a limited lease may be required. BOEM's regulations require a lease, easement, or ROW for activities that ''support generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS.'' [18] BOEM has the discretion to determine whether an activity ''supports generation'' of electricity and, therefore, requires a lease.[19] BOEM issued leases for site assessment activities early in the OCS renewable energy program, but has not received a formal request for a limited lease for site assessment activities since its regulations took effect in 2009.

If a limited lease is required, a developer must first notify BOEM that it is requesting a lease for a specific portion of the OCS.[20] BOEM then issues a public notice in the **Federal Register** to determine whether competitive interest exists in the requested area. If there is no such interest, BOEM may negotiate a limited lease with the developer.[21] If BOEM and the developer agree to terms, the developer has 12 months to submit a GAP under §§ 585.640 through 585.647 for BOEM's review and approval. BOEM may request additional information during its review and may specify terms and conditions that must be incorporated into the GAP before approval.[22] Although BOEM has yet to issue a limited lease, BOEM estimates that it could take 3 years between the submission of a limited lease application and authorization to conduct activities on the lease.

2. Why the Existing Regulations Should Be Updated

BOEM has determined that its regulations are overly burdensome for authorizing met buoys for site assessment activities for the reasons outlined below.

(a) Minimal Environmental Impacts of Meteorological Buoys

After 10 years of analyzing the environmental impacts of deployment, operation, and removal of met buoys, BOEM has concluded that, when properly sited, these buoys cause minimal harm to the marine, coastal, and human environments.[23] Given a met buoy's surficial seabed disturbance during a limited deployment time and BOEM's repeated analysis of these devices, BOEM has concluded that their potential environmental effects are short-term and minimal, assuming sensitive benthic habitat and archaeological sites are avoided.[24] Proper deployment will be ensured through the USACE Nationwide Permit 5 (NWP 5), which is reasonably tailored to buoys and is subject to the same applicable Federal environmental laws as BOEM's authorization of met buoys. USACE's NWP 5 procedures may require a pre-construction notification under the general conditions for permits, depending on the presence of certain resources, *e.g.,* listed species, critical habitat, or essential fish habitat. These procedures are the same for vast majority of buoys installed offshore; it is only the renewable energy met buoys that require a SAP under the current BOEM regulations.

BOEM determined in 2016 that met buoys meet the criteria for a nondestructive data collection categorical exclusion from the potential requirement to prepare an environmental impact statement under NEPA.[25] Consequently, BOEM's existing SAP (§§ 585.605 through 585.618) and GAP (§§ 585.640 through 585.657) requirements governing on-lease and off-lease site assessment activities, respectively, are disproportionate to the potential environmental impacts caused by met buoys.

(b) Duplicative Regulations

BOEM's regulation of site assessment activities is duplicative of the USACE's permitting requirements under section 10 of the Rivers and Harbors Act, which applies to obstructions in U.S. navigable waters, including the OCS.[26] The USACE typically authorizes data collection buoys under its NWP 5 for scientific measurement devices, or its equivalent, depending on the geographic district in which the buoy is proposed. NWP 5 addresses the most critical impacts of met buoys—environmental resources, archaeological resources, safety, and navigation—while also requiring that such devices be removed ''to the maximum extent practicable and the site restored to pre-construction elevations.'' [27] The

[13] Dep't of Energy & Dep't Of Interior, National Offshore Wind Strategy (2016) [hereinafter Offshore Wind Strategy], *https://www.boem.gov/National-Offshore-Wind-Strategy.* At this time, met buoys deployed for this purpose use Light Detection and Ranging (LIDAR) technology, which is capable of collecting measurements to the same height as a typical met tower and the hub height of proposed wind turbines.

[14] 30 CFR 585.600(a).

[15] 30 CFR 585.605(a).

[16] To improve readability and avoid any confusion, all further regulatory section references in the main body of this notice are to 30 CFR part 585 unless otherwise specified. Footnotes will contain the complete citation.

[17] 30 CFR 585.516(a)(2).

[18] 30 CFR 585.104.

[19] Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Guidelines for Activities Requiring Authorization for Renewable Energy Development on the Outer Continental Shelf Pursuant to 30 CFR part 585 (2020), *available at https://www.boem.gov/guidance.*

[20] 30 CFR 585.230.

[21] 30 CFR 585.231.

[22] 30 CFR 585.648.

[23] *See, e.g.,* Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia, Final Environmental Assessment (2012), *available at https://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/Smart_from_the_Start/Mid-Atlantic_Final_EA_012012.pdf;* Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Massachusetts, Revised Environmental Assessment (2014), *available at https://www.boem.gov/Revised-MA-EA-2014/*); and Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New York, Revised Environmental Assessment (2016), *available at https://www.boem.gov/NY-EA-FONSI-2016/.*

[24] *See supra* note 22; *see also* Offshore Wind Strategy, *supra* note 12, at 31. Another concern is the potential for marine mammal entanglement in anchor chains. However, the Army Corps of Engineers will require mitigation of such risks pursuant to its consultations with NMFS, regardless of any BOEM permit.

[25] *See* 43 CFR 46.210(e).

[26] 33 U.S.C. 403.

[27] U.S. Army Corps of Engineers, Nationwide Permit 5—Scientific Measurement Devices (2017), *available at https://www.swt.usace.army.mil/*

USACE's permitting process is subject to the same Federal laws concerning environmental analyses and inter-agency consultations that govern BOEM's authorization of met buoys—including NEPA, ESA, MMPA, MSA, NMSA, and NHPA. To date, USACE has participated in BOEM's environmental reviews as a cooperating agency under 40 CFR 1501.6.

The deployment of a met buoy or tower to collect data for potential OCS renewable energy development is subject to two regulatory regimes—BOEM's and USACE's—that largely analyze the same environmental impacts. However, the same type of buoy or tower is subject to only USACE's regime if deployed for other purposes. As discussed below, the proposed rule would resolve this duplication of regulatory compliance by eliminating BOEM's SAP requirement for met buoys.

(c) Requirement for Air Permits for Meteorological Buoys

Under the Clean Air Act (CAA), a party proposing to construct a source of air pollution on the OCS that meets the CAA definition of an ''OCS source'' is required to apply for an air permit before construction. The CAA definition of an ''OCS source'' of air pollution includes those sources that have the potential to emit air pollutants, are deployed on the OCS, and are regulated or authorized under the OCS Lands Act.[28] Met buoys to support renewable energy development, authorized by BOEM, are currently included as OCS sources because some contain backup diesel generators that emit air pollutants. These met buoys frequently are required to have a CAA permit when deployed in OCS areas under U.S. Environmental Protection Agency (USEPA) jurisdiction, specifically offshore the U.S. Atlantic and Pacific coasts. While emissions from buoy backup generators are minimal due to their limited use, the CAA has no *de minimis* exception to the air permit requirement.

In some instances, obtaining OCS air quality permit for a met buoy can take longer than obtaining SAP approval from BOEM. Under the proposed rule, met buoys deployed in OCS areas solely under USEPA's jurisdiction reasonably and appropriately would no longer require CAA permits since they would neither be regulated nor authorized under the OCS Lands Act and, consequently, would not meet the definition of an ''OCS source.'' This conclusion also takes into consideration that these buoys are anticipated to have minimal emissions, there is a significant time and cost associated with obtaining a CAA permit, and similar buoys authorized under other statutes do not require a CAA permit (*e.g.,* scientific measurement devices permitted under NWP 5).

(d) European Practice

BOEM is aware that European countries with mature offshore wind industries and permitting regimes have more streamlined permitting processes for site assessment activities. In several European countries, including Denmark and The Netherlands, the government will typically undertake the site characterization and site assessment work as part of its ''pre-development'' efforts before a tender offering (*i.e.,* lease sale in the U.S. model). In the U.K. model, which shares similarities with the U.S. regulatory framework, the developer is responsible for undertaking this work. Pre-construction site assessment activities, including the deployment of met towers and buoys, are described in a separate submission to the U.K. Marine Management Organization following the developer's receipt of governmental approval. Recent met buoy case files show that these site assessment applications are typically approved in roughly 30-calendar days. BOEM has received multiple comments from industry criticizing the length of its present met buoy authorization process and urging BOEM to learn from the European practice. The proposed rule would move the United States closer to Europe's more efficient approach to site assessment activities.

(e) Lack of Off-Lease Site Assessment

BOEM believes that public and private entities alike should be encouraged to collect OCS meteorological and oceanographic data for potential renewable energy development in areas not yet leased commercially. BOEM is aware of only four met buoys (and no met towers) that have been deployed on the OCS for such purposes: two off the east coast and two research buoys managed by the DOE off the coast of California. BOEM is concerned that the perceived difficulty of obtaining a limited lease and subsequent GAP approval is deterring off-lease site assessment activities.

3. Proposed Changes

The proposed rule would eliminate BOEM's duplicative authorizations for on-lease site assessment facilities without an engineered foundation (primarily met buoys) and all off-lease site assessment facilities. BOEM proposes to retain its SAP process for facilities installed on a commercial lease using an engineered foundation, such as met towers.

(a) On-Lease Meteorological Buoys

The proposed rule would eliminate SAPs for site assessment activities that do not use an engineered foundation, defined as a met tower or other facility installed using a fixed-bottom foundation.[29] Met buoys would be exempt from the SAP requirement unless deployed with an engineered foundation, which BOEM expects will occur rarely. A SAP would still be required for met towers and other site assessment facilities with engineered foundations. BOEM would also recommend that lessees consult with BOEM and other Federal agencies with jurisdiction over submerged lands in off lease areas before deploying site assessment facilities with novel anchoring technologies absent a BOEM-approved SAP. Independent of the need to submit a SAP for approval, all site assessment activities are required to be performed under an SMS that accounts for and mitigates risks to personnel and the environment associated with the assessment activities. In any case where an NMSA permit may be required, NOAA may require certain financial assurances for infrastructure removal activities potentially required under permit.

The proposed rule also would amend the decommissioning regulations in the proposed subpart J to ensure that lessees are not subject to duplicative or conflicting requirements for the removal of met buoys. Under the proposed rule, a lessee would decommission its met buoys according to USACE requirements in lieu of submitting a decommissioning plan for BOEM's approval. In the unlikely event that USACE did not require site clearance, BOEM would retain the authority to require decommissioning of the buoys under proposed § 585.900(c) pursuant to OCS Lands Act subsection 8(p)(6)(C) so that the United States can fulfill its international treaty obligation to restore the lease area.[30] BOEM also would no

Portals/41/docs/missions/regulatory/NationwidePermits/Nationwide%20Permit%2005%20-%20Scientific%20Measurement%20Devices.pdf?ver=2017-03-31-150714-880).

[28] 42 U.S.C. 7627(a)(4)(C).

[29] Unlike a simple anchor, a fixed-bottom foundation generally requires professional engineering design and assessment of sediment, meteorological, and oceanographic conditions. Examples of fixed bottom foundations are monopiles, jackets with driven piles or suction buckets, and gravity-based foundations.

[30] *See* 43 U.S.C. 1337(p)(6)(C) and article 5.5 of the Convention on the Continental Shelf, T U.N.

Continued

longer routinely require supplemental financial assurance for decommissioning of met buoys. In most cases, the buoys are authorized and installed pursuant to USACE regulations and USACE would assume responsibility for ensuring that any required removal takes place; in these circumstances, the USACE would be responsible for obtaining any financial assurance necessary.

These changes should allow lessees to deploy met buoys in substantially less time and at a reduced cost because a SAP would no longer be required. Instead, lessees would deploy a met buoy under the authorization of a USACE NWP 5 scientific device permit or the USACE district equivalent. BOEM estimates one buoy would be permitted annually, and this permitting change would save approximately $1.1 million of compliance costs in each instance.[31] BOEM also anticipates that this change could eliminate the need for lessees to obtain a CAA air quality permit from the USEPA for on-lease met buoys with backup diesel generators because these buoys would fall outside the CAA definition of an ''OCS source.'' BOEM is not including the potential savings for a CAA permit in its economic analysis because the underlying burden arises from another Federal agency's regulatory requirements (appropriately, USEPA could claim any CAA burden reduction).

This approach likely would result in regulatory relief from the SAP requirement for nearly all future development of OCS renewable resources. Most current lessees have proposed conducting site assessments with met buoys. BOEM expects that pattern to continue for the foreseeable future. Off-lease site assessment activities would fall outside BOEM's control, though remain within USACE's, and should they occur within a national marine sanctuary or in the vicinity of a national marine sanctuary, activities may require NMSA permits or consultations.

BOEM proposes several conforming ancillary regulatory changes to accommodate the SAP changes outlined in this section. These changes include merging the preliminary and site assessment periods of the lease (see the analysis of proposed changes to § 585.235 in section VI.C.), eliminating deadlines for SAP submittals, decoupling the requirement to operate under an SMS from SAP submission (*i.e.,* all site assessment activities must be conducted under an SMS, regardless of whether a SAP is required), and removing references to terminology that relates primarily to buoys (*e.g.,* anchors, chains, mooring) in the SAP regulations.

For several reasons, this approach would not increase environmental impacts and would be subject to the same environmental review and consultations currently performed by BOEM. First, BOEM will prepare environmental analysis under NEPA and will consult under the ESA prior to a lease sale. That environmental analysis will include potential impacts from activities that are expected to occur following lease issuance after the sale (*e.g.,* site characterization and site assessment activities). Second, NWP 5 complies with current Federal environmental laws and governs deployment of other scientific measurement devices that result in no more than minimal individual and cumulative adverse environmental impacts. Lessees must ensure that the placement of met buoys and towers conforms with NWP 5. The USACE general conditions for nationwide permits require interagency consultations if warranted by the location and activities proposed. USACE considers cumulative impacts in the re-issuance of the nationwide permits every 5 years. Third, based on BOEM's experience in approving SAPs to date, BOEM has already documented the environmental impacts of met buoys to be minimal. Fourth, those who are conducting site assessment activities are still required to conduct all such activities under an SMS that accounts for and mitigates risks to personnel and the environment. Fifth, BOEM would not disclaim all oversight of site assessment activities. As noted above, the potential environmental impacts of met towers and facilities with engineered foundations are both more variable and more significant for certain marine resources. Therefore, BOEM would continue to require SAPs for such facilities. Finally, BOEM may consider adding stipulations to future leases relating to site assessment activities not covered by a SAP. BOEM anticipates that such stipulations would ensure BOEM is aware of activities conducted on its lease and that such activities are required to be performed in accordance with any applicable USACE requirements and best industry practices.

BOEM notes that the proposed rule likely would require revisions to BOEM's programmatic agreements with consulting parties under the NHPA. Most of BOEM's existing agreements anticipate that it would review and approve plans relating to all site assessment activities.

BOEM completed an informal programmatic section 7 consultation under the Endangered Species Act with the National Marine Fisheries Service (NMFS) in 2021. This informal consultation covered leasing, site characterization, and site assessment activities. It is expected to cover most, if not all, USACE NWP 5 permits issued for on-lease met buoys in the three Atlantic Renewable Energy Regions (North Atlantic Planning Area, Mid-Atlantic Planning Area, and South Atlantic Planning Area). This consultation concluded that the activities considered are not likely to adversely affect any ESA-listed species or critical habitat.[32] Activities are considered not likely to adversely affect as long as they are within the scope of what was analyzed in the consultation, meet the stated project design criteria and apply the prescribed conservation measures. BOEM is conducting similar ESA consultations for the Pacific and Gulf of Mexico regions.

(b) Off-Lease Meteorological Buoys

The proposed rule would clarify that off-lease site assessment facilities do not require a limited lease. BOEM proposes to accomplish this by amending § 585.104 to add a statement that, for purposes of that section, site assessment activities neither produce, transport, nor support the generation of any energy products.

In so doing, BOEM would cease its existing policy of making case-by-case determinations about whether off-lease site assessment activities require a lease.[33] BOEM does not believe off-lease site assessment activities support the production of energy within the meaning of 43 U.S.C. 1337(p)(1)(C) because the nexus between such activities and the commercial production of energy is too speculative (*e.g.,* the entity conducting site assessment may determine the energy potential is insufficient for commercial operations, may not seek a commercial lease for other reasons, or may not be the winning bidder in a lease auction).[34]

Doc. A/CONF. 13/L.55, T.I.A.S. 5578 and 15 U.S.T. 471. *Any installations which are abandoned or disused must be entirely removed* [emphasis added].

[31] *See infra* part VII.B.2 for overview of this proposed rule's economic analysis.

[32] See *https://www.boem.gov/sites/default/files/documents/renewable-energy/OSW-surveys-NLAA-programmatic.pdf.*

[33] *See supra* note 18.

[34] In contrast, site assessment activities conducted on a commercial lease are not subject to the same jurisdictional analysis despite the proposed change to § 585.104. BOEM may determine by regulation which on-lease activities do and do not require a separate BOEM approval. In the proposed rule, BOEM would determine that site assessment activities under a commercial lease involving an

BOEM believes this change will substantially decrease the time and expense required to obtain authorization to deploy a site assessment facility on the OCS that is not tethered to a commercial renewable energy lease. As a result, BOEM anticipates that more developers, research institutions, and governmental entities may be interested in collecting renewable energy resource data on the OCS—likely through deployment of met buoys. Such increased data collection could, in turn, aid in determining which areas are most suitable for future OCS renewable energy leasing.

This clarification of BOEM's authority over off-lease site assessment activities applies to both met buoys and met towers. Although met towers have greater environmental impacts than met buoys, BOEM does not believe this proposed regulatory change would increase environmental risk. First, USACE would continue to permit facilities associated with off-lease site assessment. USACE has already permitted an off-lease met tower in connection with the Cape Wind project in Nantucket Sound offshore Massachusetts. Second, BOEM believes it is highly unlikely that anyone would undertake the considerable expense of constructing a met tower absent the exclusive development rights afforded by a commercial lease, particularly because met buoys have become commonplace as the more cost-effective site assessment alternative. Finally, this regulatory change would not have an environmental impact because it would not substantially alter BOEM's existing practice. BOEM presently has the authority not to require limited leases for off-lease site assessment activities based on a case-by-case determination that such activities do not support the production of energy.

B. Project Design Envelope

The proposed rule would codify the use of project design envelopes (PDE)—*i.e.,* proposing a range of design parameters and construction and operation activities—in COP submissions. The use of PDEs was first introduced by BOEM in draft guidance in 2016 and is now being codified in the regulations.

The proposed rule would add language throughout the proposed subpart G that would clarify the ability of lessees and grant holders to submit plans using a PDE. The PDE is a proven approach to provide lessees and grant holders with flexibility throughout the permitting process while still complying with NEPA and other statutory and regulatory obligations. As detailed in BOEM's draft guidance,[35] the PDE is ''a permitting approach that allows a project proponent the option to submit a reasonable range of design parameters within its permit application, allows a permitting agency to then analyze the maximum impacts that could occur from the range of design parameters, and may result in the approval of a project that is constructed within that range.'' [36] BOEM recognizes that a PDE should not be overly broad to avoid not defining the project well enough for meaningful analysis. BOEM's NEPA analysis will continue to include reasonable alternatives that meet the purpose and need of the project. As a result, the NEPA analysis would be sufficient to avoid a delay in review by BOEM or other agencies.

Here is an illustrative example:

- Lessee X has determined that jacket and monopile foundations are both technically feasible options for its project. Its ultimate foundation choice could depend on several factors that are not typically known at the time of COP submittal, such as the cost of steel at the time of procurement, contract negotiations with foundation fabricators, and the availability of novel pile-driving technologies.
- Lessee X proposes in its COP that it will use a foundation PDE consisting of three scenarios: all jacket foundations, all monopile foundations, and half each.
- In its environmental analysis, BOEM will assume the maximum design scenario (*i.e.,* the scenario with the greatest impacts) for each affected resource. For benthic habitat, BOEM could analyze 100 percent use of jacket foundations because that scenario disturbs the most seabed.
- BOEM may ultimately approve the full PDE for foundations, meaning Lessee X would have the flexibility to construct its project using either or both foundations. Alternatively, BOEM could find that the environmental impacts of one foundation type are unacceptable and approve the use of only the other foundation type, meaning Lessee X could only construct its project using the approved foundation type.

In its draft PDE guidance, BOEM set out ''its support of, and preliminary recommendations for the voluntary use of the PDE in the submission and review of COPs for offshore wind energy facilities.'' [37] In preparing to issue its draft guidance, BOEM contracted a yearlong study of PDE use in the United Kingdom and its potential use in the United States.[38]

BOEM has concluded that use of the PDE would be beneficial to OCS renewable energy development because that approach provides reasonable latitude to make site-specific design and engineering decisions after plan approval without having to reopen the permitting review process.

Though BOEM's existing regulations allow a PDE, BOEM believes that it can clarify the process for lessees and other stakeholders by explicitly integrating PDE principles into its regulatory text—primarily by referencing ''ranges'' of design parameters or locations. It should be noted, however, that the range of parameters in a PDE could involve non-design attributes, such as installation methods or mitigation measures. BOEM believes these proposed changes (and other related modifications described in the part VI section-by-section analysis of the proposed rule) would not substantively alter its existing regulatory framework, or its required consultations with other agencies, but would be helpful to lessees and the general public.

C. Geophysical and Geotechnical Surveys

1. Existing Regulations

BOEM regulations require a lessee's COP to include, among other things, survey data characterizing the seabed and sub-seabed that would be disturbed by the proposed project. BOEM uses this information to inform its environmental analysis of the project, its related consultations (particularly involving historical resources and essential fish habitat), and its review of the project's technical feasibility. These data are derived from surveys that are typically divided into two categories: *geophysical* surveys that use acoustic and magnetic sensing techniques to map and model the composition of the seafloor where ground-disturbing activities will take place, and to identify natural and manmade hazards as well as potential archaeological resources; and *geotechnical* surveys that use boreholes, vibracores, grab samplers, and other

engineered foundation require a SAP given the likely environmental impacts.

[35] *See* ''Draft Guidance Regarding The Use Of A Project Design Envelope In A Construction And Operations Plan,'' (January 12, 2018), U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, *available at https://www.boem.gov/guidance.*

[36] *Id.* at 1.

[37] *Id.*

[38] Office of Renewable Energy, Bureau of Ocean Energy Mgmt., Phased Approaches to Offshore Wind Developments and Use of Project Design Envelope, Final Technical Report (2017), *https://www.boem.gov/Phased-Approaches-to-Offshore-Wind-Developments-and-Use-of-Project-Design-Envelope/.*

penetrative methods to determine the actual geological composition of the subsurface and, in certain cases, identify potential archaeological resources.

BOEM's regulations require a commercial lessee to submit a COP with geotechnical survey data that include the results of a testing program used to investigate the stratigraphic and engineering properties of the sediment that may affect foundations or anchoring systems; *in situ* testing, boring, and sampling at each foundation location; and at least one deep boring (with soil sampling and testing) at each edge of the project area and within the project area as needed to determine the vertical and lateral variation in seabed conditions.[39] Thus, lessees are currently obligated to conduct their full suite of geotechnical surveys before COP submittal.

The FDR, which is submitted following COP approval, requires the submittal of a ''summary of environmental data used for design'' as well as a ''summary of the engineering design data,'' [40] both of which could include additional geotechnical surveys. Lessees must apply for a regulatory departure under § 585.103 if they wish to defer *in situ* testing, boring, and sampling at each foundation location until the FDR stage.

A lessee's COP also is required to include ''[t]he results of the archaeological resource survey with supporting data.'' [41] BOEM, therefore, requires the results of all archaeological surveys to be submitted with the COP.

2. Why the Existing Regulations Should Be Updated

BOEM has learned that its existing COP data submittal regulations lack sufficient flexibility to accommodate both the lessees' needs and BOEM's statutory and regulatory mandate. The amount and type of data that BOEM needs from lessees in order to conduct its environmental and technical reviews and reach a decision on a COP may vary depending on the size and design of the project as well as site conditions in the proposed project area. Lessees may use various techniques to gather this data, depending on the intended use of the data. The surveys are costly (generally in the tens of millions of dollars, depending on the size of the area and the desired resolution); time-consuming (individual surveys can each take several months to complete); and challenging to schedule due to limitations on the availability of survey vessels and equipment, weather, and seasonal restrictions.

(a) Existing Survey Requirements

The current regulations at 30 CFR 585.626(a)(1)–(3), (5), and (6) require robust information on shallow hazard, geological survey results, biological survey results, archeological resources, and an overall site investigation before COP submission. The current regulations also require geotechnical surveys and borings of all locations where foundations are expected to be installed in order to inform the engineering properties of the sediment. Frequently, the exact locations of foundations change between the time of COP submission and installation, requiring the lessee to repeat the same survey and boring work at new locations.

The geophysical and geotechnical survey requirements in BOEM's renewable regulations are largely built upon the framework for offshore oil and gas energy facilities, which have a smaller footprint and different geologic data needs than OCS renewable energy projects. The detailed engineering survey data that BOEM's offshore renewable regulations require early in the authorization process do not align with existing renewable industry practices. Requiring geotechnical sampling at each turbine location and engineering-specific geophysical survey data—several years before the turbines are procured and before the final layout is known—is unnecessary for BOEM's review of the COP. Equally important, this data requirement for COP submissions creates major logistical difficulties for lessees, hinders their ability to modify the project design during and after COP review, and is the subject of frequent industry criticism and regulatory departure requests under § 585.103. This information can instead be reviewed with the FDR once siting has been finalized.

Offshore wind projects are complex and have a development timeline that may last as much as 7 years from lease issuance to commencement of construction. During that time, technologies likely will evolve. The collection of geotechnical and, to a lesser extent, geophysical data is more logically performed in stages as the process evolves from planning and permitting to preliminary and final designs, with the appropriate level of survey data provided at each stage. This staged data collection and design process allows lessees to take advantage of the newest technologies and to make project modifications responsive to BOEM and stakeholder concerns, rather than locking the project into a detailed design years in advance of completion.

The current lack of flexibility is also at odds with the development and use of PDE discussed above in section V.B, entitled ''Project Design Envelope.'' The PDE's benefits cannot be fully realized without additional flexibility regarding the timing of engineering survey data submittal. If a lessee is required to conduct all of its engineering surveys (and potentially its most detailed archaeological surveys) before COP submittal, it may be constrained from adjusting the project design based on the availability of new technologies, stakeholder input, or other emergent factors. Likewise, a lack of flexibility in data submittal requirements could indirectly constrain BOEM's ability to consider NEPA alternatives that might modify the proposed project design. Such design changes might result in additional survey costs and project delays that may, in turn, jeopardize electricity offtake agreements or otherwise render the project nonviable. Revising the geophysical and geotechnical survey timing and data submittal requirements would codify and increase the utility of the PDE.

(b) European and Industry Practices

Based on BOEM's conversations with various European regulators of offshore wind energy projects, many European governments that have authorized offshore wind development allow for the final engineering-related surveys to occur after project approval given the widespread use of design envelopes, which are discussed in section V.B. Performing geotechnical investigations in phases is a common approach for offshore wind projects in Europe and for most large and complex land-based developments. Experienced offshore wind developers and consultants are accustomed to this approach and have informed BOEM of its advantages.[42]

Moreover, this staged method of data submittal has been recommended by experienced geotechnical consultants in various publications and in geotechnical guidelines published by offshore wind classification societies.

Based on BOEM's experience and stakeholder feedback, the Department has concluded that allowing the submittal of certain geophysical and geotechnical data and analysis in stages would not adversely affect our ability to

[39] 30 CFR 585.626(a)(4).

[40] 30 CFR 585.701(a)(5)–(6).

[41] 30 CFR 585.626(a)(5).

[42] *See, e.g.,* Soc'y for Underwater Tech., Guidance Notes for the Planning and Execution of Geophysical and Geotechnical Ground Investigations for Offshore Renewable Energy Developments 12 (Mick Cook ed., 2014), *https://www.sut.org/wp-content/uploads/2014/07/OSIG-Guidance-Notes-2014_web.pdf.*

execute the statutory mandate to provide for environmental protection and safety on the OCS. We have learned that the precise location of each wind turbine may be uncertain at the COP submittal stage and that the geotechnical survey data, in particular, collected primarily for engineering purposes, are more relevant to the facility design and review process, which follows COP approval.

The Department and BOEM acknowledge that the level of data required for fulfilling its statutory mandate may be different than the level of data required to satisfy the mandates of other agencies. Under the proposed rule, the COP must still contain information sufficient to define the baseline geological conditions of the seabed, develop a geologic model,[43] assess geologic hazards, and determine the feasibility of the proposed site for the proposed facility. At the COP review stage, lessees would still be required to provide the data necessary to conduct the required consultations.

The non-geotechnical survey data included in the COP submittal are more than adequate to assess impacts to the human, marine, and coastal environment, to conduct necessary statutory consultations, and to show technical feasibility of all proposed foundation types. BOEM's oil and gas program takes a similar approach. Non-geotechnical survey data are used to assess plans, and geotechnical surveys occur after plan approval. Over the last 10 years, over 2,600 oil and gas plans have been approved; in none of these cases have subsequent geotechnical surveys identified any potential impact that required supplementation of an EIS or reinitiation of consultation. Because of this, we are confident that the proposed change is unlikely to undermine the environmental review done as part of the COP approval process. Even if a geotechnical survey after COP approval caused a change in the approved action or environmental assessment, we would expeditiously analyze the requisite changes and update the environmental assessment and record of decision.

The information from the deferred geotechnical surveys is not necessary to perform the requisite environmental reviews and consultations for COP approval or CZMA consistency reviews. Instead, the detailed information is necessary for engineering specifications associated with the design of the project. Furthermore, to ensure BOEM has sufficient information for its requisite technical reviews, environmental analysis, and interagency consultations, BOEM conducts a sufficiency review after receipt of a COP and notifies the lessee of any information shortfalls that must be filled before the COP review is complete.

3. Proposed Changes

(a) COP Data Requirements

The proposed rule would address the concerns with the existing regulations primarily by providing more flexibility (and clarifying existing flexibility) in the COP requirements.[44] For clarity, the proposed rule would reorganize the data requirements by topic. The first proposed topic, ''geological and geotechnical,'' would encompass the types of surveys required in existing § 585.626(a)(1), (2), (4), and (6). The survey and data collection requirements would shift from the largely prescriptive standards in the existing regulation to performance-based standards. These performance-based standards would give lessees the leeway to demonstrate that their selected combination of geotechnical and geophysical surveys provide BOEM the data that it needs at the COP review stage to determine whether the project as designed can be constructed safely in the proposed range of locations—assuming industry standard engineering practices are used at subsequent phases. Lessees could strike their own balance between geotechnical and geophysical surveys at the COP stage, so long as BOEM deems that data sufficient for BOEM's review as well as the required consultations or authorizations of other agencies. BOEM would still ensure that the COP contains information sufficient to complete its environmental review and required consultations, through a COP sufficiency determination. BOEM has issued guidelines elaborating its recommended best practices for such surveys.[45] These guidelines will be revised as needed based on the regulatory text of the final rule. BOEM could recommend, as a best practice, that developers coordinate early with relevant agencies on applicable site characterization plans, before surveys occur.

The proposed rule would no longer require that COPs contain the results of *in situ* boring and sampling at each foundation location. Instead, the proposed rule would allow submission of geotechnical data for an engineering assessment of the proposed turbine foundations with a lessee's FDR.

The proposed rule also would grant the Department the flexibility to allow a lessee to submit certain subsea archaeological surveys with the FDR on a case-by-case basis, subject to terms and conditions of COP approval. We recognize that deferring subsea archaeological data submission until after COP submittal could introduce some degree of uncertainty and risk into a project by extending the timeline for BOEM's review and consultations under section 106 of the NHPA and its implementing regulations. This could delay a lessee's clearance to commence construction. This risk may be reduced, however, through the development of programmatic agreements or memoranda of agreement among the section 106 consulting parties that could establish procedures for avoiding or mitigating impacts discovered after COP approval.

BOEM estimates that a geotechnical investigation costs on average $200,000 per turbine location and assumes that deferring survey work by 2 years would result in time value of money savings to a lessee. BOEM also estimates a 10 percent reduction in the number of geotechnical investigations by adding flexibility to the existing requirement of a core analysis at each individual turbine location.[46]

It is important to consider what these proposed rule changes would not do. First, the proposed rule would not prevent BOEM from obtaining COP data sufficient for an adequate impact analysis of a proposed project under the OCS Lands Act, NEPA, and other statutory authorities. The COP sufficiency review will ensure the necessary data is submitted to complete BOEM's and other agencies' analyses. The COP must still have the information sufficient to define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site. Changing when lessees must submit data from each foundation-specific boring does not impact the sufficiency review that BOEM uses to ensure that a COP has sufficient detail to support all consultations that accompany BOEM's environmental

[43] The geologic model brings together bathymetric data, surficial data imagery, sub-bottom data imagery, and sediment samples.

[44] See 30 CFR 585.626(a).

[45] See Office of Renewable Energy, Bureau of Ocean Energy Mgmt., Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant to 30 CFR part 585 (2020), available at *https://www.boem.gov/guidance.* See also Bureau of Ocean Energy Mgmt., Data Gathering Process: Geotechnical Departures for Offshore Wind Energy (2018), *https://www.boem.gov/Data-Gathering-Process/.*

[46] *See infra* Part VII.B.2 for overview of this proposed rule's economic analysis.

review under NEPA. The vast majority of the data that would be deferred to the FDR and FIR stage is used solely for engineering purposes. Any deferred data would be subject to terms and conditions of COP approval that would allow the Department to halt or require modifications to further activities if the data is inconsistent with the analysis upon which BOEM based its COP approval. If the COP needs to be modified as a result of information gathered from the deferred surveys, such as if the deferred survey data reveals likely effects that were not considered previously, the Department would require the lessee to revise the COP under the regulations at § 585.634. The Department also retains the authority to halt or require modifications to the deferred surveys themselves, if necessary, through the lease suspension authority at § 585.417(a)(2). The Department believes the flexibility attained by these proposed changes would enhance the Department's (and lessees') ability to respond to environmental and ocean user concerns raised during its environmental reviews by modifying the project design.

Second, the proposed rule would not prevent the Department from obtaining engineering-related survey data sufficient to analyze the safety and feasibility of the final design before the lessee installs facilities, as provided in § 585.701. Such data would instead be reviewed at the FDR and FIR stage rather than the COP stage. Put differently, the Department would be able to obtain the same data under the proposed rule as it obtains now before the commencement of construction. Therefore, the Department anticipates that this element of the proposed rule would have no environmental and safety impacts, and no socioeconomic impacts beyond the potential cost savings to lessees.

(b) Limited Leases and Grants

Extending the reasoning articulated above in sections V.B, entitled ''Project Design Envelope,'' and V.C.3(a), entitled ''COP Data Requirements,'' the proposed rule would make similar changes to the GAP requirements for limited leases and grants.

4. Solicitation of Comments Concerning a Potential New Permit Requirement for Conducting Geological and Geophysical Surveys for Renewable Energy Activities

Section 11 of OCSLA (43 U.S.C. 1340) addresses exploration for minerals (which include oil and gas) and subsection (g) requires that any exploration permit ''will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.'' However, geological and geophysical exploration permits for minerals, including oil and gas, are required only for off-lease surveys, *i.e.,* on unleased lands or on lands under lease to a third party.[47] On-lease surveys are governed by separate regulations and require only that the lessee notify BOEM at least 30 days prior to conducting such activities.[48] BOEM reviews such notices to ensure the activities described do not cause undue or serious harm or damage to the human, marine, or coastal environment.

BOEM's existing renewable energy regulations do not expressly govern survey activities. However, subsection 8(p) of OCSLA, which authorizes BOEM to ''issue any necessary regulations to carry out this subsection,'' also requires that activities authorized under this subsection be carried out in a manner that provides for ''safety . . . protection of the environment . . . [and] consideration of . . . any other use of the area, including use for a fishery . . . .'' OCSLA 8(p)(4).

Although BOEM requires a lessee to submit the results of certain surveys to BOEM in order to obtain approval of its COP, those regulations do not require BOEM's approval of a permit for such surveys. Instead, BOEM has provided guidance on conducting such surveys[49] and also includes terms and conditions in renewable energy leases that require lessees to submit survey plans to BOEM for review in advance of their survey activities.[50] BOEM's review of the plans, while not an approval process, does provide BOEM an opportunity to communicate with lessees to ensure the lessees' survey results will meet BOEM's information needs and to ensure certain environmental conditions are met in conducting the surveys.

BOEM is considering whether there is a need for a future rulemaking intended to regulate surveys associated with OCS renewable energy activities. To that effect, BOEM is soliciting comments on the following questions:

- What additional protections might be gained through rulemaking that cannot be achieved by way of the lease stipulations?
- Should BOEM establish a permit-based mechanism to regulate how, when (pre-lease, post-lease), and where (on- and off-lease) surveys are conducted? And to what extent, if any, should that permit program differ from the permit requirements of the oil and gas program and marine minerals program?
- Is there another method, other than a permit-based mechanism, that could aid in the confirmation of any damage to fishing gear as well as the identification of responsible parties for any such damage from survey activities?
- To what extent should BOEM require additional public reporting and notice of any anticipated OCS survey activities, beyond the current lease stipulation requirements of two weeks' advance notice to applicable ocean users of lessee geological and geophysical surveys? Is there a greater need for specific advance notice requirements, extending beyond geological and geophysical surveys, to include the location, dates, and times in which other OCS surveys will be conducted?
- To what extent should BOEM identify and track OCS survey activities related to renewable energy program activities?
- How can BOEM improve the current procedures for reporting by and reimbursement of any party that is harmed as a result of the activities of a company engaged in renewable energy survey activities? Can these improvements replace the need to promulgate regulations governing OCS surveys for renewable energy projects?
- Should BOEM require advance coordination of survey activities with other lessees operating on the OCS?
- Are there other policies or requirements that BOEM should consider in order to minimize the adverse interaction between other users of the OCS and those conducting surveys that support renewable energy activities on the OCS?

Please see the **ADDRESSES** caption at the beginning of this notice to send responses to these questions and any other comments that you have. If you have any data or information that could be used to evaluate the extent of this problem, or potential costs or benefits of instituting additional procedures to address it, please provide that information as well. Please see the **FOR FURTHER INFORMATION CONTACT** caption at the beginning of this notice if you

[47] See 30 CFR 551.4

[48] See 30 CFR 550.207 through 550.210.

[49] Guidelines for Providing Information on Fisheries Social and Economic Conditions for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR part 585 (2020) *available at https://www.boem.gov/sites/default/files/documents/about-boem/Social%20%26amp%3B%20Econ%20Fishing%20Guidelines.pdf.*

[50] Refer to stipulation 3.1.2.1 in Addendum C of commercial leases auctioned by BOEM in recent lease sales (*e.g., available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Lease%20OCS-A%200537_0.pdf.*

have questions or comments regarding this topic.

D. Certified Verification Agent and Engineering Reports

1. Existing Regulations

As discussed above, the current subpart G of BOEM's regulations governs the design, fabrication, and installation of offshore wind facilities following plan approval—as well as the process by which independent third-party CVAs are nominated, selected, and tasked with duties for project engineering review.

2. Why the Existing Regulations Should Be Updated

The existing regulations use terminology to describe the role of the CVA that is not consistent with industry practices. They also are inexplicit regarding the flexibility that lessees or grant holders are afforded in the timing and composition of their FDRs and FIRs, and ambiguous regarding what procurement and fabrication activities lessees or grant holders can carry out before BOEM's review of these reports.

3. Proposed Changes

(a) Certified Verification Agent Roles and Flexibility

BOEM and the Bureau of Safety and Environmental Enforcement (BSEE), concurrently review reports for design and construction of the facilities. However, rather than relying solely on agency engineering expertise, the bureaus also require lessees to use a CVA to provide independent third-party review of a project's FDR and FIR. The CVA plays an integral role in BOEM's determination that a proposed OCS renewable energy facility will be designed and constructed safely using best engineering practices in accordance with § 585.700(a)(1). The CVA also is expected to monitor fabrication and installation activities and to submit a final report to BOEM before the start of commercial operations or other approved activities in accordance with § 585.700(a)(2). So that the Department is able to ''ensure that any activities . . . are carried out in a manner that provides for safety'' as required by § 585.102(a), the Department proposes to add a requirement that the CVA verify the facility's design, taking human safety into appropriate consideration. In addition, the CVA would be required to evaluate the commissioning of any critical safety systems. Critical safety systems would be defined as safety systems and equipment designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment associated with facilities.

The Department proposes to change all ''certification'' references in the proposed subpart H to ''verification.'' This modification would align the regulations with industry standards.[51]

The proposed rule also would add flexibility to the CVA nomination process. Currently, a lessee or a grant holder must submit its CVA nominations with its SAP, COP, or GAP.[52] BOEM approves or disapproves CVA nominations as part of its plan review.[53] Multiple lessees have expressed a desire to have approved CVAs in place before COP submittal so the CVA may provide third-party review of design concepts in the COPs. This reasoning also supports CVA review of SAPs and GAPs before submittal. The Department believes that integrating CVA review into the earliest stages of the design and permitting process is consistent with its policy goals of encouraging safety and best engineering practices. We also recognize that a lessee or a grant holder may need to nominate new CVAs as the project progresses (for instance, if a design parameter changes at a late stage) or to request the replacement of an approved CVA if that CVA is ineffective or can no longer perform its duties. As a result, the proposed rule would provide flexibility for the Department, lessees, and grant holders by decoupling the CVA nomination and approval process from plan submittal and approval. The proposed rule also clarifies that a lessee or a grant holder may nominate separate CVAs to review different components of a project.

[51] Panel on Certification of Offshore Structures, National Research Council, Verification of Fixed Offshore Oil and Gas Platforms 8–9 (1977), *https://www.nap.edu/read/18431/chapter/1* (opining that ''verification'' is the preferred description of the procedure assuring stakeholders that appropriate environmental and operating factors have been duly considered in the design, construction, and installation of offshore oil and gas platforms); *see also* Transportation Research Board, Nat'l Academies of Sciences, Engineering, and Medicine, Structural Integrity of Offshore Wind Turbines, Oversight of Design, Fabrication, and Installation 96–108 (2011) (discussing role of third party oversight and certified verification agents in the offshore wind industry).

[52] For COP requirements, see 30 CFR 585.626(b)(20), 706(a). For SAP and GAP requirements, see 30 CFR 585.610(a)(9) and 585.645(c)(5), respectively. CVA nominations are required in a SAP and a GAP if BOEM determines the facilities proposed in those plans require an FDR and FIR because they are complex and significant. See 30 CFR 585.700(a), 705, 706(a).

[53] 30 CFR 585.706(e).

(b) Staged Submittal of the Facility Design Report and Fabrication and Installation Report

The Department recognizes that the construction of an offshore renewable energy facility is complex and that the procurement and installation of components depends on a wide range of project-specific factors that may change over time. These factors include availability of port facilities and installation vessels, weather conditions, seasonal construction restrictions, project financing, and approval of permits and authorizations. Requiring a lessee or a grant holder to submit only one FDR and FIR ignores that time-dependent complexity and could lead to unnecessary inefficiencies and delays. Indeed, lessees have already requested permission to submit separate, staged reports for discrete major project components. If the Department approves such requests, those lessees could begin fabricating and installing certain components while other components are being verified by a CVA. We acknowledge that some major project components may require analysis upfront to ensure safety and adherence to best engineering practices but believes that more flexibility is warranted in the timing of component review.

The Department believes that allowing staged submittal of FDRs and FIRs addresses this complexity and provides appropriate flexibility without compromising its project review. Though BOEM's existing regulations permit staged FDR and FIR submittal, this proposed rule would clarify that authority and would better define the circumstances under which staged submittal would be allowed. Importantly, staged submittals would be allowed only if the lessee or grant holder could explain how the constituent major components would function together in an integrated manner and could demonstrate that a CVA has verified such integration. The Department believes these two qualifications would minimize the risk that a lessee or grant holder would have to modify completed fabrications or installations based on any subsequent Department or CVA objections to later-reviewed components of the project.

(c) Definition of ''Fabrication,'' and Early Fabrication of Facility Components

Because of the long lead times for the procurement or fabrication of some components for offshore wind energy facilities, numerous lessees have expressed interest in the procurement or

fabrication of facility components before submittal of their COPs, FDRs, and FIRs. This ''early fabrication of facility components'' would take place outside of the OCS (*e.g.,* onshore manufacturing).

The existing regulations provide that a lessee or a grant holder may begin to fabricate and install approved facilities only after BOEM notifies the lessee or grant holder that it has received the FDR and FIR and has no objections.[54] BOEM has previously read this provision conservatively and required lessees to obtain departures before they ''begin'' any fabrication prior to BOEM's notification that it has no objection to their FDR and FIR, even if the fabrication, *i.e.,* manufacture, does not occur on the OCS. Lessees have asked BOEM to clarify what constitutes ''fabrication'' because they want to accelerate timelines by proceeding with procurement or fabrication activities outside of the OCS prior to receiving BOEM's non-objection to the FDR and FIR or the end of BOEM's 60-day review of the FDR and FIR without objections.

The Department has determined that the term ''fabrication,'' as used in the current subpart G, is arguably ambiguous and, therefore, further clarifying this term would be useful for the regulated community. BOEM has granted departures from the requirements of § 585.700(b) on a case-by-case basis,[55] provided that the departure request meets the requirements in BOEM's regulations and the lessee or grant holder assumes all business risk associated with fabrication activities that occur as a result of the departure. Whenever granting a departure for early fabrication, BOEM reserved the right to object to the fabrication methodologies described in the submitted FDR and FIR before the lessee began installation of facility components on the OCS. The Department has now concluded that the regulation in question prohibits only the fabrication and installation of facility components that take place on the OCS (*e.g.,* assembly, construction, or installation). Therefore, the fabrication of facility components that does not take place on the OCS may be carried out prior to the submittal of an FDR, FIR, or any plans under the regulations, and such activities do not require the prior issuance of a departure. However, the fact that fabrication activities outside the OCS can commence prior to the submittal of an FDR, FIR, or any plans does not prevent the Department from objecting to the installation of such components on the OCS if their fabrication is inconsistent with accepted industry or engineering standards, the approved SAP, COP, or GAP, or the FDR or FIR, or regulations. To codify this policy, the Department proposes to amend the existing regulations to remove any doubt that only fabrication activities that take place on the OCS are prohibited prior to the Department non-objection of the FDR and FIR or the end of the 60-day review period without objections.

The Department also proposes to include in 585.112 a definition for the term ''fabrication,'' which would be defined as ''cutting, fitting, welding or other assembly of project elements of a custom design conforming to project-specific requirements,'' and would exclude from this definition the procurement of discrete parts of the project that are commercially available in standardized form (such as electrical components, magnets, and gears) and type-certified components (such as nacelles and blades).[56]

Consequently, the proposed rule would reduce the number of components that are considered ''fabricated'' through the definition. The proposed rule would clarify that fabrication activities that do not take place on the OCS can commence before the submittal of the FDR, FIR, or any plans required under regulations. This proposed change would not in any way limit BOEM's ability to conduct a robust environmental review during the plan approval process; BOEM's consideration of alternatives and mitigations would be unaffected. The rule would also clarify that all facility components procured or fabricated (regardless of where they were fabricated) would be subject to CVA verification. This requirement would reduce the risk of a lessee or grant holder seeking short-term cost savings to the detriment of safety and accepted engineering practices. The lessee or grant holder assumes any business risk associated with the procurement or fabrication of facility components prior to plan approval or the Department non-objection to the FDR and FIR or the end of the 60-day review period without objections. In order to avoid the business risk of objections to the fabrication of facility components prior to installation, developers can always opt not to fabricate until their FDR and FIR have gone through the 60-day review period without objections or received a non-objection to the FDR and FIR. Although such procurement and fabrication activities are not prohibited by the regulations, the proposed rule would clarify that the Department reserves the right, during its FDR and FIR reviews, to object to the installation of previously procured or fabricated facility components if said components are inconsistent, or were not fabricated in accordance with, accepted industry or engineering standards, the approved SAP, COP, or GAP, or the FDR or FIR, or BOEM's regulations.

Clarifying that the regulations do not prohibit all procurement or fabrication activities prior to the submittal of the FDR and FIR provides maximum flexibility to the industry, while still allowing the goals of the regulation to be met (*i.e.,* to prevent the installation of facility components on the OCS if the Department has objections to their fabrication or the installation methodologies proposed in the FIR).

E. The Renewable Energy Leasing Schedule

1. Existing Regulations

The existing regulations do not address the preparation of a renewable energy leasing schedule. Under the existing regulations, BOEM announces lease sales individually as each is scheduled.

2. Why the Existing Regulations Should Be Updated

BOEM proposes to add a new section to the regulations, entitled 'The Renewable Energy Leasing Schedule' to indicate BOEM's intent to publish a proposed five-year leasing schedule for the OCS renewable energy program. This would provide greater transparency to the leasing process by giving stakeholders as much advance notice as possible of proposed lease sales.

The Secretary provided a preview of such a schedule on October 13, 2021, by announcing plans for BOEM to potentially hold up to 7 new offshore lease sales by 2025 in the Gulf of Maine, New York Bight, Central Atlantic, and Gulf of Mexico, as well as offshore the Carolinas, California, and Oregon. The proposed regulation would require a proposed leasing schedule and periodic updates to the schedule. Through a proposed schedule, BOEM would provide increased certainty and

[54] 30 CFR 585.700(b). BOEM is also ''deemed'' to have no objections if BOEM does not object within 60 days of receiving the reports.

[55] See BOEM's record of departure requests at *https://www.boem.gov/departure-request.*

[56] Component type-certification (for type-certified components) provides independent proof that critical main components of a wind turbine meet relevant international standards and codes for performance and safety. Component type-certification differs from project certification, which assesses the performance of a group of wind turbines on a specific project site.

enhanced transparency, and facilitate planning by industry, the States, and other stakeholders. With this change, DOI can lay out an ambitious roadmap to confront climate change, create good-paying jobs, and accelerate the nation's transition to a cleaner energy future.

3. Proposed Changes

The proposed rule would include a new section describing the renewable energy leasing schedule. This proposed schedule would include a list of locations under consideration for leasing and a leasing schedule that BOEM intends to follow in announcing its future renewable energy lease sales. According to this proposal, at least once every two years, the Secretary would publish a schedule of proposed lease sales. As a proposed schedule, it would not obligate BOEM to offer all sales on the schedule; BOEM would adjust the schedule as necessary through the scheduled updates. The first published schedule would be issued for the five-year period following the effective date of this rulemaking, and subsequent schedules will cover the five-year period after each update. This schedule would include a general description of the area of each proposed lease sale, the calendar year in which each lease sale is projected to occur, and the reasons for any changes made to the previous schedule. Every time the schedule is updated, BOEM would identify those lease sales that are being considered for the following 5-year period.

The Inflation Reduction Act (IRA), Public Law 117–169, requires that, during the 10-year period beginning on August 16, 2022, BOEM may not issue an OCS wind lease unless an OCS oil and gas lease sale has been held during the 1-year period ending on the date of the issuance of the wind lease and the sum total of acres offered for lease in OCS oil and gas lease sales during that 1-year period is at least 60 million acres. BOEM will comply with the requirements of the IRA.

This Renewable Energy Leasing Schedule would differ substantially from the Five Year Oil and Gas Leasing Program, described in the oil and gas regulations in 30 CFR part 556. Compared to the Five Year Oil and Gas Leasing Program, which is mandated under section 18(a) of the OCS Lands Act, the proposed Renewable Energy Leasing Schedule would be much less complicated and would not constitute a final action enforceable or challengeable administratively or in the courts. The proposed regulations would not have requirements for public meetings, comment periods, or iterative proposals, and would not include a list of factors that must be considered other than those already enumerated in § 585.102. Any proposed lease sale covered by the schedule would be subject to all applicable regulations, including area identification, coordination with relevant parties, and applicable environmental reviews.

BOEM seeks comment on its proposal to publish a proposed Renewable Energy Leasing Schedule and what information should be provided as part of this schedule. BOEM is soliciting comments specifically on the content and the timing of the schedule updates, as well as generally on how best to provide a schedule to improve transparency of renewable energy development on the OCS.

F. Lease Issuance Procedures

1. Existing Regulations

During the past 10 years, the existing lease issuance procedures have been criticized for being too prescriptive in some aspects and unclear in others. The existing procedures constrain flexibility by prescribing auction formats, processes, systems, and variables. BOEM has determined that the lease issuance process requires added flexibility, transparency, and clarity and that its regulations should address possible consequences when the provisional winner fails to execute a lease, a lessee relinquishes a lease, or BOEM contracts or cancels a lease.

2. Why the Existing Regulations Should Be Updated

BOEM proposes to revise several aspects of its lease issuance procedures primarily for simplification, clarification, and conformance with existing agency practice.

3. Proposed Changes

(a) Pre- and Post-Auction Procedures

This proposed rule would reorganize, simplify, and clarify the sections of BOEM's regulations that detail the steps leading to an OCS renewable energy auction. The proposed rule would introduce a new term, ''provisional winner,'' to describe the bidder that BOEM determines has submitted the winning bid at the close of the auction, pending completion of the government's post-auction reviews and the lease award reconsideration process. The provisional winner becomes the winning bidder upon favorable completion of these reviews and appeals. The proposed rule would consolidate the reconsideration and appeal provisions into a single section while retaining separate processes for seeking the review of a decision selecting a provisional winner and for appealing all other final decisions under this part. The proposed rule would simplify and clarify post-auction procedures by outlining what BOEM and a provisional winner must do between the auction and lease execution. The proposed rule would eliminate the term ''request for interest'' and replace it with the broader term ''request for information.'' Finally, the proposed rule would change the due date for payment of the first 12 months' rent to 45-calendar days after the winning bidder receives a copy of the executed lease.

(b) Auction Processes and Rules

BOEM recognizes that the auction formats and bidding systems described in the existing §§ 585.220 and 585.221 are difficult to understand and overly prescriptive, although they allow for customization of each auction. This proposed rule would simplify and clarify the auction regulations, replacing the currently enumerated auction formats, bid systems, and bid variables with a more flexible process to better accommodate an emerging industry while allowing for auctions to be customized based on circumstances. The proposed rule would meet the fundamental policy objectives to have a process that is objective, fair, reasonable, and competitive; awards leases to the highest bidder; and provides a fair return to the U.S. taxpayer. Consistent with BOEM's existing practice, the PSN would propose the specific format and procedures for an upcoming auction, and the public would have an opportunity to submit comments that would inform BOEM's final decisions regarding format and procedures. BOEM would publish the final auction format and procedures in the FSN. This proposed rule would allow BOEM greater flexibility to tailor each auction to fit the particular circumstances.

(c) Multiple Factor Auctions and Bidding Credits

BOEM proposes to continue to implement multiple factor auctions, through the use of bidding credits, to allow the competitive lease award process to take into consideration various priorities, such as advancing a domestic supply chain or requiring workforce development agreements, relating to orderly development of OCS renewable energy resources. The multiple factor auction format ascribes a value, expressed in monetary terms, to the factors or actions demonstrated or committed to by a bidder at a lease auction during the competitive lease

award process. In each round of the auction, a bid may have a non-monetary component represented by the bidding credit as well as a monetary (cash) component.

A multiple factor auction using bidding credits would be expected to proceed along the lines of the following example. We assume there are three qualified bidders in an ascending bid clock auction, which is the same auction format traditionally used for BOEM's wind energy lease sales. Bidder A has met the requirements for a bidding credit of 10 percent of the cash component by having obtained a power purchase agreement (PPA); Bidder B has met the requirements for a bidding credit of 20 percent of the cash component by having committed to appropriate workforce or supply chain development agreements; and Bidder C has not earned or made the requisite commitments to earn a credit.

The auction begins with an opening bid of $100 with subsequent $10 bidding increments per round. The auction continues for seven rounds. Bidder C submitted an exit bid in Round 6 and is ineligible to continue bidding. The auction concludes when Bidder B bids the asking price in Round 7 and Bidder A submits an exit bid less than the asking price. Bidder B wins the auction with its lower cash bid combined with its commitment to workforce training and supply chain development. The example bidding results are shown in the following table.

TABLE—OFFSHORE WIND AUCTION EXAMPLE

Bidding round	BOEM's asking price (combined bid)	Bidder A (10 percent credit)	Bidder B (20 percent credit)	Bidder C (no credit)
1	$100	$90.90 cash + $9.10 credit	$83.30 cash + $16.70 credit	$100.00.
2	$110	$100 cash + $10 credit	$91.67 cash + $18.33 credit	$110.00.
3	$120	$109.09 cash + $10.91 credit	$100 cash + $20 credit	$120.00.
4	$130	$118.18 cash + $11.82 credit	$108.33 cash + $21.67 credit	$130.00.
5	$140	$127.27 cash + $12.73 credit	$116.67 cash + $23.33 credit	$140.00.
6	$150	$136.36 cash + $13.64 credit	$125 cash + $25 credit	$145.00 (exit bid).
7	$160	Exit bid of $140 cash + $14 credit = $154.00.	$133.33 cash + $26.67 credit = $160.00 (winner).	[ineligible to bid].

Before the auction, BOEM will determine each bidder's eligibility for bidding credits in accordance with the specifications of the FSN; however, such eligibility may be established either for actions that the bidder has already undertaken or for actions which it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. Eligibility for bidding credits would be tied to specific actions defined in the FSN that facilitate OCS renewable energy development by increasing the likelihood or pace of development—for instance, a PPA—or by advancing other public policy goals reflected in the OCS Lands Act. The FSN would contain the rules governing the eligibility of parties to obtain bidding credits, as well as the application process, use, and value of bidding credits in a specific auction. As it has done in the past, BOEM would consider the enforceability of commitments made by bidders during the design of the auction credits to be offered in specific lease sales. In the past, this was not much of a concern because BOEM mostly offered credits for commitments and achievements previously made. This proposed rule would clarify that a bidder may be eligible for bidding credits based on actions the bidder has already undertaken or for commitments to future actions. However, in proposed 30 CFR 585.225, this rule would also provide that, in the event that a lessee does not meet the commitments it made to obtain any bidding credits, the lessee would be required to repay the value of the bidding credits that it received, adjusted for inflation. BOEM would also reserve the right to impose civil penalties pursuant to the provisions of subpart N of 30 CFR 550 for failure to comply with the terms or provisions of a lease, easement, or right-of-way.

According to the provisions of this proposed rule, a multiple factor auction may take one or more non-monetary factors into consideration, including: (1) power purchase agreements; (2) eligibility for, or applicability of, renewable energy credits or subsidies; (3) development agreements by a potential lessee that facilitate shared transmission solutions and grid interconnection; (4) technical merit, timeliness, financing and economics, environmental considerations, public benefits, or compatibility with State and local needs; (5) agreements or commitments by the developer that would facilitate OCS renewable energy development or other OCS Lands Act goals; or (6) any other factor or criteria to further development of offshore renewable energy in a sustainable and environmentally sound manner, as identified by BOEM in the PSN and FSN.

(d) Solicitation of Comments

BOEM seeks comments on the use of bidding credits and multiple factor auctions as a method of advancing important priorities, such as promoting workforce development or supply chain enhancement, consistent with the goals of the OCS Lands Act. It is BOEM's goal to ensure that there is adequate flexibility to the leasing process to achieve public policy goals and any comments or suggestions as to how BOEM could best achieve this objective would be welcome. Specifically, BOEM is interested in obtaining comments on how bidding credits or factors might be tailored to mitigate possible adverse, project-related impacts. For example, BOEM is interested in receiving comment on what impacts a project could have on underserved communities and how bidding credits or multiple factor auctions can be used to promote mechanisms such as community benefit agreements that could address those impacts and provide benefits to the underserved communities. Comments on alternative means to achieve public policy goals, such as through lease stipulations, are also sought.

(e) Improper or Inappropriate Bidder Communications

The proposed rule would explicitly prohibit a bidder from disclosing its auction strategies and economic valuations of a lease area to other bidders in a particular auction in any manner that might prevent the United States from obtaining a fair return on a prospective lease. Such practices have been prohibited in recent FSNs.

This proposal would outline the rules applicable to all auctions and the

processes BOEM would use to disqualify a bidder that no longer meets qualification requirements or who engages in specified improper conduct. The proposed rule would specify how a disqualified bidder might seek to be re-qualified as a bidder.

(f) Provisional Winner Obligations

This proposed rule would define the term ''provisional winner'' and would outline consequences if a provisional winner fails to sign the lease agreement, provide the requisite amount of financial assurance, or tender the outstanding bid balance. The proposed rule would provide a list of actions that BOEM is authorized to take if a provisional winner fails to fulfill its obligations. In addition, because the proposed rule would allow a provisional winner to become a lessee before it has completed all obligations for which it obtained bidding credits, an additional provision has been added to proposed § 585.225, specifying that a lessee that has obtained bidding credits for prospective performance obligations that were not fulfilled at the time of the lease award, are subject to repayment in the event that those performance obligations are not ultimately met prior to a specified deadline or event. BOEM would also reserve the right to impose civil penalties pursuant to the provisions of subpart N of 30 CFR 550 for failure to comply with the terms or provisions of a lease, easement, or right-of-way.

(g) Re-Offering Leases at Auction or When a Lease Area Is Relinquished, Contracted or Cancelled

The proposed rule would provide clear authority for BOEM to offer a lease to the next highest bidder if a provisional winner of a lease auction fails to fulfill its obligations before lease execution or is otherwise unable to execute a lease. Similarly, if a lessee relinquishes its lease or BOEM contracts or cancels a lease in whole or in part, BOEM may re-offer the area previously covered by the lease.

G. Risk Management and Financial Assurance

1. Existing Regulations

As discussed above, under the current subpart E of part 585, BOEM requires lessees and grant holders to provide financial assurance, in the form of a bond or other instrument, in an amount sufficient to guarantee compliance with terms and conditions of their leases and grants.

2. Why the Existing Regulations Should Be Updated

The existing financial assurance regulations lack flexibility and clarity in several key areas, as explained below.

3. Proposed Changes

This proposed rule would revise BOEM's risk management and financial assurance requirements in the proposed subpart F. The revisions are intended to facilitate OCS renewable energy development while continuing to protect the U.S. taxpayer against risks of default. The proposed rule would accomplish both goals through four key changes. Other minor proposed changes are addressed in section VI.F. BOEM also seeks comment on additional potential changes that would better align financial assurances to risk discussed in subsection 3(e) below.

(a) Elimination of COP Approval Financial Assurance Requirement

The proposed rule would eliminate the supplemental financial assurance currently required before COP approval.[57] This requirement was intended to protect the U.S. taxpayer against liability from defaulted lease obligations that accrue after COP approval.[58] However, decommissioning liabilities do not accrue from COP approval; such liabilities accrue only with the commencement of approved activities on the OCS.[59] BOEM's regulations require—and this proposed rule would continue to require—supplemental financial assurance before OCS installation starts in order to cover those liabilities, *i.e.,* anticipated decommissioning costs. Therefore, BOEM proposes to eliminate as unnecessary the requirement for supplemental financial assurance before COP approval. In the unforeseen event that a COP approval does, by itself, cause the accrual of new obligations, BOEM retains the authority to assess supplemental financial assurance on a case-by-case basis under § 585.517.[60]

(b) Revision of Lease-Specific Financial Assurance Amount

The proposed rule would simplify the requirements for financial assurance during the early stages of a commercial lease. Currently, before BOEM will execute a commercial lease, the lessee is required to provide lease-specific financial assurance in the amount of $100,000 to guarantee compliance with the lease terms and conditions. BOEM recognizes, however, that annual rental payment is the only financial obligation accrued at lease execution and before installation activities on the OCS are authorized. BOEM currently assesses financial assurance for 12 months of rent when it makes its first request for supplemental financial assurance—typically during SAP review.[61] This practice leaves BOEM under-bonded for the preliminary term of a lease if annual rent exceeds $100,000, which it generally does.

BOEM, therefore, proposes to replace the $100,000 lease-specific financial assurance with financial assurance in the amount of 12 months' rent, due before lease execution. This amendment would ensure that BOEM and U.S. taxpayers are adequately bonded throughout the early stages of the lease. Combined with the proposed elimination of financial assurance for met buoy decommissioning, this amendment would simplify financial assurance by eliminating the need for supplemental financial assurance in addition to 12 months' rent before installation of BOEM-approved facilities on the OCS. The amendment is not expected to have a financial impact on lessees.[62]

Additionally, BOEM's regulations allow periodic adjustments to the $100,000 lease-specific financial assurance based on the Consumer Price Index-All Urban Consumers or equivalent index. With the proposed replacement of the $100,000 lease-specific financial assurance, BOEM proposes to eliminate these adjustment provisions as obsolete. BOEM seeks comments on the extent to which additional modifications or enhancements to the financial assurance might be appropriate.

Extending the reasoning in this section, the proposed rule also would change the financial assurance requirement prior to issuance of limited leases and grants from $300,000 to an amount equal to 12 months' rent.

[57] 30 CFR 585.516(a)(3).

[58] *See* Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf Final Rule, 74 FR 19637 (Apr. 29, 2009), *available at https://www.boem.gov/Renewable-Energy-Program/FinalRenewableEnergyRule-pdf.aspx.*

[59] Under both the existing regulations and the proposed rule, OCS installation of approved facilities may begin only after the lessee addressed all CVA and BOEM concerns raised during their FDR and FIR reviews to their satisfaction.

[60] Where a permit under the National Marine Sanctuaries Act may be required, NOAA's Office of National Marine Sanctuaries may require certain financial assurances for infrastructure removal activities potentially required under the permit.

[61] 30 CFR 585.516(a)(2).

[62] As discussed in section V.A above, BOEM proposes to eliminate SAPs for met buoys, which have become the predominate facilities for OCS site assessment activities.

(c) Additional Authorized Financial Assurance Instruments

The proposed rule would provide greater flexibility regarding the financial assurance instruments that BOEM would accept. While BOEM's regulations list types of acceptable financial assurance instruments, BOEM's regulations permit it to accept other instruments that meet the general requirements for financial assurance in 30 CFR 585.525. Several lessees have expressed an interest in using letters of credit, which are accepted as financial assurance across a range of industries. The proposed rule explicitly would allow letters of credit as permissible financial assurance instruments and would set forth evaluation criteria for their use. The proposed rule would add catch-all provisions clarifying that BOEM may accept instruments not explicitly listed as well as combinations of different instruments; however, these instruments would need to meet BOEM's general requirements for financial assurance as noted above. These changes would provide greater flexibility to a lessee and a grant holder, but still protect the United States against default.

The proposed rule also would provide lessees and grant holders with greater flexibility when using a third-party guaranty by allowing guarantors to cap their liability. BOEM's existing regulations require a third-party guaranty to cover the full amount of all lease and grant obligations. The proposed rule would grant BOEM the discretion to approve a third-party guaranty for a specific amount. This modification would provide lessees and grant holders with the flexibility to use a third-party guaranty up to a certain dollar amount and to satisfy the remainder of their financial assurance obligations through other acceptable instruments. Given that BOEM would retain the ability to approve all proposed financial assurance instruments and that the criteria for such instruments would remain unchanged, BOEM believes these changes would not increase the risk to U.S. taxpayers.

(d) Staged Funding of Decommissioning Accounts

The proposed rule would allow staged funding of decommissioning accounts during the operations period of a lease or grant to satisfy financial assurance requirements for decommissioning. BOEM's existing regulations require full funding of a decommissioning account for each renewable energy facility, such as a wind turbine generator, before its installation on the OCS. This places a significant upfront capital burden on a lessee or a grant holder.

BOEM strives to develop a financial assurance framework for the renewable energy sector that accomplishes the same goal of protecting the taxpayer as does the financial assurance framework governing the oil and gas sector. BOEM also recognizes that there are key differences between the renewable energy and oil and gas sector that necessitate different approaches. Notably, offshore renewable energy is projected to maintain consistent levels of power production over the life of a project, as opposed to production decline curves associated with oil and gas production from offshore wells. In addition, the risk that predicted levels of oil and gas reserves may be overstated is also not a concern with offshore renewable energy projects. Additionally, renewable energy projects often have legally binding PPAs, which ensure an ongoing revenue source over a significant time horizon and eliminate another major risk factor faced by the oil and gas sector: commodity price volatility. This relatively consistent production, combined with PPAs that often guarantee a market for power at predictable prices over 15 to 20 years, allows BOEM to receive revenue and make profitability projections with a much greater degree of certainty than for conventional energy assets.

BOEM's proposal to set a scheduled and staged implementation of a decommissioning trust account or other financial assurance funding mechanism is also appropriate given that the funding schedule is established at the beginning of the operations period, significantly before decommissioning is scheduled to occur, as opposed to after the assets have been operating for years and may be approaching or past scheduled end-of-life. The proposed rule would allow BOEM to approve a schedule for funding decommissioning accounts during a lease's or grant's operations period on a case-by-case basis.[63] In all instances, the decommissioning account would be required to be fully funded by the time a lessee or grant holder is obligated to decommission the applicable facility. This proposed change would align BOEM's financial assurance regulations with common European practices.

BOEM believes the risk of this proposed change to U.S. taxpayers is negligible. First, the proposed rule would not commit BOEM to allowing staged funding of a decommissioning account in all instances. If BOEM believes that a particular project poses a high financial risk, BOEM could require full funding of the decommissioning account before OCS installation. Second, the European industry has a strong history of solvency that BOEM believes would extend to the U.S. industry because the lessees and projects share many of the same characteristics. Third, BOEM anticipates that even if a lessee became insolvent during its commercial operations period, it would likely be able to transfer a functioning OCS renewable energy facility to a solvent entity because the revenues would be expected to exceed operating costs.

(e) Other Financial Assurance Provisions

BOEM is considering additional changes to its existing financial assurance framework. In December 2015, the Government Accountability Office highlighted risks in BOEM's financial assurance procedures applicable to the offshore oil and gas industry and recommended that BOEM complete its planned financial assurance revisions ''including the use of alternative measures of financial strength.'' [64] Subsequently, BOEM is considering a new rulemaking to revise the financial assurance regulations for its offshore oil and gas program while continuing to protect U.S. taxpayers against defaulted obligations incurred by lessees and grant holders.[65]

The oil and gas rulemaking initiative could consider reliance on credit ratings with a specific regulatory credit rating threshold for BOEM's evaluation of the financial strength and reliability of a lessee, grant holder, or third-party guarantor. In all cases, BOEM could retain the discretion to require supplemental financial assurance in situations where it is warranted.

Similarly, in its renewable energy program, BOEM is considering use of a minimum credit threshold rating to help determine the necessity for financial assurance. BOEM is not proposing regulatory text implementing this concept and is not specifying a credit rating threshold in this rulemaking. BOEM does seek comments on the merits of this concept for potential inclusion in the final rule for the renewable energy program. Regulatory

[63] The operations period for a commercial lease is defined at § 585.235(a)(4); for a limited lease, § 585.236(a)(2); and for a grant, § 585.303(b).

[64] Government Accountability Office, GAO–16–40, Offshore Oil and Gas Resources, Action Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities 34 (2015), *https://www.gao.gov/products/GAO-16-40.*

[65] Risk Management, Financial Assurance and Loss Prevention, 85 FR 65904 (Oct. 16, 2020).

text implementing this proposal likely would result in BOEM replacing many of the factors that currently guide BOEM's determination of a lessee's or grant holder's financial strength in the existing § 585.527, or adding provisions outlining additional methods for determining financial strength.

(i) Credit Ratings

Currently, BOEM requires a commercial lessee to provide supplemental financial assurance before installing facilities included in the approved COP.[66] Under existing regulations, BOEM may allow a lessee or grant holder to use its financial strength and reliability to cover its financial assurance based on an evaluation of audited financial statements; business stability; reliability; and a record of compliance with laws, regulations, and contracts.[67] Based on a similar evaluation of a guarantor, BOEM also may allow a lessee or grant holder to use a third-party guarantee to meet its financial assurance requirements.[68]

These factors primarily assess past performance as a proxy for future financial strength and reliability. In dynamic electricity markets, however, such backward-looking factors may lead to inaccurate and inconsistent assessments of financial strength and reliability.

A forward-looking assessment would be more reliable because the financial situation of a lessee, grant holder, or third-party guarantor can worsen quickly despite its past performance. Credit ratings provide such forward-looking assessments by taking into account relevant factors, such as cash flow, debt-to-income ratios, and debt-to-funds from operation.

BOEM seeks comment on whether it should alter its assessment of financial strength and reliability by replacing the use of several current factors with a credit rating from a nationally recognized statistical rating organization (NRSRO), as identified by the U.S. Securities and Exchange Commission under the Credit Rating Agency Reform Act of 2006 and its implementing regulations,[69] or a proxy credit rating determined by BOEM using audited financial statements. Based on BOEM's experience in the oil and gas industry, BOEM has concluded credit ratings are the most reliable predictor of future ability to meet obligations.[70] The use of credit ratings would align BOEM's assessment with widely accepted risk evaluation methods within the banking and financial industry.

BOEM believes that an NRSRO credit rating greater than or equal to investment grade from Standard & Poor's Ratings Service (S&P) or from Moody's Investor Service would be a sufficient indicator of future reliability to allow a lessee or grant holder to use its financial strength to meet its requisite financial assurances. BOEM also proposes to use the same credit rating criteria to evaluate the financial strength and reliability of a lessee's or grant holder's proposed third-party guarantor. If a lessee, grant holder, or guarantor lacks an NRSRO credit rating, it would be allowed to submit audited financial statements—which generally include an income statement, balance sheet, statement of cash flows, and auditor's certificate—prepared in accordance with generally accepted accounting principles. Based on these audited financial statements, BOEM then would determine a proxy credit rating using the S&P Credit Analytics credit model or a similar widely accepted credit rating model. BOEM has concluded that such a model, used in conjunction with audited financial statements, can generate a proxy credit rating comparable to that of an NRSRO.

(ii) Joint and Several Liability

Currently, co-lessees and co-grant holders are jointly and severally liable for lease or grant obligations accruing during their tenancy, including decommissioning.[71] When a lease or grant is assigned, the assignor remains liable for unmet obligations that accrued before BOEM's approval of the assignment.[72] The assignee is liable for obligations that accrued before and after BOEM's approval of the assignment.[73] Moreover, the assignee is required to provide requisite financial assurance.[74] This joint and several liability significantly reduces the risk of non-performance if any liable party has adequate financial strength and reliability.

BOEM seeks comment on whether it should explicitly rely on the financial strength and reliability of these other liable parties, including any current or predecessor lessees and grant holders, when determining the need for, and amount of, financial assurance necessary to cover all accrued lease or grant obligations.

H. Safety Management Systems

An SMS is a combination of policies, procedures, and control mechanisms designed to meet an organization's safety objectives in a disciplined and continually improving manner. BOEM regulations require a lessee or a grant holder to develop an SMS for COP-approved renewable energy facilities and for SAP- and GAP-approved facilities that BOEM deems complex and significant. The SMS must be functional when a lessee or grant holder begins its approved activities and throughout the project.

1. Existing Regulations

BOEM's existing SMS regulations are brief and general, having been promulgated in 2009 when construction and operation activities were years in the future. The regulations require a lessee or a grant holder to submit a general description of safety measures and capabilities, emergency procedures, and testing protocols. Multiple Federal statutes authorize various safety oversight activities by different agencies for facilities on the OCS, including renewable energy facilities. BOEM recognizes that duplicative enforcement of similar statutes by multiple agencies is likely to be confusing and cause unneeded cost and delay. Consequently, BOEM and BSEE have coordinated with the Occupational Safety and Health Administration (OSHA) and the United States Coast Guard (USCG)—the Federal agencies primarily responsible for OCS facility safety management—to assure coordination and consistency with the safety management responsibility of these agencies for OCS facilities. BOEM's SMS requirements will become the primary tool to ensure human and environmental safety with respect to renewable energy development on the OCS. This rule is intended to clarify the expectations of the SMS for the regulated community. It is also designed to clarify the expected content of an SMS and support the assessment by other Federal regulators that an SMS performance-based approach to risk management will establish a reasonable regulatory framework.

2. Why the Existing Regulations Should Be Updated

With construction and operation activities expected to commence soon, OCS wind lessees and contractors have

[66] 30 CFR 585.516(a)(4). BOEM may adjust the amount of the supplemental financial assurance as cumulative obligations increase or decrease during the lease. 30 CFR 585.517(c). On a grant or limited lease, BOEM may require supplemental financial assurance as activities progress and obligations accrue. 30 CFR 585.521(a).

[67] 30 CFR 585.527(a).

[68] 30 CFR 585.528(b).

[69] See 17 CFR parts 240 and 249.

[70] Credit ratings are part of current reliability criteria discussed in existing § 585.527(a)(3).

[71] 30 CFR 585.406(a).

[72] 30 CFR 585.410.

[73] 30 CFR 585.411(b).

[74] 30 CFR 585.408(b)(8).

informally asked BOEM to clarify its expectations regarding SMS standards. The proposed rule would address those inquiries, incentivize SMS certification from a recognized accreditation organization, add two safety reporting requirements, and clarify that lessees and grant holders would be required to have and use an SMS for all OCS activities undertaken pursuant to a lease, from site assessment through decommissioning.

Additionally, the proposed changes would reflect the recent DOI policy statement clarifying that 30 CFR part 585 contains the primary workplace health and safety regulations for OCS renewable energy operations.[75]

3. Proposed Changes

The Department proposes a performance-based approach that would promote flexibility in determining the best way to ensure personnel safety on and near OCS renewable energy facilities during activities covered by the SMS. The proposed SMS changes are consistent with industry's safety management best practices. The proposed amendments would allow a lessee or grant holder to adopt U.S. and international workplace health and safety standards as its SMS framework.

Under the proposed rule, upon SMS receipt, the Department would engage with the lessee or grant holder to understand the risks the safety system was designed to mitigate and how the system would function. The proposed rule would provide transparency regarding the types of information that the Department considers necessary in a satisfactory SMS and would clarify that the Department expects the lessee or grant holder to design, implement, and maintain the SMS according to widely accepted standard practices. This clarification would help prospective OCS renewable energy developers understand the Department's SMS expectations.

The proposed rule would provide incentives for a lessee or grant holder to obtain certification of its SMS from a recognized safety and environmental management system CAB. A lessee or grant holder whose SMS has been certified would be eligible for streamlined oversight in recognition of the increased rigor in the development and implementation of its SMS. While such certifications would not be required and cannot guarantee streamlined oversight in all instances, BOEM anticipates that most lessees and grant holders would pursue certification as a best practice.

The proposed rule would add two reporting requirements. One report would require an annual summary of how the SMS performed, normalized to work hours and energy generation. This report would allow the Department to verify SMS functionality and track continual improvements.[76] The second would be a triannual report summarizing the results of the most recent SMS audit, the corrective actions implemented, and a description of any changes made to the SMS since the prior report. Data from these reports could be used to generate annual industry-wide comparisons of safety performance.

Finally, the proposed rule would provide that a lessee must have a functional SMS before beginning any activity on the OCS pursuant to a lease, and must use its SMS for all such activities, including site assessment work. This would clarify the Department's expectations regarding the stages at which an SMS must be functional and used, including prior to the SAP, COP, or GAP.

I. Inspections

1. Existing Regulations

Existing regulations state that BOEM will inspect facilities and vessels engaged in renewable energy activities to verify compliance with applicable terms, conditions, laws and regulations, and to determine whether safety equipment has been properly installed and operated. The existing regulations that require the lessee to conduct self-inspections are limited to inspections of structures, mooring systems, and monitoring of corrosion protection.

2. Why the Existing Regulations Should Be Updated

OCS Lands Act section 1834(c) requires the Department to promulgate regulations to provide for scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf. As currently written, BOEM's regulations require BOEM to perform a scheduled on-site inspection of all renewable energy facilities on the OCS and inspect all safety equipment designed to prevent or ameliorate fires, spills, or other major accidents.

To ensure that the OCS Lands Act mandate of an annual onsite inspection is met, the Department proposes to update its regulations to require the lessee conduct annual onsite self-inspections. The lessee would also be required to maintain records of its self-inspections and to provide these records to the Department upon request. This would make the lessee accountable for ensuring safety and protection of the environment. In addition, the Department would retain the ability to conduct inspections at any time.

This update would allow for DOI to focus resources on conducting inspections, both scheduled and unscheduled, based on designated criteria, such as operational risk severity and risk probability, industry trends, incident data, analytical data, safety management system implementation and audits, and other observations.

This proposal would also reduce logistical and human resource burdens on the operators by allowing them to schedule the annual self-inspections with maximum efficiency by incorporating the inspections into scheduled onsite activities.

3. Proposed Changes

(a) BOEM Inspection Requirement

The proposed rule would revise BOEM's requirement ''to conduct'' an inspection on OCS facilities or any vessels engaged in renewable activities to state that BOEM ''may conduct'' an inspection on an OCS facility or any vessel engaged in renewable activities.

(b) Self-Inspection Requirements

The proposed rule would require that, once a facility has commenced commercial operations, the lessee would conduct an onsite inspection of its facility at least annually, including all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents, to satisfy the annual onsite inspection requirement of the OCS Lands Act. The proposed rule would also require the lessee to maintain records of the facility inspections, summarize the results of those inspections and provide the records and the summary of the results to BOEM upon request.

J. Other Proposed Changes

The Department proposes other regulatory changes that fall outside the eight categories previously discussed. The most significant of these proposed changes are summarized here. Other changes correct technical errors or clarify inconsistencies arising from this proposed rule. All these proposed changes and their rationales are discussed further in section VI.

[75] Notification of policy statement, 84 FR 55861 (Oct. 18, 2019).

[76] This report also would close a known reporting gap between BOEM and OSHA, which requires annual reporting of workplace injury and illness data.

1. Lease Structure

The proposed rule would change the default lease terms in § 585.235 by merging the existing preliminary and site assessment terms into one preliminary period; establishing new lease periods for COP review and for design and construction that can vary in length based on the duration of the COP review and the design and construction process; and converting the existing 25-year operations term that commences at COP approval into a 30-year operations period commencing at the commercial operations date. These proposed changes recognize most lessees will not submit SAPs, account for the time required for permit review and construction, and provide certainty to a lessee regarding the operations period of its renewable energy project.

2. Lease Segregation and Consolidation

BOEM has received requests from lessees to segregate single leases into multiple leases, held by different subsidiaries, as well as to consolidate multiple adjacent leases into a single lease. BOEM regulations allow such segregations and consolidations, and the proposed rule would clarify the existing regulations by establishing specific procedures.

3. Civil Penalties

BOEM's renewable energy regulations do not explicitly provide for assessing immediate civil penalties for violations that constitute(d) a threat of serious, irreparable, or immediate harm or damage to life, property, or the marine, coastal, or human environment, without notice and an opportunity to correct. However, the authority for doing so is set forth in the OCS Lands Act. This proposed rule would amend the Department's regulations to ensure that its civil penalty regulations are coextensive with its statutory authority.

4. Standardize Annual Rental Rates for Grants

The proposed rule would standardize the annual rental rate for most grants. Under the proposed rule, BOEM would apply a $5 per acre annual rental rate for both ROWs and RUEs.

5. Technical Corrections and Clarifications

Finally, the proposed rule would make numerous minor technical changes. These technical revisions maintain consistency with proposed changes elsewhere in the regulations, clarify ambiguities, correct technical errors, and improve organization. Examples of proposed changes in this category include:

- Clarifying that under 30 CFR 585.103(a)(1), regulatory departures may be granted when necessary to facilitate programmatic activities before, during and after lease termination.
- Replacing reference to the Immigration and Naturalization Service, which no longer exists, with ''appropriate Federal immigration authority.''
- Eliminating the paper copy submission requirement for plans, applications, reports, and notices to modernize procedures and to promote responsible stewardship of resources.
- Replacing ''BOEM'' with ''ONRR'' in certain provisions to reflect that ONRR is the correct payee for all lease and grant payments.
- Revising the cross-reference to BSEE's 30 CFR part 254 regulations in BOEM's oil spill response plan requirement for COPs, because the majority of 30 CFR part 254 does not apply to offshore renewable energy.
- Modifying the air quality provisions to reflect Congress' 2011 amendments to the CAA.

K. Potential Revisions to Regulations Governing Research Activities

BOEM requests public comments on whether the lease process for research activities in existing § 585.238 warrants amendment. This proposed rule does not contain changes to this section, but BOEM is interested in receiving comments on the following: whether it should create a specific regulatory framework for research leases and planning; whether it should expand the criteria for who can hold research leases; whether the DNCI requirement can or should be relaxed for research activities; and whether any other aspects of this section deter OCS renewable energy research. Note that for one of the two leases issued under this section to date, BOEM used its discretion to require the submittal of a Research Activities Plan containing information substantially the same as what is required to be included in a COP.[77]

L. Potential Revisions to Regulations Governing Transmission

BOEM recognizes a need to minimize impacts to the environment and natural and cultural resources and maximize the utility of land-based points of interconnection. BOEM is continuing efforts to explore a coordinated approach to transmission, which could include the shared use of cable corridors or other shared transmission solutions, such as regional transmission systems, meshed systems, and the development of an offshore grid. Accordingly, BOEM seeks comment on the types of regulatory changes that would be appropriate to better accommodate these options and to minimize impacts to environmental, natural, and cultural resources. For example, should 30 CFR 585.200(b) be modified to allow BOEM to encourage or require use of such options where they are available and allow for full enjoyment of the lease? What approaches or options should BOEM consider advancing in 30 CFR 585.200(b) to facilitate interconnection for lessees, while minimize impacts to important resources?

VI. Section-by-Section Analysis of Proposed Rule

A. 30 CFR Part 585, Subpart A—General Provisions

§ 585.102 What are BOEM's responsibilities under this part?

Section 585.102(a) specifies that BOEM will authorize renewable energy activities in accordance with OCS Lands Act subsection 8(p)(4), as enumerated in § 585.102(a)(1) through (12). BOEM is amending this regulation to clarify that none of the enumerated requirements is intended to outweigh or supplant any other. The purpose of this change is to clarify that BOEM takes all of these relevant factors into consideration in planning its renewable energy program and that no one factor or consideration, by itself, should outweigh the other relevant considerations.

§ 585.103 When may BOEM prescribe or approve departures from the regulations in this part?

Section 585.103 was promulgated to allow BOEM to maintain programmatic flexibility while adapting to a new and changing industry by approving departures from regulatory requirements under certain limited circumstances.[78]

The proposed rule would modify § 585.103(a) introductory text and (a)(1) to specify that BOEM may prescribe or approve a departure from the regulations when BOEM deems the departure necessary because the applicable provision(s) as applied to a specific circumstance are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program. In this way BOEM would maintain flexibility to adapt the regulations to the unique circumstances of this new and evolving industry while

[77] *See* letter from Bureau of Ocean Energy Mgmt. to John Warren, Dir., Va. Dep't Mines, Minerals & Energy (Mar. 23, 2016), *https://www.boem.gov/Approval-of-VOWTAP-Research-Activities-Plan/.*

[78] *See supra* note 51, at 19653.

retaining the consistency and integrity of the regulations as a whole.

The existing departure provisions of this section are limited in scope to those regulatory provisions that apply to existing lease and grant holders. However, BOEM has applied departures not only to activities ''on a lease or grant,'' but also to activities that occur before lease issuance (*e.g.,* BOEM's planning and lease sale processes) and after lease termination (*e.g.,* decommissioning, release of financial assurance). The proposed changes would allow for such departures.

Minor updates to the provisions paragraphs (a)(2) through (4) were made for consistency with the new language in § 585.103(a). No changes are proposed to § 585.103(b) which lists the requirements that an approved departure and its rationale must be consistent with subsection 8(p) of the OCS Lands Act, protect the environment and public health and safety, not impair the rights of third parties, and be documented in writing.

§ 585.104 Do I need a BOEM lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?

Section 585.104 traces the statutory language of the OCS Lands Act in establishing that a lease, ROW, or RUE issued under this part is required in order to construct, operate, or maintain facilities that ''produce or support production, transportation, or transmission of energy from sources other than oil and gas.'' [79] The proposed rule would clarify that for purposes of this section, site assessment activities are not considered to produce, transport, or support the generation of any energy products; and, therefore, such activities do not, by themselves, require a lease, easement or ROW. As discussed above in section V.A of this preamble, this revision is intended to clarify that an entity does not require a lease from BOEM to deploy a met buoy or tower for site assessment activities that are not located on an existing commercial lease. Under the proposed rule, BOEM would not require a separate lease for the deployment of such facilities.[80] The USACE would be the lead Federal permitting agency for such facilities under its existing legal authority, though other agencies may also have permitting or consultation requirements, such as NOAA under the NMSA (for any off-lease site assessment activities that may occur within a national marine sanctuary or in the vicinity of a national marine sanctuary).

§ 585.105 What are my responsibilities under this part?

BOEM is proposing a minor modification to strengthen the requirement for lessees to comply with all applicable laws, regulations, other requirements, the terms of the lease or grant under this part, reports, notices, approved plans, and any conditions imposed by BOEM. This would expand, strengthen, and clarify the language found in current § 585.105(d), requiring compliance only with the ''terms, conditions, and provisions of all reports and notices submitted to BOEM, and of all plans, revisions, and other BOEM approvals, as provided in this part.''

§ 585.106 Who can acquire or hold a lease or grant under this part?

BOEM proposes several changes to its qualification requirements.

First, the proposed rule would replace the word ''hold'' with ''acquire or hold'' throughout this section to clarify that the qualification requirements of § 585.106 are intended to apply both to the acquisition and retention of both OCS lease and grant interests. BOEM does not require automatic forfeiture of a party's existing lease and grant interests if the lessee or grant holder no longer meets the criteria in this section; rather, the cancellation provisions at § 585.437 would be the appropriate vehicle for revoking a lease.

Second, the proposed rule would correct § 585.106(a) to list the citizenship qualifications in the disjunctive and not the conjunctive by substituting ''or'' for ''and'' in § 585.106(a)(6).

Third, the proposed rule would add criteria that may disqualify a party from acquiring a lease or grant interest under this part and, consequently, from participation in the lease and grant issuance processes. The proposed rule would prevent a party that has been disqualified from acquiring a lease or grant interest (because it either lacks the basic regulatory qualifications or has engaged in certain enumerated misconduct) from participating in any lease or grant issuance processes under this part. This provision closes a loophole by prohibiting a party disqualified from acquiring a lease or grant interest from entering into commercial agreements to participate in the lease or grant issuance processes on behalf of a third party. This provision also would clarify BOEM's authority to disqualify a party from an auction, which is not explicitly set forth in the existing regulations. These proposed provisions are intended primarily to deter current and potential lessees and grant holders from engaging in conduct that is illegal or detrimental to BOEM's renewable energy program and to the fair conduct of its auctions.

A party under consideration for disqualification would receive written notice from BOEM of the basis for the disqualification and would be provided an opportunity to be heard before BOEM issues a final, appealable decision. BOEM also may instruct that party regarding what remedial actions, if any, would restore its qualification. Until such remedial actions are completed to BOEM's satisfaction or until qualification is otherwise restored, a disqualified party would be ineligible to acquire a lease or grant under this part or to otherwise participate in BOEM's competitive and noncompetitive lease or grant issuance processes.

§ 585.107 How do I show that I am qualified to be a lessee or grant holder?

BOEM proposes a technical correction to paragraph (b) to reflect that the Immigration and Naturalization Service no longer exists and to avoid the need for future technical corrections in the event of another change in the name of the relevant Federal immigration authority.

§ 585.110 How do I submit plans, applications, reports, or notices required by this part?

BOEM proposes to eliminate its paper copy requirement and rely primarily on electronic submissions. The paper requirement has proven unwieldy for voluminous plan submittals that contain multiple appendices and may be subject to multiple revisions before they are finalized.

BOEM proposes to reserve the authority to require paper copies of certain documents (such as maps and charts) if necessary.[81] The proposed rule also would eliminate the specific BOEM mailing address to avoid the need for future technical corrections if BOEM's mailing address changes again. Instead, the mailing addresses for BOEM submissions would be listed for the appropriate contacts on BOEM's website.

§ 585.112 Definitions

The proposed rule would add a new definition for ''bidding credits.'' Bidding

[79] 43 U.S.C. 1337(p)(1)(C).

[80] BOEM would nonetheless require a commercial lessee, that seeks to install a met tower, to submit a SAP in addition to the USACE permit, given the potential impacts that might be caused by such towers.

[81] BOEM proposes to retain the paper copy requirement for assignment applications given the importance of having an original signed version. See discussion *infra* VI.E § 585.408.

credits are defined as the value assigned by BOEM, expressed in monetary terms, to the factors or actions demonstrated, or committed to, by a bidder at a BOEM lease auction during the competitive lease award process. The regulations further specify that the types and values of any bidding credits awarded to any given bidder will be set forth in the FSN.

The proposed rule would modify the definition of ''commercial activities'' to state that such activities are conducted ''under'' leases and grants. This modification would maintain consistency with the proposed revisions to § 585.104 by clarifying that site assessment activities that are not conducted on a commercial lease (and thus do not require a lease) are excluded from the definition of ''commercial activities.''

The proposed rule would modify the definition of ''commercial operations'' to state that the term means the generation of electricity or other energy product for commercial use, sale, and distribution on a commercial lease, but does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis.

The proposed rule would add a new definition for ''Critical Safety System'' to mean safety systems and equipment designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment associated with the lessee's or grant holder's facilities. This modification would clarify new requirements in §§ 585.705, 585.707, 585.708, 585.710, 585.712, and 585.637 for the CVA to verify the commissioning of critical safety systems.

The proposed rule would add a definition for the term ''engineered foundation,'' which would mean any structure installed on the seabed using a fixed-bottom foundation constructed according to a professional engineering design (based on an assessment of sedimentary, meteorological, or oceanographic conditions). Comments are solicited on the appropriateness of the definition of this term, as used in the proposed rule.

The proposed rule would also add a definition for the term ''fabrication'' which would mean the cutting, fitting, welding, or other assembly of project elements of a custom design conforming to project-specific requirements. Fabrication does not include the procurement of discrete parts of the project that are commercially available in standardized form and type-certified components.

The proposed rule would also add definitions for the terms ''lease area'' and ''provisional winner'' to provide clarity in the regulatory text. Lease area is an OCS area identified by BOEM for potential development of renewable energy resources. The provisional winner is the bidder that BOEM determines at the conclusion of the auction to have submitted the highest bid. The provisional winner would become the winning bidder upon favorable completion of the government's post-auction reviews.

The proposed rule would also add a new definition of ''multiple factor auction,'' which would be defined to mean an auction that involves the use of bidding credits to incentivize goals or actions that support public policy objectives or maximize public benefits through the competitive leasing auction process. In all multiple factor auctions, BOEM would add the monetary value of the bidding credits to the value of the cash bid to determine the highest bidder.

The proposed rule also would define ''receipt'' of a document as having been deemed to take place, in the absence of documentation to the contrary, (a) 5-business days after the document was given to a mail or delivery service with the proper address and postage; or (b) on the date the document was sent electronically. This proposed definition borrows from the Interior Board of Land Appeals regulation on service of documents at 43 CFR 4.401(c)(7), but acknowledges that most documents will be transmitted instantaneously through electronic means. In the absence of documentation evincing actual receipt, the presumption of constructive receipt in this definition would be overcome by evidence demonstrating that a document was either not received or received in more or less time than the default timeframes set forth. The definition of ''receipt'' would apply to variants of that word, including variants of ''receive,'' and would apply only where those terms are used in the regulations to describe the receipt of a document when the timing of receipt triggers a regulatory time period or consequence.

Finally, BOEM proposes a technical correction to the definition of ''site assessment activities'' to avoid possible confusion with site characterization activities.

§ 585.113 How will data and information obtained by BOEM under this part be disclosed to the public?

BOEM proposes a technical change, substituting the word ''operations'' for ''generation'' in paragraph (b)(1), so that BOEM's review of the data and information will be done ''3 years after the initiation of commercial operations . . .,'' to provide greater consistency with the remainder of BOEM's offshore renewable regulations.

§ 585.114 Paperwork Reduction Act Statements—Information Collection

BOEM proposes to update the table in this section to align with proposed regulations.

§ 585.116 Requests for Information

The existing regulations reference two public information requests that share the same acronym: requests for interest (RFI) under §§ 585.210 and 585.231, and requests for information (RFI) under § 585.116. The proposed rule would combine all such notices in a revised § 585.116 and call them requests for information. The request for interest is an optional step in the leasing process that assists BOEM in collecting information in advance of initiating a new leasing process. BOEM used the request for interest in this way several times, especially early in the program. However, more recently, the practice has been to initiate the leasing process with the next, mandatory step in the leasing process, publishing a Call. The proposed rule suggests eliminating the request for interest as a step in the leasing process. In the event that BOEM would like to start the leasing process with a solicitation of information from the public, the more general request for information under § 585.116 is available to serve that need.

§ 585.118 What are my appeal rights?

BOEM's existing renewable energy regulations discuss appeal rights in two sections—§§ 585.118 and 585.225. Section 585.118 describes appeals of BOEM final decisions made under part 585. Section 585.225 provides that a bidder may request the Director to reconsider its bid rejection. To simplify and clarify the administrative review provisions, the proposed rule would combine these two sections by locating all procedures for review of BOEM renewable energy final decisions or orders in a revised § 585.118. This revised section would maintain the existing distinction between requesting reconsideration of rejected bids and appeals of other final decisions made under part 585, but will now characterize challenges to decisions selecting provisional winners as appeals to the Director, rather than requests for reconsideration.

The proposed section would provide appeal rights to any adversely affected bidder of a provisional winner selection

decision. Currently, § 585.225(b) limits requests for reconsideration to those with rejected bids. The proposed section would also provide provisional winners an opportunity to appeal if they believe there have been any errors or omissions in the selection decision, such as miscalculated or unapplied bidding credits.

This proposed section would specify that BOEM must receive written appeals of a decision selecting the provisional winner within 15-business days after a bidder receives notice of the decision. This is consistent with the existing regulations at § 585.225(b) and clarifies the existing language at § 585.118(c)(1). This section would adopt the rules found in the appeal procedures at 30 CFR 590.3 of this chapter for determining when a selection decision is received.

Finally, the proposed section would clarify two points regarding an appeal of a decision selecting the provisional winner. First, the provisional winner would have an opportunity to be heard before the BOEM Director reverses a selection decision. Second, the Director's decision would not be appealable administratively to the Interior Board of Land Appeals.

B. 30 CFR Part 585, Subpart B—The Renewable Energy Leasing Schedule

§ 585.150 What Is the Renewable Energy Leasing Schedule?

BOEM is proposing to add a new subpart and section to the regulations that would define a proposed leasing schedule for the renewable energy program. BOEM determined that a new subpart is appropriate given the nature of this change and the potentially significant benefit to stakeholders. This proposed schedule would include a list of locations under consideration for leasing and a schedule that BOEM would follow in holding its future renewable energy lease sales. According to this proposal, at least once every 2 years, the Secretary would publish this schedule of proposed lease sales. The first published schedule would be issued for the 5-year period following the effective date of this rulemaking and subsequent schedules will cover the 5-year period after the update. This schedule would include a general description of the area of each proposed lease sale, the calendar year in which each lease sale will occur, and the reasons for any changes made to the previous schedule. BOEM is soliciting comments from stakeholders regarding this provision. Any proposed leasing would be subject to all applicable regulations, including area identification, coordination with relevant parties, and applicable environmental reviews.

C. 30 CFR Part 585, Subpart C—Issuance of OCS Renewable Energy Leases

General Lease Information

Subpart B, Issuance of OCS Renewable Energy Leases, is being redesignated as subpart C to accommodate the addition of a new subpart B, as noted above. The individual section numbers in subpart C and in subsequent subparts have not been changed.

§ 585.202 What types of leases will BOEM issue?

BOEM proposes a technical revision to this section to make it consistent with subsection 8(p) of the OCS Lands Act and the proposed revisions to § 585.104, as well as to add a reference to leases issued for research activities under § 585.238.

§ 585.203 With whom will BOEM consult before issuance of leases?

BOEM proposes to make a technical correction to the penultimate sentence of this section by removing the word ''including'' and replacing it with ''include.''

Competitive Lease Award Process—Pre-Auction Provisions

§ 585.210 What are the steps in BOEM's competitive lease award process?

Proposed § 585.210 would provide an overview of the competitive leasing process and effectively would merge existing §§ 585.210 and 585.211. The proposed rule would replace the request for interest in the existing § 585.210 with a request for information in the revised § 585.116. The revised § 585.210 would provide an overview of the entire competitive leasing process by including two steps that are not currently mentioned in this section of the existing regulations: the auction and lease award.

§ 585.211 What is the Call?

Proposed § 585.211 would consolidate the existing §§ 585.211(a), 585.213, and 585.214, which describe the information requested by the Call, the information a respondent should include in its response if it wishes to nominate one or more areas for a commercial renewable energy lease within the preliminarily identified leasing areas, and BOEM's handling and processing of the information received. The primary purpose of this proposed change is reorganization; no substantive changes would be made to BOEM's existing regulations and practice. BOEM proposes to remove the reference to withholding privileged and confidential information as redundant of the protections already described in § 585.113.

§ 585.212 What is area identification?

Proposed § 585.212 would provide more clarity regarding BOEM's area identification process, thus expanding the description of this step in the existing § 585.211(b). This section would make no substantive change to the existing process.

This section would clarify that BOEM balances potential OCS renewable energy development with competing uses and environmental concerns during area identification and attempts to resolve foreseeable issues. Consistent with the existing regulations and practice, BOEM would determine during area identification whether specific OCS areas are suitable for further consideration for renewable energy development with appropriate mitigation.

BOEM would consider any factors that it determines relevant during this process. These factors may include, but would not be limited to, other uses in and around the area, applicable environmental analysis, formal and informal stakeholder comments, industry nominations, and the area's feasibility for development. Consideration of the area's feasibility for development could include, but would not be limited to, analysis of the area's size and other relevant physical conditions, potential electrical generation capacity, pertinent technical data, and applicable electricity market and offtake information. For example, BOEM may incorporate a high-level assessment of an area's characteristics that would be relevant to potential development, such as bathymetry, distance to shore, and wind resources, and may consider an adjacent State's offshore wind energy offtake or incentive programs.

BOEM would retain the flexibility to modify the selection of parcels offered for leasing after area identification and before the auction. Also consistent with existing regulations, BOEM would use the area identification process to inform its NEPA review and associated interagency consultations to evaluate the potential effects of activities that are expected to take place after lease issuance on the human, marine, and coastal environments and on other environmental requirements. For example, the National Marine

Sanctuaries Act may apply to any actions that may injure sanctuary resources or that may require permits for placement of equipment or disturbance of covered submerged lands. In any case where a NMSA permit may be required, NOAA may require certain financial assurances for infrastructure removal activities potentially required under permit. BOEM may develop lease stipulations or other measures as part of its NEPA review to mitigate potential adverse impacts and may hold public hearings regarding its environmental analyses after potential lease areas have been identified.

§ 585.213 What information is included in the PSN?

The analyses of the proposed sections on the PSN and the FSN, §§ 585.213 and 585.214 respectively, emphasize the close interrelationship between the notices, and enhance understanding.

The PSN and FSN are closely related but distinct notices published in the **Federal Register** that detail the auction procedures and lease provisions relevant to a particular lease sale. Currently, the PSN proposes procedures and provisions and invites public comment on them; the FSN establishes the final procedures and provisions. BOEM uses the public comments received in response to the PSN to inform its decisions regarding the final procedures and provisions in the FSN.

Proposed §§ 585.213 and 585.214 would replace § 585.216 of the existing regulations. These proposed sections would not change substantially the nature, scope, or content of the PSN and FSN from BOEM's existing regulations and practice. However, the proposed sections would clarify BOEM's existing authority to set a maximum number of lease areas that an individual party may bid on or acquire in an auction. The proposed rule would separate the PSN and FSN regulations into individual sections because, although the notices are closely related, each notice represents a distinct step in the leasing process. The PSN and FSN would continue to serve as the primary sources of information for prospective bidders on the lease areas, auction procedures, and lease provisions. Also, proposed § 585.223 would outline supplemental auction information that may be contained in the PSN and FSN.

§ 585.215 What may BOEM do to assess whether competitive interest for a lease area still exists before the auction?

BOEM's existing regulation at § 585.212 explains the process BOEM follows if it has reason to believe competitive interest no longer exists before the FSN is issued. Proposed § 585.215 would maintain essentially the same process for determining whether competitive interest remains and then acting on that determination. This section would clarify, however, that BOEM may engage this process any time before the auction when it has reason to believe competitive interest is absent. The competitive lease issuance process is the ''default'' under the OCS Lands Act,[82] so BOEM may proceed with an auction regardless of the result of its competitive interest inquiry under this section.

§ 585.216 How are bidding credits awarded and used?

Proposed § 585.216 would allow the provisional winner's bid to include the value of bidding credits awarded if the provisional winner has made certain demonstrable commitments that facilitate OCS renewable energy development and that reflect a developmental advantage, or advance public policy—for instance, a power purchase agreement. The PSN and FSN would prescribe the use of bidding credits in a particular auction, including eligibility requirements, application procedures, and the types and values of available credits. BOEM would retain discretion not to offer bidding credits in a given auction.

A bidder would be awarded bidding credits before the auction under the FSN if it timely submits a bidding credit application with the requisite commitments and meets eligibility requirements. Depending on the FSN provisions, a bidder might be eligible for multiple bidding credits if the bidder meets the criteria for each credit. The FSN could provide for bidding credits that are stackable or non-stackable. Stackable credits are those where the total value of a bidder's bidding credits would be the sum of all the credits for which the bidder was eligible. Alternatively, the FSN may limit the bidding credits to non-stackable credits, where the total value of a bidder's bidding credits would be limited to the value of the largest bidding credit for which the bidder was eligible. Stackable credits would incentivize bidders to meet the criteria for as many of the available bidding credits as they can. Alternatively, using non-stackable credits would limit the total value of the non-monetary component of the bid. Bidding credits may be denominated as either a fixed dollar amount or a percentage of the cash bid, as specified in the FSN.

The FSN would specify the procedures, timing, and eligibility requirements for bidding credits. BOEM would inform bidders before the auction of the value of each bidding credit for which they are eligible. A provisional winner who received bidding credits would pay its bonus as the amount of the cash component of its winning bid less the bid deposit, as prescribed in the FSN. The regulation text would further specify that qualification to obtain bidding credits must be done in advance of any lease auction, in accordance with the specifications of the FSN; however, such qualifications may be obtained either for actions that the bidder has already undertaken or for actions which it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. If a bidder receives a bidding credit for a commitment to future action, acceptance of the lease would constitute an obligation to undertake those actions, and failure to do so would constitute noncompliance with the lease.

BOEM is soliciting comments on whether the regulations should codify its past practice of imposing a cap on the value of bidding credits that any bidder can earn, measured as either an absolute dollar amount or as a percentage of the bid amount. Bidding credit limits in past auctions ranged from 10 to 25 percent of the high bid. If implemented, this cap would be intended to ensure that BOEM obtains a fair return on the prospective lease.

BOEM is also requesting comment on what factors in proposed § 585.216(b) should qualify for credits, particularly the policy-based factors described in § 585.216(b)(5), and how such factors could best be quantified for the purpose of calculating their value as part of the auction process.

Competitive Lease Award Process

§ 585.220 How will BOEM award leases competitively?

BOEM proposes to continue to implement multiple factor auctions, through the use of bidding credits, to allow the competitive lease award process to take into consideration various priority actions, such as advancing a domestic supply chain and providing workforce development agreements, consistent with the goals of the OCS Lands Act. As noted previously, bidding credits represent a monetary value assigned by BOEM to the actions or factors demonstrated or committed to by a bidder at a BOEM

[82] 43 U.S.C. 1337(p)(3).

lease auction during the competitive lease award process. The value of the bidding credits would be added to the value of the cash bid to determine who is the highest bidder.

The existing regulations at §§ 585.220 through 585.222 set forth options that BOEM can use for auction formats, bidding systems, and bid acceptance criteria for both commercial and limited leases. As discussed in section V.E above, entitled ''Lease Issuance Procedures,'' these regulations are overly prescriptive and require clarification and modification to provide BOEM with flexibility to adopt new and innovative auction processes and procedures. Proposed § 585.220 would replace these sections with a simplified and flexible approach that would allow BOEM to use any auction process, including multiple factor, and any procedure that is objective, fair, reasonable, and competitive; awards a lease based upon the highest total bid; and provides a fair return to the United States. This section also would clarify that the specific process for each auction would be noticed in the PSN and, subject to revisions, finalized in the FSN.

BOEM is soliciting comments on the various alternatives that could be used to incorporate incentives and preferences into the competitive leasing process.

§ 585.221 What general provisions apply to all auctions?

This is a newly proposed section that would set forth the provisions and rules applicable to all auctions. This proposed section would codify the existing practice whereby BOEM conducts an auction if it determines after the Call that competitive interest exists for renewable energy development on parcels of the OCS and decides to issue leases within those areas. Proposed § 585.221 would codify the use of the FSN to prescribe the detailed process for any auction.

Proposed § 585.221(d) would add details to outline the circumstances under which BOEM may delay, suspend, cancel, and restart an auction due to a natural or man-made disaster, technical malfunction, security breach, unlawful bidding activity, administrative necessity, or any other reason that BOEM determines may adversely affect the fair and efficient conduct of the auction. The proposed § 585.221(d) would also add a provision that BOEM may restart the auction at whatever point it deems appropriate, reasonable, fair, and efficient for all participants; or, alternatively, BOEM may cancel the auction in its entirety.

§ 585.222 What other auction rules must bidders follow?

Proposed § 585.222 would establish a set of procedures and rules of conduct for bidders. This section would be consistent with BOEM's existing practices and would include requirements that bidders submit bid deposits in accordance with § 585.501, and meet §§ 585.106 and 585.107 qualification requirements. If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder must submit, along with the executed lease, written evidence that the agent is authorized to act on behalf of the bidder, as is already required under existing § 585.224(g). Notably, this section would explicitly prohibit bidders from disclosing their auction strategies and economic valuations of the lease area to other bidders listed in the FSN in such a way as to adversely affect the ability of the United States to obtain a fair return from the auction. This prohibition is aimed at deterring pre-auction communications among bidders regarding their preferred lease areas or the maximum amount they are willing to bid, which could constitute an explicit or tacit agreement that has the effect of reducing competition for a particular lease. Such communications between bidders may undermine an auction's competitiveness and adversely affect the ability of the United States to obtain a fair return from the auction.

This proposed provision would not impede commercial speech by bidders regarding their participation in the auction. For example, public announcements regarding a bidder's intent to participate in an upcoming OCS renewable energy auction would not be prohibited by the proposed rule. BOEM nonetheless seeks comment on whether the proposed language constitutes an appropriate and effective means of preventing anti-competitive bidder behavior and on whether there are alternative means of achieving this goal.

§ 585.223 What supplemental information will BOEM provide in a PSN and FSN?

Proposed § 585.223 would contain a non-exhaustive list of supplemental auction details likely to be contained in a PSN and FSN. Although this section lacks an analogue in the existing regulations, the supplemental details listed in this section generally are consistent with the information that BOEM has provided in recent FSNs. This section would clarify the concept of the next highest bidder and would describe the process to determine the next best bid if the provisional winner fails to meet its obligations or is otherwise unable to acquire the lease. The next best bidder criteria would be detailed in the PSN and FSN.

Competitive Lease Award Process—Post-Auction Provisions

§ 585.224 What will BOEM do after the auction?

Proposed § 585.224 would outline the steps that BOEM would take following the end of an auction. This section would make explicit existing practices that are consistent with the OCS Lands Act and that have proven effective in BOEM's auctions thus far. Proposed § 585.224 would retain BOEM's existing authority in §§ 585.222(a)(2) and 585.224(f) to reject and accept bids and to withdraw lease areas between auction completion and lease execution. Finally, if an auction results in unsold lease areas, proposed § 585.224 would clarify that BOEM has the discretion to re-auction those unsold areas after the auction by restarting the competitive leasing process at any reasonable and appropriate step in that process.

§ 585.225 What happens if BOEM accepts a bid?

Proposed § 585.225 would set forth the steps BOEM and the provisional winner would take after the auction. This section would function similarly to the existing regulations at § 585.224(a), (b), (c), and (e), but contains several new proposed provisions. First, this proposed section would provide that BOEM will refund without interest any portion of the provisional winner's bid deposit that exceeds the amount due from the winning bid. Second, this proposed section would permit BOEM to extend the 10-business-day deadline for the completion of the provisional winner's obligations to allow greater flexibility in addressing unforeseen situations, such as a Federal Government shutdown or pandemic. This proposed section would require payment of the first 12 months' rent within 45-calendar days after the provisional winner receives the executed lease from BOEM as opposed to 45-calendar days after receiving the three unexecuted lease copies as provided under the existing regulations. Finally, under this proposed section, the provisional winner would become the winning bidder when BOEM executes the lease after any properly filed appeals under proposed § 585.118(c) have been resolved. The effective date of the lease would continue to be governed by § 585.237.

§ 585.226 What happens if the provisional winner fails to meet its obligations?

The existing regulations at § 585.224(d) state that a winning bidder will forfeit its bid deposit if it fails to execute and return the lease within 10-business days or otherwise fails to comply with applicable regulations or terms of the FSN. While no winning bidder has failed to meet its post-auction obligations thus far, BOEM recognizes the potential for such a situation and seeks to provide flexibility in its response to such a possibility.

Proposed § 585.226 would specify that, if BOEM determines that a provisional winner has failed to meet its obligations under § 585.225(b) or § 585.316, or has otherwise failed to comply with applicable laws, regulations, BOEM may require forfeiture of the bid deposit. In the event the bid deposit exceeds the winning bid, BOEM would limit the required forfeiture amount to the lower value, that of the winning bid.

Proposed § 585.226 would also set forth the additional actions BOEM could take if a provisional winner fails to meet its obligations. These possible actions would include refusal to award other leases won by the provisional winner in the auction and referral to DOI's Administrative Remedies Division for suspension or debarment review pursuant to 2 CFR part 180 as implemented at 2 CFR part 1400. This section also would specify that if the provisional winner fails to meet its obligations or is otherwise unable to execute a lease, BOEM could select a new provisional winner by either repeating the auction, selecting the next best bid, or using other criteria specified in the FSN.

Noncompetitive Lease Award Process

§ 585.231 Will BOEM issue leases noncompetitively?

BOEM proposes several modifications, both significant and minor, to its noncompetitive leasing process. First, this proposed rule would clarify paragraph (a) to re-affirm that BOEM will only use the noncompetitive process if it ''determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.'' [83]

Second, in the event that a company submits a request for BOEM to issue a lease and submits the required acquisition fee, BOEM may issue a request for information in the **Federal Register** to determine whether any other companies also have an interest in that area. In the event that BOEM issues such a request for information and no responses are received, BOEM may issue a lease noncompetitively. The proposed rule would revise paragraph (b) to clarify that BOEM has discretion to determine whether an unsolicited lease request should be the subject of a request for information. BOEM occasionally receives unsolicited requests for areas that it may deem inappropriate for leasing without seeking public input (*e.g.,* previously leased areas or areas that straddle a USCG traffic separation scheme). In the event that BOEM elects not to issue a request for information in response to the unsolicited lease request, BOEM would not issue a lease noncompetitively and will refund the acquisition fee. BOEM occasionally receives unsolicited requests for areas that it may deem inappropriate for leasing without seeking public input (*e.g.,* previously leased areas or areas that straddle a USCG traffic separation scheme).

Third, the proposed rule would add a timeline and sunset provision to BOEM's noncompetitive leasing processes. The existing regulations establish neither an expiration date for a DNCI nor deadlines for the noncompetitive leasing process. If BOEM were to leave the regulations in the current form, this could allow a company to obtain a noncompetitive lease in situations where there may potentially be other interested lessees in the future (due to changes in circumstances). Accordingly, proposed paragraphs (d) and (e) would create the following milestones for the noncompetitive leasing process:

- After publication of the DNCI, BOEM would prepare and provide the beneficiary with a written estimate of the fees for conducting an environmental review of lease issuance.
- The beneficiary has 90-calendar days from receipt of the fee estimate to pay the fee.
- The DNCI would expire within 2 years of publication, unless BOEM determines, on a case-by-case basis, that this timeframe should be extended.

BOEM specifically seeks comment on the reasonableness of its proposed schedule and timeframes for a DNCI.

Fourth, the proposed rule in paragraph (d)(3) would clarify that BOEM would conduct an environmental review of a noncompetitive lease request that it determined had no competitive interest and which BOEM intends to process. Fifth, the proposed rule would specify that BOEM will make a decision whether to issue a noncompetitive lease after the completion of its environmental review and other reviews required by Federal law (*e.g.,* CZMA). BOEM, in § 585.231(f), clarifies that for noncompetitive leases, CZMA concurrences would be processed pursuant to 15 CFR part 930 subpart D. Based on current experience, BOEM expects this to be a rare occurrence.

Finally, the proposed rule would make several miscellaneous technical corrections and clarifications to this section. The proposed rule would revise the existing section heading to more accurately reflect the scope of this section. The proposed rule would replace the ''request for interest'' referenced in § 585.231(b) with a request for information consistent with the proposed revisions to § 585.116. The proposed rule would make administrative changes to § 585.231(c)(1) and (g)(1)(ii) to reflect updated cross-references in the proposed rule. This proposed rule also would revise the payment due date for the first 12 months' rent on a lease consistent with proposed changes to §§ 585.225 and 585.503. The remainder of the noncompetitive lease issuance process would remain substantially the same as in the existing regulations.

§ 585.232 May I acquire a lease noncompetitively after responding to a request for information or a Call for Information and Nominations?

The proposed rule would revise the existing section heading of § 585.232 to reflect the change in nomenclature in proposed § 585.116 from ''request for interest'' to ''request for information.'' It would also revise paragraph (c) to incorporate changes to the cross-referenced provisions associated with the proposed rule.

Commercial and Limited Lease Periods

§ 585.235 What are the lease periods for a commercial lease?

BOEM proposes to overhaul the organization and duration of its commercial leases as well as the triggers that move a lease from one period of a lease to another. These changes are responsive to industry comments, reflect BOEM's experience administering its leasing program, and arise from other aspects of this proposed rulemaking—particularly the elimination of the SAP for met buoys.

Under the existing regulations, BOEM's commercial leases comprise three ''terms'':

- A preliminary term of 12 months, starting at lease execution and typically ending with the submission of a SAP.

[83] 43 U.S.C. 1337(p)(3).

• A site assessment term of 5 years, starting at SAP approval and ending with the submission of a COP.

• An operations term of 25 years, typically starting at COP approval.

BOEM automatically tolls the preliminary and site assessment terms during its review of submitted plans; a lessee may request additional time extensions if it does not timely file a plan.

The proposed rule would make numerous changes to the text and structure of § 585.235(a). First, BOEM proposes to rename its lease ''terms'' as lease ''periods'' to more appropriately describe the progression of its commercial leases. This change in nomenclature is intended to more accurately distinguish between the lease term (which is the entire duration of the lease) and its constituent parts.

Next, BOEM proposes to merge the preliminary and site assessment terms into one 5-year preliminary period that commences at the lease effective date and ends either with the submittal of a COP to BOEM for its review or 5 years after the lease effective date. This change flows directly from BOEM's proposal to eliminate the SAP requirement for met buoys.[84] Given that most lessees are not expected to submit a SAP if the proposed rule is finalized, BOEM believes it would no longer make sense for a lease to contain a deadline for SAP submittal—much less to use that deadline to trigger a new phase of the lease. (As discussed in the section-by-section analysis of § 585.601 in section VI.G. below, BOEM also proposes to remove all deadlines for SAP submittal.)

The proposed rule also would create two new lease periods between the submission of the COP and the commencement of operations: the *COP review period,* which starts at COP submittal and ends upon BOEM's decision on whether to approve or disapprove the COP, or approve the COP with modifications; and the *design and construction period,* which starts at COP approval and ends at the commercial operations start date or at the expiration of the period set forth in the approved COP as modified. BOEM does not propose a fixed length for the COP review period in order to preserve regulatory flexibility and to allow for harmonization with recent government-wide permit review streamlining initiatives (*e.g.,* FAST–41).[85] The approved COP will include a timeline for the design and construction period, subject to modification as mutually agreed to by BOEM and the lessee.

BOEM also proposes to set a 1-year time limit on a lessee after its initial COP submission to resolve issues identified by BOEM and to finalize its COP in order to incentivize lessees to submit properly completed COPs that are ready for BOEM review and to encourage lessees to make COP revisions diligently in response to BOEM comments.

BOEM seeks public comment regarding the need and means to set specific regulatory timelines while preserving sufficient flexibility within the *COP review period* and the *design and construction period.*

Lastly, BOEM proposes that the operations period commence at the commercial operations start date and remain in effect for 30 years. Presently, the 25-year operations term includes the time required for a lessee to prepare and BOEM to review its FDR and FIR plus the time required to construct the project—both of which significantly subtract from the time available for commercial operations. BOEM believes that its proposed revision would create certainty and facilitate project financing by providing a fixed period of time in the lease dedicated to commercial operations. BOEM also proposes to extend the operations period to 30 years based on industry comments that this timeframe better reflects the design life of an offshore wind facility.

BOEM recognizes that if this rule is finalized as proposed, existing lessees may request modification of their leases to conform to the new lease periods. BOEM intends to address these requests on a case-by-case basis but understands that these new lease periods might be advantageous to current lessees and that there are administrative benefits to standardizing lease terms. BOEM seeks comment on whether the final rule should contain a provision setting forth a process by which existing lessees can request lease amendments to conform their leases to the structure proposed in the amended § 585.235 and, potentially, to other regulatory changes in this proposed rule.

In addition to revamping the structure of its commercial leases, BOEM proposes several provisions aimed at granting a lessee more flexibility throughout the development process. First, BOEM proposes expanding the criteria in § 585.235(b) for granting extensions of lease periods. Currently, the only enumerated basis for extending the preliminary term or the site assessment term is if a lessee submits a plan late. BOEM proposes to clarify that it has discretion to extend any lease period for good cause. Second, BOEM proposes a new § 585.235(c) clarifying that a lessee may propose an alternative lease period schedule if it chooses to develop its lease in phases. Numerous lessees have expressed interest in phased development of their leases, but the existing regulations do not explicitly set forth a process for modifying the default lease schedule if a lessee intends to defer development on portions of its lease area. Third and relatedly, BOEM proposes a new § 585.235(d) providing that a lessee may seek modification of the default lease schedule in its application to segregate its lease or consolidate two adjacent leases. As discussed in the section-by-section analyses of §§ 585.410 and 585.413 in section VI.E. below, BOEM previously has approved lease segregation and consolidation requests and anticipates more such requests in the future. However, the existing regulations do not explicitly address the effects these actions might have on lease schedules.

§ 585.236 If I have a limited lease, how long will my lease remain in effect?

BOEM proposes to substitute the word ''period'' for ''term'' to ensure consistency with its proposed changes to § 585.235. Additionally, because limited leases may allow a wide range of activities, the proposed rule would replace the existing 5-year operations term with an operations period of a duration determined by BOEM prior to auction (if the lease is issued competitively) or negotiated with the applicant (if the lease is issued noncompetitively). In either case, the length of the term will depend on the intended use of the lease. The existing regulations specify that extensions of the preliminary term if the GAP for the limited lease was not submitted in a timely manner and was submitted late without specifying any reason. BOEM proposes to allow extensions of a limited lease's preliminary period only if the requested extension can be justified for ''good cause,'' consistent with its proposed changes to § 585.235, BOEM also proposes to allow extensions of a limited lease's operations period if the requested extension can be justified for ''good cause.''

D. 30 CFR Part 585, Subpart D—Rights-of-Way Grants and Right-of-Use and Easement Grants for Renewable Energy Activities

Subpart C, Rights-of-Way Grants and Right-of-Use and Easement Grants for Renewable Energy Activities, is being redesignated as subpart D to accommodate the addition of a new

[84] *See supra* section V.A, entitled ''Site Assessment Facilities,'' for complete discussion.

[85] Fixing America's Surface Transportation Act Title 41, 42 U.S.C. 4370m *et seq.*

subpart B, as noted in section VI.B above.

ROW Grants and RUE Grants

§ 585.301 What do ROW grants and RUE grants include?

BOEM proposes to remove the prescribed width of ROWs, in order to implement the PDE approach discussed above in sections V.B, entitled ''Project Design Envelope,'' and V.C., entitled ''Geophysical and Geotechnical Surveys,'' and to maintain consistency with BOEM's proposed revisions to § 585.628(g) for project easements. BOEM also proposes a technical change to clarify that a subsea cable ROW may need to accommodate multiple associated facilities.

§ 585.302 What are the general requirements for ROW grant and RUE grant holders?

BOEM proposes a technical correction to update the cross references in this section, reflecting that an applicant must meet the qualifications set forth in §§ 585.106 and 585.107 in order to acquire a ROW or RUE.

§ 585.303 How long will my ROW grant or RUE grant remain in effect?

BOEM proposes to substitute the word ''period'' for ''term'' to ensure consistency with its proposed changes to § 585.235. By renaming the preliminary term of a ROW and RUE as the preliminary period, BOEM intends to more accurately distinguish between the entire term of a ROW and RUE and its constituent parts. As with proposed § 585.235, BOEM also anticipates that this proposed revision would clarify whether and when a grant holder has control of its ROW or RUE. BOEM also proposes to provide the same flexibility for the operations period of its grants as it has with the operations period for its limited leases in proposed § 585.236(a)(2), both in terms of start date and duration. Finally, BOEM proposes to allow extensions of either grant period, consistent with its proposed changes to § 585.235. The existing regulations specify that the GAP must be submitted no later than the end of the preliminary period in order for the grant to remain in effect. BOEM proposes that the preliminary period may be extended if the requested extension can be justified for ''good cause.''

Current regulations specify that the ROW grant or RUE grant will remain in effect for as long as it is being used for the purpose for which it was granted. This proposed rule would modify that provision by introducing an operations period as set by BOEM (if the grant is issued competitively) or negotiated by the parties (if the grant is issued noncompetitively). The duration of the operations period will depend on the intended use of the grant. BOEM also proposes to allow extensions of a ROW grant or RUE grant operations period if the requested extension can be justified for ''good cause'' as determined by BOEM.

Obtaining ROW Grants and RUE Grants

§ 585.305 How do I request a ROW grant or RUE grant?

BOEM proposes to eliminate the paper copy requirement, consistent with its proposed changes to § 585.110.

§ 585.306 What action will BOEM take on my request?

Proposed § 585.306 would add the two provisions to paragraph (b) from the existing § 585.309 and would remove the existing § 585.309. This consolidation would simplify and clarify this subpart. The remaining proposed changes are editorial in nature.

§ 585.309 When will BOEM issue a noncompetitive ROW grant or RUE grant?

This section would be removed by the proposed rule as redundant (see analysis of § 585.306).

§ 585.310 What is the effective date of a ROW grant or RUE grant?

This section would be re-numbered in the proposed rule as § 585.309. The substance of this section would remain unchanged.

§ 585.316 What payments are required for ROW grants or RUE grants?

BOEM proposes a technical correction to reflect that ONRR is the appropriate payee.

E. 30 CFR Part 585, Subpart E—Lease and Grant Administration

Subpart D, Lease and Grant Administration, is being redesignated as subpart E to accommodate the addition of a new subpart B, as noted in section VI.B above.

Noncompliance and Cessation Orders

§ 585.400 What happens if I fail to comply with this part?

BOEM proposes to amend this section to ensure that its civil penalty authority for OCS renewable energy activities addresses a more complete range of violations and is coextensive with the authority that Congress granted it in the OCS Lands Act. Section 24 of the OCS Lands Act authorizes the Secretary to assess civil penalties for failure to remedy the violation of a regulation, lease, or permit condition, as well as for a violation that threatens ''serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property . . . or the marine, coastal, or human environment.'' [86]

Section 585.400(f) currently states that BOEM may assess civil penalties ''as authorized by section 24 of the OCS Lands Act, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part, after notice of such failure and expiration of any reasonable period allowed for corrective action.'' This section also states that ''[c]ivil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR part 550, subpart N.'' Located in BOEM's OCS minerals regulations, subpart N permits BOEM to assess civil penalties on ''[v]iolations that you do not correct within the period BOEM grants'' and ''[v]iolations of the oil spill financial responsibility requirements at 30 CFR part 553.'' [87]

BOEM's existing renewable energy regulations do not explicitly authorize assessment of civil penalties for the full range of violations envisioned under the OCS Lands Act, such as those for which notice of the violation and an opportunity to correct is not required. BSEE's OCS oil, gas, and sulfur regulations, on the other hand, allow immediate civil penalties for violations that ''constitute, or constituted, a threat of serious, irreparable, or immediate harm or damage to life . . ., property, any mineral deposit, or the marine, coastal, or human environment'' or that ''cause serious, irreparable, or immediate harm'' to the same.[88] BOEM is proposing to add a new paragraph (f)(2) to cover these situations and to allow BOEM to take appropriate action by assessing civil penalties in the event that a lessee or operator commits such failures.

Designation of Operator

§ 585.405 How do I designate an operator?

BOEM proposes technical edits to this section to maintain consistency with proposed changes in the organization of §§ 585.626 and 585.645.

[86] 43 U.S.C. 1350(b).

[87] 30 CFR 550.1404.

[88] 30 CFR 250.1404(b)–(c).

Lease or Grant Assignment, Segregation, and Consolidation

§ 585.408 May I assign my lease or grant interest?

BOEM proposes to eliminate specific elements of the regulatory requirements for an assignment application in paragraph (b) that are already provided in the form that is currently on the BOEM website for leases (Form BOEM–0003) and grants (Form BOEM–0002). BOEM proposes to retain the paper copy requirement for assignment applications. The proposed rule would also clarify that paragraph (e) refers to business mergers and not to lease consolidations that are discussed in proposed § 585.413.

Lease or Grant Assignment

The proposed rule would add a new section 585.410 to explain when an assignment would result in a segregated lease. Sections 585.410 and 585.411 would be renumbered to §§ 585.411 and 585.412, respectively.

§ 585.410 When will my assignment result in a segregated lease?

BOEM's existing regulations authorize approval of requests to segregate its leases into multiple smaller leases under § 585.408(a), which allows lessees to ''assign all or part of your lease or grant interest . . . subject to BOEM approval under this subpart.'' BOEM previously has approved lease segregation and anticipates receiving more requests as some lessees may decide to develop their leases in a phased fashion. Accordingly, BOEM proposes to clarify the process for segregating leases by adopting language from the lease segregation provision in its OCS mineral resources regulations at 30 CFR 556.702.

§ 585.411 How does an assignment affect the assignor's liability?

This section is re-numbered to reflect addition of the proposed § 585.410 regarding lease segregation.

§ 585.412 How does an assignment affect the assignee's liability?

This section is re-numbered to reflect addition of the proposed § 585.410 regarding lease segregation. The proposed rule would correct the extent of an assignee's regulatory liability by replacing ''subchapter'' with ''part'' in the first sentence of paragraph (b).

§ 585.413 How do I consolidate leases or grants?

BOEM proposes to add procedures for consolidating two or more adjacent leases or grants. BOEM currently has the authority to approve lease consolidations by mutual agreement under the terms of its existing leases (and has already done so once), but no regulatory provision directly addresses such requests. Proposed § 585.413 would codify BOEM's existing practices in the regulations by establishing a procedure for requesting and approving consolidations of leases and grants. BOEM notes that adjacent leases or grants may have different terms and be at differing stages of development.

BOEM proposes to harmonize such differences as explained below. If the time remaining in the relevant lease periods differs between the leases or grants to be consolidated, BOEM will default to the shorter remaining periods in the new lease or grant. The lessee or grant holder may request an extension pursuant to the proposed § 585.235(b). If other terms and conditions differ between the leases or grants to be consolidated, BOEM will default to the most recently issued terms and conditions contained in the leases or grants to be consolidated. The lessee or grant holder may request modifications to such terms and conditions. BOEM will consider and, in its discretion, approve such requests on a case-by-case basis for good cause. BOEM also proposes to assess the need to modify existing financial assurances before approving a proposed consolidation and to terminate any lease or grant that has been consolidated fully into a new lease.

Lease or Grant Suspension

§ 585.415 What is a lease or grant suspension?

BOEM proposes to change the word ''term'' to ''period'' in light of its proposed changes to § 585.235. This change would not alter the substance of this section.

§ 585.416 How do I request a lease or grant suspension?

BOEM proposes several technical corrections and clarifications to this section. First, BOEM has reorganized the contents of a suspension application for clarity and added a catch-all category to provide BOEM with additional flexibility. Second, BOEM proposes to add a new paragraph (b) to be consistent with its proposed revisions to § 585.235(b). Other proposed changes are for editorial clarity.

§ 585.417 When may BOEM order a suspension?

BOEM proposes to eliminate the paper copy requirement for this regulation, consistent with its proposed changes to § 585.110.

§ 585.420 What effect does a suspension order have on my payments?

BOEM proposes technical edits to this section to combine paragraphs (b) and (c), and would modify the requirement that directed suspensions would always be accompanied by a fee suspension. As a result, all payment suspensions would be at the discretion of BOEM. BOEM also proposes to clarify that regardless of whether a lease or grant suspension is approved or ordered, BOEM has discretion to ''waive or defer'' (rather than ''suspend'') payments while the lease or grant is suspended. BOEM believes that more flexibility is needed than its existing regulations provide regarding its treatment of such payments, given the wide range of potential justifications for a suspension.

Lease or Grant Renewal

§ 585.425 May I obtain a renewal of my lease or grant before it terminates?

BOEM proposes a technical change to conform to its proposed changes to § 585.235 by changing the word ''term'' to ''period'' wherever it appears.

§ 585.426 When must I submit my request for renewal?

BOEM proposes a technical change to conform to its proposed changes to § 585.235 by changing the word ''term'' to ''period'' wherever it appears.

§ 585.427 How long is a renewal?

BOEM proposes technical changes to conform to its proposed changes to § 585.235 by changing the word ''term'' to ''period'' wherever it appears.

§ 585.429 What criteria will BOEM consider in deciding whether to renew a lease or grant?

BOEM proposes adding a catch-all provision to the list of criteria in this section that it will use in determining whether to renew a lease or grant. BOEM's discretion to consider relevant factors that may not be enumerated is particularly important, given the difficulty of foreseeing what issues may arise in the future when BOEM begins to receive lease renewal requests.

Lease or Grant Termination

§ 585.432 When does my lease or grant terminate?

BOEM proposes technical changes to conform to its proposed changes to § 585.235 by changing the word ''term'' to ''period'' wherever it appears.

Lease or Grant Relinquishment, Contraction, or Cancellation

BOEM proposes to consolidate the three undesignated subheaders in the existing regulations into one, for clarity and efficiency. The existing separate undesignated subheaders denote lease or grant relinquishment, lease or grant contraction, and lease or grant cancellation.

§ 585.435 How can I relinquish a lease or a grant or parts of a lease or grant?

The proposed rule would make a lease or grant relinquishment effective on the date BOEM receives a properly completed relinquishment form. Under the existing § 585.435(a), a lease or grant relinquishment is effective on the date BOEM approves a relinquishment application. This change would conform with BOEM's approach to mineral resource lease relinquishments in 30 CFR 556.1101, under which a relinquishment takes effect as soon as the lessee or grant holder files the necessary information with BOEM in a form available on BOEM's website. Relinquishment would no longer require BOEM approval. As in the existing regulations, relinquishment of a lease or grant would have no impact on a lessee's or grant holder's obligations accrued under those instruments before relinquishment. After BOEM receives the properly completed relinquishment form, ONRR will bill the lessee or grant holder the amount due on any outstanding obligations that accrued under the relinquished lease or grant.

§ 585.438 What happens to leases or grants (or portions thereof) that have been relinquished, contracted, or cancelled?

The existing regulations do not provide a process by which BOEM can reissue a lease or grant for an area (or portions thereof) previously covered by a lease or grant that has been relinquished under § 585.435, contracted under § 585.436, or cancelled under § 585.437. Proposed § 585.438 would allow BOEM to restart the competitive leasing process at any point it deems reasonable after a lease or grant (or portion thereof) is relinquished, contracted, or cancelled. In such situations under the proposed rule, BOEM would be obligated to engage in additional environmental analysis and consultation, if necessary, due to elapsed time or changed conditions. The proposed rule also would allow BOEM to reoffer the lease or grant to the next best bidder if a competitively issued lease or grant (or portion thereof) is relinquished or cancelled within 6 months of the auction. BOEM believes that within 6 months, the next best bid may still be deemed sufficient to constitute fair return under 43 U.S.C. 1337(p)(2)(A).

F. 30 CFR Part 585, Subpart F—Payments and Financial Assurance Requirements

Subpart E, Payments and Financial Assurance Requirements, is being redesignated as subpart F to accommodate the addition of a new subpart B, as noted in section VI.B above.

Payments

§ 585.500 How do I make payments under this part?

The proposed rule would replace the due date in paragraph (c)(1) for the bonus balance payment on a competitively issued lease from ''[l]ease issuance'' to ''[w]ithin 10-business days of receiving the unsigned lease'' and would add the section reference. The proposed rule also would replace the word ''issuance'' with ''execution'' in the ''Due date'' column of (c)(3) and (c)(8). These changes would provide clarity and would give a lessee or a grant holder more time to make the required payments. The proposed rule also would substitute the word ''period'' for ''term'' in paragraphs (a) and (c) to ensure consistency with proposed changes to § 585.235. The proposed rule also would replace the annual ROW rent of $70 per mile with an annual rent of $5 per acre as determined by proposed § 585.301(a). This change would provide BOEM consistency in pricing OCS usage for RUEs and ROWs. See further discussion below in the section-by-section analysis of § 585.508. Finally, the proposed rule would eliminate the word ''statute'' in the phrase ''statute mile'' in the ''Amount'' column of (c)(8) because ''miles'' is defined as nautical miles in § 585.112.

§ 585.501 What deposits must I submit for a competitively issued lease, ROW grant, or RUE grant?

Existing § 585.501 describes the deposit a bidder must submit to participate in specific types of auctions for a lease, RUE, or ROW. Proposed § 585.501 would eliminate provisions specifying deposits by auction type and would provide BOEM with discretion to establish bid deposit requirements in the FSN. This proposal would ensure consistency with proposed § 585.220.

§ 585.503 What are the rent and operating fee requirements for a commercial lease?

Proposed § 585.503 would revise the payment due date for the first 12 months' rent on a commercial lease. The winning bidder would have to pay the rent no later than 45-calendar days after receiving a copy of the executed lease from BOEM. The existing regulations state that the rent payment is due no later than 45-calendar days after BOEM sends the unsigned copies of the lease to the provisional winner. This proposed section effectively would give lessees slightly more time to pay the first 12 months' rent.

BOEM also proposes several technical corrections to conform to the definition of ''commercial operations'' in § 585.112 and BOEM's proposed changes to § 585.235 as well as to provide more specificity regarding the regulations that govern payments to ONRR.

§ 585.504 How are my payments affected if I develop my lease in phases?

BOEM proposes a technical change to provide a more specific citation to the regulations that govern payments to ONRR.

§ 585.505 What are the rent and operating fee requirements for a limited lease?

BOEM proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR and to conform to the proposed nomenclature change from ''term'' to ''period'' in § 585.235.

§ 585.506 What operating fees must I pay on a commercial lease?

BOEM proposes to amend the introductory paragraph to clarify that operating fees are triggered at the start of commercial operations as defined in § 585.112, rather than at the start of energy generation. Under the current regulations, generation of electricity during testing would be subject to operating fees. This rule would exempt electricity generated for testing purposed from operating fees. BOEM typically does not consider energy generated during testing periods, prior to final project verification under § 585.708(a)(5), to constitute commercial operations. BOEM also proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR; to conform to the definition of ''commercial operations'' in § 585.112; to identify ONRR as the correct payee for operating fees; and to define ''DOE.''

§ 585.507 What rent payments must I pay on a project easement?

BOEM proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR and to conform to proposed changes to §§ 585.235 and 585.628(g).

§ 585.508 What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects?

BOEM proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR; to remove the word ''nautical'' as redundant given the definition of ''miles'' in § 585.112; and to make minor editorial adjustments that enhance readability. BOEM also proposes to simplify ROW rental payments to reflect that, under the proposed rule, ROW corridors would have sufficient width to accommodate all planned grant activities. BOEM believes that most grant holders would prefer an initially wider corridor that would encompass all areas of actual seabed disturbance, rather than the existing regulations limiting corridors to a 200-foot width with a subsequent determination of the ''affected area'' outside that corridor. Grant holders would be able to relinquish unused portions of the right-of-way corridor after construction, as set forth in proposed § 585.301, and would be relieved of their obligation to pay rent subsequently for those relinquished areas.

To promote consistency in BOEM's valuation of OCS rental pricing across RUEs and ROWs, the proposed rule also would replace the annual ROW rent of $70 per mile with an annual rent of $5 per acre as determined by the proposed § 585.301(a). This change would streamline BOEM's existing rental fee calculations and ensure consistent valuation of all OCS acreage for grants. Under existing regulations, a ROW grant holder pays an annual rent of about $2.89 per acre and a RUE grant holder, $5 per acre.[89] BOEM has determined that no compelling reason supports this differential between RUE and ROW annual rental rates.

§ 585.509 Who is responsible for submitting lease or grant payments to ONRR?

The proposed rule makes a technical correction to the section heading by replacing ''BOEM'' with ''ONRR'' as the correct payee.

§ 585.510 May BOEM defer, reduce, or waive my lease or grant payments?

BOEM proposes to change the regulations to allow that BOEM may grant requests for deferral of rental and operating fee payments, in addition to reductions or waivers. BOEM seeks to avoid confusion by explicitly including this authority in the proposed rule. BOEM also proposes a technical change to conform to BOEM's proposed changes to § 585.235.

§ 585.515 What financial assurance must I provide when I obtain my commercial lease?

This section is removed in the proposed rule as explained in the analysis of § 585.516.

Financial Assurance Requirements for Commercial Leases

§ 585.516 What are the financial assurance requirements for each stage of my commercial lease?

The proposed rule would amend several key aspects of this section. As discussed in section V.G.3(b) above, entitled ''Revision of Lease-Specific Financial Assurance Amount,'' BOEM proposes to replace the existing $100,000 lease-specific bond required before BOEM will execute a commercial lease or approve an assignment of an existing commercial lease with a bond or other authorized financial assurance in the amount of 12 months' rent to ensure BOEM and the U.S. taxpayers are not under-bonded during the preliminary term of a lease if annual rent exceeds $100,000, which it often does. BOEM proposes to remove the existing § 585.515 as surplusage in light of this proposed change, as that section relates to a ''flat-fee'' bond that would no longer be required. Section 585.515 currently subjects the minimum base bond to adjustment every 5 years based on changes to the Consumer Price Index—All Urban Consumers, but such adjustment is no longer necessary if the initial bond is tied to the annual rent for the lease. Under the proposed rule, § 585.515 would be reserved.

Second, BOEM proposes to amend the timing of the SAP decommissioning bond in paragraph (a)(2) so that it is due before the installation of SAP facilities, rather than at the time of SAP approval. This change is proposed in recognition of the fact that liability for SAP facilities does not accrue until installation.

Third, BOEM proposes to eliminate the bond or other financial assurance that is presently due before COP approval, for the reasons set forth in section V.G.3(a) above, entitled ''Elimination of COP Approval Financial Assurance Requirement.''

Fourth, BOEM proposes several revisions to the decommissioning financial assurance requirement. Most importantly, the proposed rule would establish that a lessee may propose—and BOEM may approve or disapprove—incremental funding of a financial assurance instrument that satisfies this requirement. This proposal would allow BOEM to approve the incremental provision of financial assurance during the operation of the facility for the reasons set forth in section V.G.3(d) above, entitled ''Staged Funding of Decommissioning Accounts.'' The proposed rule would provide more flexibility than BOEM's existing regulatory authority, which allows decommissioning financial assurance to be provided ''in accordance with the number of facilities installed or being installed.'' [90]

The remaining proposed changes to this section are intended for clarification and organizational purposes. For instance, BOEM proposes to adopt the term ''supplemental'' to describe all financial assurance for obligations other than the first 12 months' rent. BOEM also would remove language in paragraph (b) regarding a lessee's ability to increase its financial assurance. The text is redundant of § 585.517 requirements that a lessee must provide financial assurance to cover all lease obligations and that BOEM may require additional financial assurance at any time during the lease after providing a lessee notice and an opportunity to be heard. BOEM also proposes to change the timing for providing supplemental financial assurance for marine hydrokinetic projects in paragraph (c) in recognition that obtaining a Federal Energy Regulatory Commission (FERC) license, like the approval of a COP, may not itself result in the accrual of obligations. The additional flexibility regarding the timing of financial assurance will assist BOEM in coordinating with FERC.

§ 585.517 How will BOEM determine the amounts of the supplemental financial assurance requirements associated with commercial leases?

This section describes BOEM's general requirements for assessing supplemental financial assurance. BOEM proposes several technical revisions to streamline the processes set forth in this section and to maintain consistency with other proposed changes. First, the proposed rule would

[89] An annual ROW rent of $2.89 per acre for a one-mile, 200-foot-wide corridor is derived as follows: A 1-mile, 200-foot-wide corridor has an area equivalent to 1,056,000 square feet or 24.24 acres (43,560 square feet per acre); $70 divided by 24.24 acres is $2.89 per acre.

[90] 30 CFR 585.516(a)(4).

simplify terminology by renaming as ''supplemental financial assurance'' every type of financial assurance required after the initial financial assurance is provided. BOEM also proposes to combine paragraphs (a) and (b). Under the new paragraph (a), BOEM proposes to clarify that the obligation to maintain supplemental financial assurance for 12 months of rent applies only to the extent the rent is not covered in the initial financial assurance provided under § 585.516(a)(1). This language would ensure that BOEM does not require a lessee to provide more financial assurance than necessary to secure the rent obligation. Additionally, BOEM proposes to eliminate most of the existing paragraph (c)(2) as duplicative of the proposed paragraph (a); BOEM would simply cross-reference to the list of obligations that must be bonded in proposed paragraph (a).

§ 585.520 What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?

BOEM proposes to adopt an approach to calculate the initial financial assurance for limited leases, ROWs, and RUEs that is analogous to the proposed approach for commercial leases in § 585.516. Instead of the existing fixed dollar amount ($300,000), the proposed rule would require financial assurance in an amount equal to 12 months' rent before BOEM will execute the limited lease, ROW, or RUE. The rationale for this proposed change is that unpaid rental payments are the only liability that a limited lessee [91] or grant holder accrues at that stage of development. As with the proposed elimination of § 585.515, inflationary (or deflationary) adjustments would be obsolete if the minimum bond is based only on rental obligations. BOEM believes this rule change will decrease the initial cost burden on limited lessees and grant holders in most instances because 12 months of rent for these areas is likely to be less than $300,000. At all times, financial assurance would still be required to be sufficient to cover a limited lessee's obligations pursuant to § 585.521.

§ 585.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?

BOEM proposes revisions to better align limited lease and grant financial assurance requirements with those proposed for a commercial lease. Proposed language in paragraph (a) clarifies that BOEM may increase or decrease the amount of a limited lessee's or a grant holder's financial assurance depending on the estimated costs to meet its accrued obligations. The proposed rule would clarify that the amount of financial assurance provided must be no less than the amount required to meet a limited lessee's or a grant holder's obligations. Additionally, BOEM would revise this section to clarify that payments are due to the ''United States'' rather than the ''Government.'' This section includes new language providing for notice and opportunity to object if BOEM proposes to adjust the financial assurance requirements on a limited lease or grant. The proposed rule would allow a limited lessee or a grant holder to request reduction of its financial assurance requirement if the amount assured continues to be greater than the sum of the accrued obligations. Under the proposed rule, BOEM would have sole discretion to approve such a request. BOEM proposes to substitute ''supplemental financial assurance'' for ''decommissioning bond'' consistent with the proposed terminology changes discussed in the § 585.516 analysis. Finally, the proposed rule would add a provision to the effect that a limited lessee or a grant holder may fund its financial assurance incrementally. In its discretion, BOEM would approve or disapprove such a request and the schedule for providing the financial assurance. The added provision for incremental funding of the financial assurance is intended to reduce the costs associated with building and developing the lease or grant in situations where the amount of financial assurance provided would be delayed until it became necessary.

BOEM would require financial assurance prior to the net present value of the project turning negative when factoring in decommissioning costs. This calculation would change based upon actual operating efficiency of the project (both at start-up and throughout its lifecycle) and realized prices obtained through the PPA based upon the local market. BOEM would require an annual re-evaluation of the financial condition of the project and would adjust the timing of required financial assurance accordingly.

Requirements for Financial Assurance Instruments

§ 585.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?

BOEM proposes to revise this section to clarify that a lessee and a grant holder have choices in proposing alternative instruments to satisfy their financial assurance obligations. As discussed in section V.G.3(c) above, entitled ''Additional Authorized Financial Assurance Instruments,'' BOEM reads the existing section as allowing a lessee and a grant holder to propose financial assurance instruments that are not specifically enumerated in the regulations. The proposed rule would explicitly authorize BOEM to approve non-listed instruments or combinations of instruments. Responding to recent requests by several lessees, the proposed rule specifically would identify letters of credit as acceptable financial assurance instruments but would condition their use. The proposed conditions for letters of credit would include a minimum credit rating, a minimum term of 1 year, automatic renewal in the absence of a notice of cancellation to BOEM, and a venue provision requiring adjudication of any dispute in U.S. district court. These conditions would ensure that letters of credit provide protection to the U.S. taxpayer to the same extent as a surety bond. Additionally, the proposed rule would remove the provision in paragraph (a)(2) stating that cash financial assurance is to be deposited and maintained in the U.S. Treasury by BOEM.

§ 585.528 May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities?

The proposed rule would grant BOEM the authority to allow a third-party guarantor to cap its liability on a guaranty provided to meet lessee and grant holder financial assurance obligations. As discussed in section V.G.3(c) above, entitled ''Additional Authorized Financial Assurance Instruments,'' BOEM's existing regulations require a third-party guaranty to cover all obligations. BOEM believes that lessees and grant holders would benefit if a third-party guarantor could cap its liability. BOEM proposes to allow this increased flexibility by adding language in paragraph (a) stating that a third-party guaranty may be ''in an amount determined by BOEM'' and by stating in paragraph (c)(5) that a guarantor must either take corrective action or provide, within 7-calendar days or other agreed upon time period, sufficient funds ''up to the value of the guaranty'' to enable BOEM to remedy the violation. BOEM also proposes to clarify that a guarantor must satisfy only the legal and financial aspects of §§ 585.106 and 585.107; because a guarantor only provides financial assurance, it does not need to be technically qualified. Additionally,

[91] Throughout section VI, the term ''limited lessee'' means a holder of a limited lease.

BOEM proposes a technical correction to remove the term ''operating rights owner,'' a legal status that exists in the offshore oil and gas regulatory framework but not in the legal framework for OCS renewable energy.

§ 585.529 Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning?

As discussed further in section V.G.3(d) above, entitled ''Staged Funding of Decommissioning Accounts,'' BOEM proposes to allow a lessee or grant holder to fund a decommissioning account in stages over the term of a lease or grant. This authority would be set forth in a revised paragraph (a)(2) stating that a lessee or grant holder ''must fund the account in the amount determined by and according to the funding schedule approved by BOEM'' and in a new paragraph (a)(3) stating that a decommissioning account ''may be funded in whole or in part during the operations period of a lease or grant.'' A proposed funding schedule would be subject to BOEM's approval (and potential modification) after BOEM conducts the appropriate risk analysis.

Changes in Financial Assurance

§ 585.532 What happens if my surety wants to terminate the period of liability of my financial assurance?

In the section heading and paragraph (a), BOEM proposes to substitute the term ''financial assurance'' for ''bond'' because financial assurance is inclusive of all types of security—including, but not limited to, surety bonds—that BOEM allows under this subpart. To be responsive to the question posed in the section heading, BOEM also proposes to remove ''a'' and add ''your'' before ''financial assurance'' in paragraph (a).

BOEM also proposes to revise paragraph (b) by introducing a time constraint for when your surety must submit to BOEM its request to terminate the period of liability under its financial assurance and notify you of that request. The time constraint proposed in this rule is no less than 90 days before the proposed termination date. BOEM requests comment on whether the 90-day time frame is appropriate. BOEM also proposes to remove the clause ''or have not met all obligations of your lease or grant,'' and to add the words ''on your lease or grant'' to recognize that the surety continues to be responsible for obligations and liabilities that accrued during the period of liability and before the date on which BOEM terminated the period of liability. Therefore, the lessee or grant holder must provide replacement financial assurance only if it intends to continue activities on its lease or grant.

§ 585.533 How does my surety obtain cancellation of my financial assurance?

BOEM proposes to substitute the term ''financial assurance'' for ''bond'' in the section heading for the reasons set forth in the analysis of § 585.532 and to use ''cancel'' throughout this section to avoid confusion arising from the use of ''release.'' In addition, BOEM proposes to revise this section by replacing the ''only if'' conditional at the end of the existing paragraph (a), which limits the cancellation of a financial assurance whose period of liability has terminated to two situations, with a timing clause stating when cancellation would occur and by adding two additional situations when cancellation would be appropriate. The first added situation would cover the circumstance when the period of liability is terminated for financial assurance, but the provider of replacement financial assurance does not agree to assume the liabilities of the terminated period of liability. In such a situation, the proposed rule would provide that the financial assurance would be cancelled 7 years after the termination of the period of liability. The second situation would cover the circumstance when the financial assurance obligations are the subject of an appeal or judicial litigation. In such a situation, the proposed rule would provide that the financial assurance would be cancelled upon completion of the appeals process or judicial litigation.

BOEM also proposes to streamline this section by removing surplusage in the existing paragraph (b) that is redundant with the requirements and procedures set forth in proposed § 585.534.

§ 585.534 When may BOEM cancel my financial assurance?

BOEM proposes significant organizational and substantive revisions to this section. First, BOEM proposes to substitute ''financial assurance'' for ''bond'' and ''pledged security'' for the reasons set forth in the analysis of § 585.532 and to use ''cancel'' throughout this section to avoid confusion arising from the use of ''release.''

Second, the proposed rule would amend the first column of the chart (which would be part of a new paragraph (a)) to collapse the distinction between different types of financial assurance for commercial leases, supplemental or decommissioning obligations, limited leases, and grants. BOEM has concluded that the cancellation of financial assurance for different types of leases and grants should be subject to the same regulatory requirements.

Third, the proposed rule would remove the existing second column of the chart referring to the ''period of liability'' associated with BOEM's financial assurance cancellation; this column is unnecessary because the final column contains all needed information regarding when BOEM may cancel lessees' and grant holders' financial assurance. Termination of the period of liability is addressed adequately in § 585.532.

Fourth, BOEM would revise the first sentence of the third column in the existing paragraph (a) to provide that financial assurance will not be cancelled until 7 years after all operations and activities under the lease or grant cease, including decommissioning and site clearance, or a longer period as necessary to complete any appeals or judicial litigation related to a surety's financial assurance obligation. This change recognizes the statutes of limitations on claims after all operations and activities cease under the lease or grant, including decommissioning and site clearance. BOEM also proposes to introduce more flexibility to cancel financial assurance under certain circumstances not covered under existing regulations. For example, the proposed rule would give BOEM additional flexibility to cancel financial assurance before the termination of a lease or grant when the assurance is no longer needed, the operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation, or BOEM determines that the assurance was erroneously assessed. BOEM proposes this change in response to requests from lessees to depart from BOEM's existing requirement that lessees hold financial assurance for 7 years after a lease ends. BOEM believes the proposed language would provide needed flexibility to release a lessee's or a grant holder's financial assurance whenever BOEM determines that it is no longer needed.

Finally, BOEM proposes to further protect the U.S. taxpayer against certain risks by adapting language from the equivalent oil and gas regulations at 30 CFR 556.906(e). The proposed rule would allow BOEM to require reinstatement of a financial assurance instrument as if no cancellation occurred if an obligor's payment under a lease or grant is rescinded due to insolvency or bankruptcy, or if the

responsible party represents to BOEM that it has discharged its obligations under the lease or grant, and the representation was materially false when the bond was cancelled.

§ 585.535 Why might BOEM call for forfeiture of my financial assurance?

For the reasons set forth in the section-by-section analysis of § 585.532 above, BOEM proposes a technical correction to substitute the phrase ''financial assurance'' for the word ''bond.''

Revenue Sharing With States

§ 585.541 What is a qualified project for revenue sharing purposes?

BOEM proposes a technical correction to remove the word ''nautical'' as redundant given the definition of ''miles'' in § 585.112.

§ 585.542 What makes a State eligible for payment of revenues?

BOEM proposes a technical correction to remove the word ''nautical'' as redundant given the definition of ''miles'' in § 585.112.

G. 30 CFR Part 585, Subpart G—Plans and Information Requirements

Subpart F, Plans and Information Requirements, is being redesignated as subpart G to accommodate the addition of a new subpart B, as noted in section VI.B above.

§ 585.600 What plans and information must I submit to BOEM before I conduct activities on my lease or grant?

The existing regulations require lessees to submit a SAP for BOEM approval before conducting any site assessment activities on their commercial leases. Under proposed § 585.600(a)(1), SAPs would be required only for site assessment activities involving an engineered foundation. This change is intended to exempt floating site assessment facilities, such as met buoys, from the SAP requirement, and is being proposed for the reasons set forth in section V.A. above, entitled ''Site Assessment Facilities.'' Changes to these regulatory provisions would not affect the applicability of other agencies' statutory and regulatory requirements. The term ''engineered foundation'' would be defined in this section to include met towers or other structures that are installed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic condition.[92] A lessee planning to install an industry-standard met buoy using a gravity anchor for site assessment would not require a SAP. If a lessee is uncertain whether its proposed site assessment facility had an engineered foundation that would trigger SAP requirements, it would be encouraged to consult with BOEM at the earliest opportunity. BOEM seeks public comment on whether the definition of ''engineered foundation'' is appropriate (and, if not, what that definition should be) or whether a different term should be used to determine whether a facility requires a SAP.

BOEM also proposes to add language that would allow it the discretion to waive certain information or analysis requirements in a proposed plan if the applicant can demonstrate that, among other things, the information or analysis is known to BOEM, the relevant resource is not present or affected, or the information is not needed or required by a State's coastal management program. The language in this provision is modeled on BOEM's oil and gas regulations at 30 CFR 550.201(c) and would grant BOEM more flexibility to tailor its plan requirements to unique elements of a specific proposal without needing to issue regulatory departures under § 585.103.

§ 585.601 When must I submit my plans to BOEM?

The existing regulation requires submittal of any SAPs either before or within 12 months after the date of lease or grant issuance. BOEM sees no persuasive reason for this requirement and removing it could give useful flexibility to lessees and grant holders without any notable downside. Some lessees have chosen to file a COP prior to a SAP, and there may be other instances where additional data collection methods that would require a SAP are undertaken after the filing of the COP. Additionally, BOEM expects that the requirement would have little application if SAPs are no longer required for met buoys as proposed, because nearly all SAPs submitted to date have been for met buoys. BOEM, therefore, proposes to allow a lessee or grant holder to submit a SAP anytime during the life of its lease or grant, but would continue to require a lessee or grant holder to submit a SAP before conducting any activities that require a SAP.

BOEM also proposes revising the timing for COP submittal to be consistent with proposed changes to the lease periods in § 585.235. Under the proposed rule, a COP is due within 5 years of the lease effective date. BOEM proposes to clarify that the 12-month period for GAP submittal starts at the effective date of the limited lease or grant consistent with the existing § 585.236 and the proposed § 585.303(a). The remaining proposed changes to this section are edits for clarity.

§ 585.602 What records must I maintain?

The proposed rule would expand the recordkeeping requirements, which currently only refer to data and information related to plan compliance. Under the proposed rule, lessees and grant holders would also be required to retain records relating to lease or grant compliance, including SMS requirement. This change is proposed to ensure a fuller compliance record is available to monitor trends and to ensure safety and SMS effectiveness.

Site Assessment Plan and Information Requirements for Commercial Leases

§ 585.605 What is a Site Assessment Plan (SAP)?

BOEM proposes revising § 585.605(a) to be consistent with its proposed changes to § 585.600(a)(1) and to delete text that it views as duplicative of the requirements set forth in proposed §§ 585.606 through 585.613 (describing the SAP submittal and review process). BOEM's proposed changes to the renumbered paragraphs (b) and (c) are editorial in nature and intended to clarify the existing text.

§ 585.606 What must I demonstrate in my SAP?

BOEM proposes to delete the requirement that a lessee demonstrate that its site assessment activities will collect the necessary information and data required for a COP as covered in § 585.626. BOEM has determined that this requirement is unnecessary because it is not BOEM's responsibility to ascertain at this stage if site assessment data will be sufficient to meet the needs of the COP review; rather, BOEM intends to focus its review on the potential environmental impacts of the site assessment facility itself. Other edits in this section are technical corrections or are intended to further clarify the text.

§ 585.607 How do I submit my SAP?

BOEM proposes to eliminate the paper copy requirement, consistent with its proposed changes to § 585.110.

[92] See *supra* note 28 for additional discussion of engineered foundations.

Contents of the Site Assessment Plan

§ 585.610 What must I include in my SAP?

BOEM proposes to clarify and streamline the data requirements for SAP submission. Most of these proposed changes are driven by proposed changes to the COP requirements (as discussed in section V.C. above, entitled ''Geophysical and Geotechnical Surveys''); BOEM proposes making similar changes across the corresponding SAP and GAP regulations for purposes of consistency. A more detailed description of the rationale for these proposed revisions can be found in section V.C. and the analysis of proposed § 585.626.

First, the proposed rule would add language in paragraph (a) intended to clarify that a lessee may use a PDE in its SAP (see section V.B). The introductory language in proposed paragraph (a)[93] would clarify that project specific information may be provided as a range of parameters. While BOEM is not specifying in this proposed rule what that range should be, BOEM's requirement cannot be met without providing both a minimum and a maximum value. For example, a lessee would not satisfy this requirement by saying, for example, that at least 200 turbines would be installed. For example, a lessee could propose two types of met tower foundations in its SAP, but would need to describe which foundation type is expected to have the greatest impact on each affected resource. Paragraph (a)(5) would include language clarifying that a lessee can propose a range of potential locations for its site assessment facility as well as an indicative layout (*i.e.,* a less detailed design) as an alternative to a location plat. Paragraph (a)(6) would clarify that only preliminary design information is required. Such drawings would be submitted with the FDR under § 585.701 if the project is deemed complex and significant under § 585.613(a).

Second, BOEM proposes to eliminate the existing requirement in paragraph (a)(9) that a CVA nomination (if necessary under § 585.613(a)) be included with the SAP; instead, a lessee would be able to nominate a CVA before or after SAP submittal under proposed § 585.706. As described further in section V.D.3(a) above, entitled ''Certified Verification Agent Roles and Flexibility,'' the intent of delinking the CVA nomination from the SAP, COP, or GAP is to allow a lessee or grant holder to obtain the benefits of CVA review at the earliest feasible opportunity. In lieu of a CVA nomination, a lessee would need only to describe its project verification strategy for proposed activities that would require a SAP. For a SAP, this would include an analysis of whether a lessee believes the project should be considered complex or significant, thereby triggering the design, fabrication, and installation requirements in proposed subpart H. Under the proposed rule, in the event that a lessee or a grant holder under proposed § 585.645(c)(4) recommends that its project be designated complex or significant, the lessee or grant holder would include a general description of its strategy for complying with the requirements of the proposed subpart H.

Third, BOEM proposes clarifying and technical edits to several other informational requirements in paragraph (a), including adopting language from the existing COP informational requirements (§ 585.626) regarding decommissioning; documents incorporated by reference; and lists of Federal, State, and local permits.

Fourth, the proposed rule would rewrite the SAP data requirements in paragraph (b) to mirror its proposed changes to the COP and GAP regulations. The reasons for these changes are described in more detail in section V.C. above, entitled ''Geophysical and Geotechnical Surveys,'' and in the description of proposed § 585.626(b). Note that the detail and thoroughness of these data requirements would be commensurate with the scope and complexity of the proposed activities. Under proposed § 585.600(b), lessees could seek waivers of certain data requirements by providing their rationale for why that data is unnecessary.

Finally, BOEM proposes deleting the existing paragraph (c), which concerns the simultaneous submittal of a SAP and either a COP or (for a marine hydrokinetic project) FERC license application. BOEM believes that paragraph (c) is unnecessary because such simultaneous submittals still would be permitted under other provisions of this subpart in the proposed rule and because much of this paragraph is repetitive of proposed § 585.601(b).

§ 585.611 What information and certifications must I submit with my SAP to assist BOEM in complying with NEPA and other applicable laws?

BOEM proposes clarifications to the following informational requirements in this section. These proposed clarifications are consistent with BOEM's present expectations for SAP submittals and, therefore, should not create additional burdens on lessees:

- Water quality information would explicitly include impacts from vessel discharges, as is already required under the Clean Water Act.
- Archaeological resources information would explicitly include information on all types of historic properties, as is already required under the NHPA.
- Coastal and marine uses information would explicitly include assessments of fisheries and navigational safety risk. Lessees would be required to submit the latter assessment to the USCG.

Additionally, in the section heading and regulatory text, the more appropriate phrase ''applicable laws'' would replace ''relevant laws.'' The remaining proposed changes to this section are edits for improved organization, clarity, or consistency, including moving most of the language from the existing paragraph (b) into a new paragraph (c).

§ 585.612 How will my SAP be processed for Federal consistency under the Coastal Zone Management Act?

BOEM proposes to modify paragraph (a) to add that the submittal to BOEM must conform with the requirements of § 585.110. BOEM proposes to clarify in paragraph (b) that lessees need to submit a consistency certification for their SAPs under 15 CFR part 930, subpart E, only if BOEM has not previously submitted a consistency determination to that State under 15 CFR part 930, subpart C, that covered the proposed site assessment activities, as opposed to always providing the submittal as described in the current regulations. The existing regulations require lessees to submit a consistency certification in all cases.

BOEM, in consultation with NOAA, finds that implementation of the OCS renewable energy program thus far shows that there are three potential CZMA Federal consistency reviews under BOEM's actions: (1) when BOEM conducts a lease sale and awards a lease, ROW, or RUE and provides a State or States with a CZMA consistency determination under 15 CFR part 930, subpart C; (2) when an applicant

[93] For clarity, BOEM proposes standardizing the presentation of the required content for a SAP, COP, and GAP so that paragraph (a) outlines the general informational requirements and paragraph (b) outlines the survey and investigations data requirements. The equivalent COP and GAP sections would be re-arranged under the proposed rule consistent with this approach.

submits a CZMA consistency certification to BOEM for a COP, if required by 15 CFR part 930, subpart E; and (3) when the activity is located outside a geographic location described in the State's coastal management program pursuant to 15 CFR 930.52, and an applicant, on its own accord, submits a consistency certification to a State or States through BOEM under 15 CFR part 930, subpart E. For the lease sales held so far, States have reviewed associated SAP or GAP activities through the review of BOEM's consistency determination under 15 CFR part 930, subpart C. BOEM and NOAA expect that this will continue and that it should be the rare case where a separate CZMA consistency review is required for a SAP or GAP.

§ 585.613 How will BOEM process my SAP?

BOEM proposes to harmonize the existing language in paragraph (e)(2) with the equivalent provision in § 585.628(f)(2) regarding actions lessees may take in the event of COP disapproval. BOEM also proposes to clarify that SAP resubmission must occur within a reasonable time and proposes to make analogous changes to the equivalent COP and GAP requirements in §§ 585.628 and 585.648.

Activities Under an Approved SAP

§ 585.614 When may I begin conducting activities under my approved SAP?

BOEM proposes a minor edit to paragraph (b) by adding the word ''description'' after Safety Management System to clarify that it is a description of the Safety Management System that must be submitted, in conformance with the requirements outlined in § 585.810.

§ 585.617 What activities require a revision to my SAP, and when will BOEM approve the revision?

The proposed changes include the addition of a new paragraph (b) to clarify that revisions to a lessee's SAP may trigger a reassessment of the significance and complexity of the proposed activities. The proposed revisions under paragraph (d) would eliminate unnecessary verbiage in the list of changes or modifications that could trigger the revision of an approved SAP by merging the substance of existing paragraphs (c)(4), (5), and (6) into revised paragraphs (d)(2) and (3). BOEM also proposes to align this section with the PDE concept as described in section V.B. above, entitled ''Project Design Envelope,'' and to ensure consistency with the proposed § 585.610(a)(5). The proposed rule would make minor editorial changes to improve clarity and readability.

§ 585.618 What must I do upon completion of approved site assessment activities?

BOEM proposes technical edits in paragraph (a) to ensure consistency with proposed changes to § 585.235 eliminating the site assessment term of a commercial lease. The proposed paragraph (a) would apply only if site assessment facilities are installed before COP submittal.

Paragraph (e) of the existing regulation states that ''you must initiate the decommissioning process [for your site assessment activities] . . . upon termination of your lease.'' However, the proposed subpart J of the regulations contemplates that lessees will initiate the decommissioning process by submitting a decommissioning application as much as 2 years before the lease expires. BOEM proposes to revise this section for clarity and consistency with §§ 585.905 and 585.906.

Construction and Operations Plan for Commercial Leases

§ 585.621 What must I demonstrate in my COP?

The proposed changes are technical edits to ensure consistency with certain proposed changes to § 585.606 for SAPs.

§ 585.622 How do I submit my COP?

BOEM proposes to eliminate the paper copy requirement, consistent with its proposed changes to § 585.110.

Contents of the Construction and Operations Plan

§ 585.626 What must I include in my COP?

BOEM proposes to clarify and streamline the data requirements for COP submission in several key respects.

First, the proposed rule would add language in paragraph (a) intended to clarify that a lessee may use a PDE in its COP, as further discussed above in section V.B, entitled ''Project Design Envelope,'' section V.C., entitled ''Geophysical and Geotechnical Surveys,'' and the analysis of § 585.610.

Second, BOEM proposes replacing the existing obligation in paragraph (a)(18) to submit a CVA nomination with the COP with a requirement to submit a ''project verification strategy'' describing the lessee's plan for complying with the CVA regulations at §§ 585.705 through 585.714. As discussed further in section V.D.3(a) above, entitled ''Certified Verification Agent Roles and Flexibility,'' this proposed amendment is intended to provide lessees with the flexibility to nominate (and for BOEM to approve) a CVA either before or after COP submittal.

Third, the proposed rule would make both clarifying and substantive changes to the data submittal requirements in this section. Most of the proposed changes relate to nomenclature and organization and are intended to more precisely reflect BOEM's expectations for a lessee's COP surveys. For instance, BOEM proposes to merge the existing ''shallow hazards,'' ''geological,'' ''geotechnical,'' and ''site investigation'' survey requirements in paragraphs (a)(1), (2), (4), and (6) into ''geological and geotechnical'' survey requirements set forth in a new § 585.626(b)(1). BOEM believes this change would clarify any stakeholder confusion and would reduce redundancy. The shallow hazards survey is part of both geological and geotechnical surveys (and thus does not actually constitute an independent survey), geological and geotechnical surveys have overlapping purposes, and the ''site investigation'' is effectively an amalgam of the above-described surveys.

BOEM intends the proposed geological and geophysical survey provisions in § 585.626(b)(1) to replace the existing prescriptive requirements with performance-based standards focused on the sufficiency of information regarding geological site conditions that BOEM needs in order to adequately review a COP. In particular, BOEM proposes to eliminate the requirements in the existing § 585.626(a)(1) regarding shallow hazard surveys as well as the requirements in the existing § 585.626(a)(4) that lessees submit ''[t]he results of adequate *in situ* testing, boring, and sampling at each foundation location'' and ''[t]he results of a minimum of one deep boring (with soil sampling and testing) at each edge of the project area.'' Instead, BOEM proposes to require geophysical data sufficient to ''define the geological conditions of the site's seabed that could impact, or be impacted by, the proposed project'' and geotechnical data sufficient to ''ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed project; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation.''

BOEM believes that these new standards will provide it with flexibility to tailor its data requirements to site- and project-specific conditions without

needing to issue regulatory departures under § 585.103. To ensure BOEM will continue to have sufficient information to conduct an environmental analysis and the necessary interagency consultations, BOEM will continue performing a sufficiency review after receipt of a COP and notifying the lessee of any additional outstanding information requirements prior to completing the COP review. More importantly, the elimination of the *in situ* boring requirement will address the concerns raised by lessees and described in detail in section V.C. As discussed in section V.C., the proposed rule would not reduce the quality of geotechnical data that BOEM will review before the start of construction. Geophysical surveys would still need to identify all relevant shallow hazards, and the results of certain detailed geotechnical surveys to inform engineering decisions would now need to be submitted with the FDR as set forth in proposed § 585.701.

BOEM also proposes to add flexibility to the timing for when the required archaeological surveys as currently set forth in § 585.626(a)(5) are submitted. Under the existing regulations, a lessee must submit archaeological survey data at the same time it submits a COP. BOEM proposes to allow a lessee to submit the results of certain detailed subsea archaeological surveys with the FDR under the proposed § 585.701(a)(11). BOEM would allow the deferral of these surveys on a case-by-case basis. As discussed further in section V.C., the purpose of this proposed amendment is to facilitate additional flexibility in finalizing project design, recognizing that the flexibility could result in a lessee assuming additional permitting and business risk. As in its proposed changes to § 585.610, BOEM also proposes to clarify that required reports under paragraph (b)(3) of this section include information on all historic properties listed or eligible for listing on the National Register of Historic Places in accordance with the NHPA and its implementing regulations.

The proposed rule also would add § 585.626(b)(4), clarifying BOEM's need for desktop data on oceanographic and meteorological conditions sufficient to ''support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigational risks.'' The existing § 585.627(a)(1) requires the submittal of similar data on conditions that could create hazards for a project. BOEM believes obtaining more generalized meteorological and oceanographic information to better inform modeling, design, and environmental reviews is also necessary and appropriate. BOEM proposes only clarifying edits to the existing biological survey requirements in this section. BOEM proposes analogous changes, where appropriate, in the equivalent regulations for SAPs and GAPs in §§ 585.610 and 585.645 respectively.

The remaining proposed changes to this paragraph are edits for organization and clarity.

§ 585.627 What information and certifications must I submit with my COP to assist BOEM in complying with NEPA and other applicable laws?

BOEM proposes clarifications to the informational requirements in paragraph (a) consistent with the proposed changes to § 585.611(a).

BOEM also proposes to clarify the wording of the consistency certification required in paragraph (b)(1) by revising the language to provide that the applicant must certify that the proposed activities described in detail in the applicant's plan comply with ''the enforceable policies of the applicable States' approved coastal management programs (as opposed to ''the State(s) approved coastal management program(s)'') and will be conducted in a manner that is consistent with such programs.'' This change limits BOEM's interest to the enforceable policies of the applicable States' programs, not to the CZMA as a whole.

BOEM also proposes a technical correction to paragraph (c). That provision requires a lessee to submit an oil spill response plan (OSRP) with its COP ''as required by 30 CFR part 254.'' Because the cross-referenced regulations apply only to OCS oil and gas activities, BOEM proposes to require that a lessee submit an OSRP ''in compliance with 33 U.S.C. 1321, including information identified in 30 CFR part 254 that is applicable to your activities.'' This statutory provision is not limited to oil and gas activities, and grants BOEM and its lessees more flexibility to craft OSRPs that are commensurate with the estimated worst-case discharge from a renewable energy facility. The regulation clarifies that the OSRP must include information identified in 30 CFR part 254 that is applicable to the lessee's activities. BOEM, in consultation with BSEE, intends to issue guidance regarding the recommended contents of an OCS renewable energy OSRP.

Additionally, in the section heading and regulatory text, the more appropriate phrase ''applicable laws'' would replace ''relevant laws.'' The proposed rule would eliminate the paper copy requirement consistent with BOEM's proposed changes to § 585.110 and would make minor editorial changes to improve clarity and readability.

§ 585.628 How will BOEM process my COP?

BOEM proposes to add a provision to paragraph (c) stating that, after all information requirements for the COP are met and after the appropriate environmental assessment or draft environmental impact statement, if required, has been published, the lessee or grant holder would be required to submit its COP consistency certification and associated data and information under 15 CFR part 930, subpart E to the applicable State CZMA agencies through BOEM. BOEM has determined that submitting the COP to the States for Federal consistency review prior to the publication of a draft NEPA analysis would be premature because the States would not have all the relevant information at their disposal to make a State's consistency decision.

In practical terms, this would change the date on which a COP is considered an ''active application'' under 15 CFR 930.51(f). Therefore, the CZMA review period (or the start of the 30-day time period for a State to submit an unlisted activity review request to NOAA under 15 CFR 930.54) would start on the date BOEM issues the notice of availability for the draft NEPA analysis instead of the date BOEM issues the notice of intent to publish a draft NEPA analysis. For CZMA regulatory purposes, this change would make the draft NEPA analysis ''necessary data and information'' under 15 CFR 930.58.

BOEM proposes several changes to the project easement requirements in paragraph (g). Section 585.112 of the existing regulations defines a ''project easement'' to mean ''an easement to which, upon approval of your COP or GAP, you are entitled as part of the lease for the purpose of installing, gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease.'' Section 585.628(g) provides that if BOEM approves your project easement, it will issue an addendum to your lease specifying the terms of the project easement. Under the existing regulations at § 585.628(g), a project easement may include off-lease areas that contain the sites on which cable, pipeline, or associated facilities are located and ''do not exceed 200 feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a

greater width[.]'' However, though a lessee will have gathered sufficient data to know the general route (or routes) of its cables by the COP-approval stage, the precise cable route may not be known until a lessee has conducted detailed surveys of hazards, such as unexploded ordnance, following COP approval. A lessee occasionally may discover potential hazards while conducting installation activities that may necessitate a deviation from the proposed route. Consequently, a 200-foot-wide easement may be too narrow at the COP-approval stage to accommodate a reasonable degree of uncertainty regarding the final export cable route and could result in time-consuming amendments to the project easement before or after cable installation.

In order to provide flexibility to the lessee and minimize the need for subsequent project easement amendments, BOEM proposes to amend paragraph (g) to allow BOEM to issue project easements of ''sufficient off-lease area to accommodate potential changes at the design and installation phases of the project for locating cables, pipelines, and other appurtenances necessary for your project.'' Although a larger easement would result in greater rental fees under § 585.507, a lessee may relinquish any unused portions of the easement after construction is completed. BOEM believes that this approach will allow a lessee to right-size the width of its project easements on a case-by-case basis, depending on site conditions and a lessee's particular needs. This revision would be consistent with the PDE strategy described in section V.B. above because it maximizes a lessee's ability to make design choices later in the development process without revising its COP or reopening the permit review process. BOEM would still require that a COP include sufficient survey data for whatever project easement areas are requested. The proposed rule also would not affect the quantity and quality of data that BOEM presently requires before the lessee may commence installation of the export cable.

BOEM also proposes a technical correction to paragraph (g) that would make project easements subject to the same conditions as ROWs and RUEs under § 585.302(b): that the United States can grant rights in the area to other lessees or grant holders that do not unreasonably interfere with operations on the easement. Among other reasons, these provisions are critical to ensure that nearby existing or future offshore wind lessees are not definitively foreclosed from using the same general cable routes established by an earlier lessee. In the long run, cable routes shared by multiple projects could result in lower environmental impacts, streamlined permitting, and economic efficiencies.

Other remaining proposed changes to this section are edits for clarification, better organization, and consistency with changes to the equivalent SAP and GAP regulations.

Activities Under an Approved COP

§ 585.634 What activities require a revision to my COP, and when will BOEM approve the revision?

The proposed revisions under paragraph (c) maintain consistency with proposed changes to § 585.617 for SAPs by eliminating unnecessary verbiage in the list of changes or modifications that could trigger the revision of an approved COP and by merging the substance of existing paragraphs (c)(4), (5), and (6) into revised paragraphs (c)(2) and (3). BOEM also proposes to incorporate in paragraph (c)(3) the PDE concept for a ''range'' of facility locations for the reasons set forth above in sections V.B, entitled ''Project Design Envelope,'' and V.C, entitled ''Geophysical and Geotechnical Surveys,'' and to ensure consistency with proposed § 585.626(a). By incorporating the PDE, BOEM believes it can be less prescriptive regarding the threshold that would trigger a COP revision and can allow that threshold to be proportionate to the magnitude of the proposed project changes. BOEM seeks comments on what threshold should trigger COP revision regarding changes in position or layout of bottom disturbances. The remaining proposed revisions to this section are edits for clarity.

§ 585.637 When may I commence commercial operations on my commercial lease?

Paragraph (a) of the existing section provides that commercial operations may commence 30-calendar days after ''the CVA or project engineer has submitted to BOEM the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 585.708.'' However, § 585.708(a)(5)(ii) allows the lessee to commence commercial operations 30-calendar days after BOEM receives the CVA verification report unless BOEM raises objections with the lessee during that time. The proposed rule would remedy this inconsistency by moving the existing § 585.708(a)(5)(ii) provision into section 585.637 and would change ''certification'' to ''verification'' to maintain consistency with other provisions of the proposed rule. The proposed rule also would clarify that commercial operations may commence 30-calendar days after BOEM deems submitted—rather than receives—the final project verification report as described in the proposed §§ 585.704 and 585.708(a)(5) provided that BOEM has not notified you within that time frame of any objections to the verification report and that BOEM has confirmed receipt of critical safety systems commissioning records, as described in § 585.708(a)(6). This proposed change is designed to ensure that BOEM is in possession of complete and accurate submissions prior to the commencement of its limited review period. Finally, to improve organization, the proposed rule would move the existing § 585.713 requirement to notify BOEM within 10-business days of starting commercial operations into section 585.637.

BOEM is aware that electricity may be generated and distributed during testing activities conducted by a Lessee prior to submitting the proposed reports in this section (required as a prerequisite to beginning commercial operations). Under the existing regulations, electricity generation and distribution meets the definition of commercial operations, at § 585.112. BOEM has proposed an edit to the definition of commercial operations whereby the generation of electricity needed for the preparation of the final FIR, or the generation of electricity for testing purposes, would be excluded from the definition of commercial operations provided that such electricity is not sold on a commercial basis.

BOEM is soliciting comment on the proposed revisions to the provisions of § 585.637 for required submissions prior to commencing commercial operations, and on the revisions to the definitions of commercial activities and commercial operations in § 585.112.

§ 585.638 What must I do upon completion of my commercial operations as approved in my COP or FERC license?

The existing regulation, under paragraph (a), states that you must ''initiate the decommissioning process'' upon completion of your approved COP activities. However, the proposed subpart J of the regulations contemplates that lessees would initiate the decommissioning process by submitting a decommissioning application as much as 2 years before the lease expires. BOEM proposes to revise this section for clarity and

consistency with §§ 585.905 and 585.906.

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

§ 585.640 What is a General Activities Plan (GAP)?

The proposed rule would eliminate the second sentence in paragraph (b) because it is redundant with the requirements found in the existing and proposed § 585.303(a) regarding the due date for GAP submission.

§ 585.641 What must I demonstrate in my GAP?

The proposed changes include technical edits to ensure consistency with proposed changes to existing provisions of §§ 585.606 and 585.621, as appropriate.

§ 585.642 How do I submit my GAP?

BOEM proposes to eliminate the paper copy requirement for this regulation, consistent with its proposed changes to § 585.110.

Contents of the General Activities Plan

§ 585.645 What must I include in my GAP?

BOEM proposes changes to this section consistent with its proposed revisions to § 585.610 for SAPs and § 585.626 for COPs, as appropriate.

§ 585.646 What information and certifications must I submit with my GAP to assist BOEM in complying with NEPA and other applicable laws?

BOEM proposes clarifications to the informational requirements in paragraph (b) of this section similar to those proposed for SAPs in § 585.611 and COPs in § 585.627, as appropriate. As in those sections, these clarifications are consistent with BOEM's present expectations for GAP submittals and, therefore, should not create additional burdens on lessees.

Additionally, in the section heading and regulatory text, the more appropriate phrase ''applicable laws'' would replace ''relevant laws.''

§ 585.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?

BOEM is proposing minor changes to provide clarity and consistency with other proposed changes.

§ 585.648 How will BOEM process my GAP?

BOEM proposes minor editorial changes to this section to improve clarity, eliminate redundancy, enhance readability, and provide consistency with proposed changes to the equivalent SAP and COP regulations.

Activities Under an Approved Gap

§ 585.652 How long do I have to conduct activities under an approved GAP?

BOEM proposes a technical revision to paragraph (a) to maintain consistency with its proposed modifications to the limited lease periods in § 585.236.

§ 585.655 What activities require a revision to my GAP, and when will BOEM approve the revision?

BOEM proposes clarifications and technical edits to the provisions regarding GAP revisions in paragraphs (a) and (c) that are analogous to the ones BOEM proposes in § 585.617 for SAP revisions and § 585.634 for COP revisions.

§ 585.657 What must I do upon completion of approved activities under my GAP?

BOEM proposes a clarification analogous to proposed changes to the corresponding SAP and COP requirements in §§ 585.618(e) and 585.638 respectively.

Cable and Pipeline Deviations

§ 585.659 What requirements must I include in my SAP, COP, or GAP regarding air quality?

BOEM proposes a technical correction to reflect Congress' 2011 CAA amendment expanding BOEM's air quality jurisdiction to offshore of the North Slope Borough of Alaska.[94]

H. 30 CFR Part 585, Subpart H—Facility Design, Fabrication, and Installation

Subpart G, Facility Design, Fabrication, and Installation, is being redesignated as subpart H to accommodate the addition of a new subpart B, as noted in section VI.B above.

Reports

§ 585.700 What reports must I submit to BOEM before installing facilities described in my approved SAP, COP, or GAP?

BOEM proposes to amend this section first to clarify that BOEM has the authority to allow lessees to submit their FDRs and FIRs for BOEM's review by stage or component. As discussed in section V.D.3(b) above, entitled ''Staged Submittal of the Facility Design Report and Fabrication and Installation Report,'' this proposed change is intended to affirm that lessees and grant holders have flexibility in certain circumstances to commence fabrication or construction of project components while other aspects are still under review. Under the proposed rule, a lessee's or a grant holder's ability to avail itself of this flexibility would be contingent on providing an adequate explanation to BOEM that all components will function together in an integrated manner in accordance with its project design basis—which identifies all requirements, assumptions, and methodologies essential for the project design—as verified by the project CVA. If multiple FDRs and FIRs were submitted, each component report would have its own 60-day period for BOEM to review and respond with objections once BOEM deems the report submitted, consistent with the new § 585.704. BOEM proposes to clarify that FDRs and FIRs may be submitted before or after SAP, COP, or GAP approval, though BOEM's 60-day review period will not start until the report is deemed submitted and the plan is approved. BOEM believes this proposed change is necessary to ensure that its limited period for review and objection does not begin until it has determined that the submission is complete, accurate, and ready for consideration. The changes described above are achieved by the inclusion of new paragraphs (b) and (c), and revised language to existing paragraphs (b) and (c), which BOEM proposes to redesignate as paragraphs (d) and (f).

Second, as discussed in section V.D.3 above, entitled ''Definition of 'Fabrication' and Early Fabrication of Facility Components,'' BOEM is also revising this section to address industry concerns with long lead times associated with the procurement and fabrication of facility components. To address these concerns, BOEM is proposing revisions to the language in paragraph (b) of the existing regulations (redesignated as paragraph (d)), and to add a new paragraph (e). Paragraph (d) clarifies that fabrication and installation activities on the OCS may only commence once a lessee or grant holder has received BOEM's non-objection to the FDR and FIR or if no objections were made by the end of BOEM's 60-day review. Proposed new paragraph (e) would clarify that (i) procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS, may commence prior to the submittal of the FDR and FIR or any plans required under BOEM's regulations; and (ii) any procurement or

[94] 42 U.S.C. 7627.

fabrication of facility components prior to BOEM's non-objection to the FDR and FIR, or the end of BOEM's 60-day review without objections, is subject to verification by the CVA and to possible objection by BOEM prior to the installation of said components on the OCS.

In addition to the foregoing, BOEM also proposes to add in § 585.112 a definition for the term ''fabrication,'' since the existing regulations do not define ''fabrication.'' The proposed rule would define fabrication as the ''cutting, fitting, welding, or other assembly of project elements of a custom design conforming to project-specific requirements,'' while excluding from this definition ''the procurement of discrete parts of the project that are commercially available in standardized form and type-certified components.''

Finally, BOEM proposes to revise existing paragraph (c), which is proposed to be redesignated as paragraph (f), to clarify that it has 60 calendar days to object to an FDR or FIR or to request additional information. BOEM believes this proposed change is necessary to emphasize that additional time may be needed for its review if key information is missing from a report.

These proposed changes would bring BOEM's regulations in line with industry practices and would allow orderly and efficient BOEM and CVA supervision of a project's technical development without sacrificing safety. These proposed changes also would afford greater flexibility to lessees and grant holders to begin certain procurement and fabrication (*e.g.,* manufacturing) activities at an earlier stage.

§ 585.701 What must I include in my Facility Design Report?

BOEM proposes several modifications to the FDR submission requirements. The proposed rule would replace the requirements for floating turbines in the existing paragraph (b) with a reworded requirement in proposed paragraph (a)(6), partly for organizational purposes and partly as a technical correction because USCG regulations regarding structural integrity and stability do not apply to floating offshore wind facilities. To maintain consistency with its proposed changes to § 585.626, BOEM proposes that the FDR include the results of any detailed geotechnical surveys that were deferred as a result of proposed § 585.626(b)(1)(iii). Similarly, BOEM proposes that the FDR include the results of any archaeological surveys that were deferred on a case-by-case basis under proposed § 585.626(b)(3). To maintain consistency with the FIR and to provide flexibility, BOEM is adding a requirement in new paragraph (a)(12) for the lessee to include design standards in the FDR. This would allow the lessee to propose design standards specific to their project instead of BOEM incorporating standards by reference into the regulations. Also, BOEM is proposing a new requirement in paragraph (a)(13) for the lessee to include information on critical safety systems, including a risk assessment that identifies the critical safety systems and a description of the identified critical safety systems. This information is necessary for the CVA to verify the commissioning of critical safety systems, as required by proposed § 585.705. The proposed rule would require the CVA to verify that the facility has been designed to provide for safety. By allowing the lessee to conduct a risk assessment to identify critical safety systems for the individual project, BOEM is providing increased flexibility for the types of equipment that can be used, especially considering the rapid pace of technology development. Finally, for regulatory flexibility, BOEM proposes a catch-all category to cover necessary project-specific information that may not be contained within the listed categories. BOEM also proposes to eliminate the third column of the table in paragraph (a) as superfluous given BOEM's proposed elimination of the paper copy requirement and to replace that column's content with a new paragraph (b) consistent with the proposed § 585.110.

The remaining proposed changes are technical corrections and include: removal of the word ''proposed'' from the project easement requirement in paragraph (a)(2)(iii) because the project easement would be approved already at the time of BOEM's FDR review; substitution of ''verification'' for ''certification'' in the description of the CVA's duties, as discussed in section V.D.1; addition to the CVA verification statement that the facility has been designed to provide for safety, in keeping with other proposed changes; and removal of the trade secrets provision as redundant of § 585.113.

§ 585.702 What must I include in my Fabrication and Installation Report?

BOEM proposes several modifications to the FIR submission requirements. The proposed rule would add a requirement in new paragraph (a)(6) that lessees and grant holders submit any certificates documenting that they are adhering to a recognized quality assurance standard. This regulatory change would conform with industry practice and would allow alternate means of compliance on a case-by-case basis. BOEM also proposes to clarify that any environmental information contained in a previously submitted corresponding plan may be incorporated by reference in an FIR to the extent that information satisfies the requirements of proposed paragraphs (a)(7)(i) through (iv). BOEM is also proposing to add a requirement in paragraph (a)(8) for the submittal of commissioning procedures for critical safety systems. This information is necessary for the CVA to verify the commissioning of critical safety systems, as required by proposed § 585.705. The proposed rule would clarify that commissioning procedures include original equipment manufacturer or other procedures for commissioning of critical safety systems. BOEM also proposes to eliminate the third column of the table in paragraph (a) as superfluous given BOEM's proposed elimination of the paper copy requirement and to replace that column's content with a new paragraph (b) consistent with the proposed § 585.110. The proposed paragraph (c) would provide clarity and added flexibility regarding project easement information submittals and requests. Finally, as with its proposed changes to the FDR requirements in § 585.701, BOEM proposes a catch-all category for necessary project-specific information that may not be covered by the listed categories.

The remaining proposed changes are largely the same as the technical corrections to § 585.701.

§ 585.703 What reports must I submit for project modifications and repairs?

BOEM proposes to eliminate language in paragraph (a) indicating that major repairs or modifications must be ''certified,'' consistent with the proposed changes to §§ 585.701 and 585.702. To promote safety, BOEM also proposes that any major modification or repair report contain a CVA verification statement analogous to the one required for FDRs in § 585.701 and for FIRs in § 585.702. BOEM is also proposing to clarify the definition of a ''major repair'' in paragraph (a)(1) to include substantial repairs to critical safety systems and the definition of a ''major modification'' in paragraph (a)(2) to include a substantial alteration of a critical safety system. It is essential that BOEM is made aware of major repairs and modifications to these systems and that the repairs and modifications are done in accordance with an accepted engineering practice. The remaining proposed changes are similar to technical corrections to § 585.701.

§ 585.704 After receiving the FDR, FIR, or project verification reports, what will BOEM do?

Over the past few years, BOEM has received numerous incomplete COPs and other documents that it could not properly evaluate. This has created many issues between the lessees and BOEM with respect to the status of the applications. In order to address this, BOEM is proposing to make a determination as to the completeness of the application before its review period begins. The proposed rule would provide that BOEM will have 20-calendar days to make this determination. Under the proposed rule, once BOEM makes a determination that any given report is sufficiently accurate and complete, it would deem it submitted, which would begin the applicable period of time for BOEM to review and object, as necessary.

This procedure is similar to the practice described in § 550.231 for exploration plans under the oil and gas program, which BOEM has implemented successfully for many years. BOEM is proposing to add this regulation to clarify that the reports (*e.g.,* FDR, FIR, and project verification reports) must be deemed submitted before the 60-calendar day or 30-calendar day review ''clock'' begins.

Certified Verification Agent

§ 585.705 When must I use a Certified Verification Agent (CVA)?

The proposed rule explicitly would allow the use of multiple CVAs on a project. This change would enable a lessee or grant holder to assign the expertise of specific CVAs to the corresponding project component. This change is further discussed in the analysis of § 585.706.

BOEM proposes several modifications, clarifications, and technical corrections to this section. First, the proposed rule would add a requirement for the CVA to ensure critical safety systems are commissioned in accordance with the procedures identified in the FDR, FIR, and the project modification and repair reports and for the CVA to provide BOEM with immediate reports of incidents that affect the commissioning of critical safety systems. This addition is necessary for BOEM to meet the requirement in § 585.102(a)(1) to ensure any authorized activity is carried out in a manner that provides for safety. Also, BOEM is currently requiring a qualified third party to ensure critical safety systems are commissioned in accordance with the procedures identified in the FDR, FIR, and the project modification and repair reports. This addition will clarify that the qualified third party should be the CVA, who is already familiar with the project. Second, the proposed rule would clarify that the CVA requirement applies unless it is waived under paragraph (c) of this section. Third, BOEM proposes to clarify that, just as multiple CVAs may be nominated for different project elements (see § 585.706 analysis), BOEM may grant partial waivers of the CVA requirement for discrete elements of a project. For instance, BOEM could determine that a hypothetical project's electrical service platform has a standard design that does not require CVA review, while the remainder of the project still warrants such review. Fourth, the proposed rule would substitute ''fabricator'' and ''fabricated'' for ''manufacturer'' and ''manufactured'' to avoid confusion and maintain consistency with § 585.700. Fifth, the proposed rule would add a requirement that fabrications, repairs, or modifications that are the subject of a CVA waiver nonetheless must adhere to a recognized quality assurance standard. This regulatory change would maintain consistency with proposed revisions to § 585.702(a) and would conform to industry practice while still allowing for alternative compliance standards on a case-by-case basis. Sixth, the proposed rule would eliminate the requirement that waiver requests be submitted with plans, thus relieving BOEM of the obligation to consider such waiver requests as part of its plan reviews. This change would maintain consistency with other proposed changes intended to decouple the CVA nomination process from plan approval as discussed in section V.D.1. Finally, the proposed rule would change ''certify'' to ''verify'' as also discussed in section V.D.1.

The remaining proposed changes to this section are edits for clarity and consistency.

§ 585.706 How do I nominate a CVA for BOEM approval?

This section would be amended to eliminate the requirement that a lessee or grant holder nominate a CVA with its COP, SAP, or GAP. Instead, BOEM would require only that a CVA be nominated and approved before conducting the relevant verification activities. As discussed in section V.D.3(a) above, entitled ''Certified Verification Agent Roles and Flexibility,'' the purpose of this proposed change is to allow a lessee and a grant holder greater flexibility to onboard CVAs earlier in the project development process so they may provide independent review of design concepts before COP submittal—as well as to replace or nominate new CVAs as needed following COP submittal. Additionally, the proposed rule would require that if a lessee or grant holder seeks to use multiple CVAs, it must nominate a general project CVA no later than COP submittal to manage the project verification strategy, to ensure CVAs are conducting their reviews in a consistent manner, and to oversee the transition areas between various project components and their associated CVAs. BOEM recognizes that the various components of an offshore wind facility must function as an integrated whole and believes this requirement for a general project CVA will help ensure that third-party verification is coordinated.

The existing regulation bars CVAs from acting in a capacity that would create a conflict of interest or the appearance of one. Because objectivity is at the core of the CVA role, BOEM proposes to clarify that the nominated CVA must not have been involved in preparing the plans, reports, analyses, or other technical submittals that it will verify. While this requirement is encompassed in the existing regulations, BOEM believes this clarification responds to inquiries it has received from industry. The remaining proposed changes to this section are technical corrections or edits for clarity.

§ 585.707 What are the CVA's primary duties for facility design review?

The proposed rule would change ''certify'' to ''verify'' as discussed in section V.D.1. Additionally, this section would mirror proposed changes to § 585.701 by replacing the requirements for floating turbines in the existing paragraph (c) with a reworded requirement in proposed paragraph (b)(10). The proposed rule would allow, but not require, the CVA to utilize the FDR defined in proposed § 585.700. In addition to the current ''verification'' requirements, the proposed rule would require the CVA to verify that the facility has been designed to provide for safety and to conduct an independent assessment of the design for human safety and accident prevention. This addition is necessary for BOEM to meet the requirement in § 585.102(a)(1) to ensure any authorized activity is carried out in a manner that provides for safety.

§ 585.708 What are the CVA's or project engineer's primary duties for fabrication and installation review?

The proposed rule would update existing paragraphs (a)(5) and (b) by replacing the terms ''certify'' and ''ensure'' with ''verify'' for consistency

with the proposed changes to the CVA standard of review as discussed further in section V.D.3(a) above, entitled ''Certified Verification Agent Roles and Flexibility.'' The proposed rule would add a requirement in paragraph (a)(1) for the CVA to use good engineering judgment and practice when conducting an independent assessment of the commissioning of critical safety systems, would require that the commissioning of critical safety systems be consistent with § 585.705, and would require that the CVA monitor the commissioning of critical safety systems in paragraph (a)(2). Similar to paragraph (5)(i), BOEM is proposing to add paragraph (a)(6) to require the CVA to provide records documenting that critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8) and to identify the location of all records pertaining to commissioning of critical safety systems, as described in § 585.714(c). Unlike paragraph (5)(i), BOEM is not expecting a full report of the commissioning of critical safety systems. BOEM expects a report with the relevant data, showing the successful completion of the commissioning, test date, and signature of the CVA.

Additionally, the proposed rule would add language regarding quality assurance standards to ensure consistency with § 585.702(a)(6). For clarity and organization, BOEM also proposes to move the requirement in the existing paragraph (a)(5)(ii) regarding commencement of commercial operations to § 585.637. Additionally, BOEM proposes to add a requirement that if multiple CVAs are used—thus necessitating multiple verification reports for different project components—the general project CVA must submit the final verification report for the entire project prior to the commencement of commercial operations under § 585.637.

The remaining proposed changes to this section are edits for clarity and consistency.

§ 585.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?

This section would be revised to mirror the proposed changes to § 585.701 by modifying the existing paragraph (b) to remove the references to the U.S. Coast Guard and by specifying the CVA must verify the structural integrity, stability, and ballast of a floating facility. In addition, paragraph (b) is being modified to remove the requirement for consideration of foundations, foundation pilings and templates, and anchoring systems, as well as mooring or tethering systems, because those requirements are addressed in § 585.710.

§ 585.710 When conducting onsite installation inspections, what must the CVA or project engineer do?

BOEM proposes to simplify this section to require only that the CVA ''verify'' the enumerated items. BOEM intends for this change to ensure consistency with the emphasis on the ''verification'' standard for CVA activities discussed in section V.D.1 and reflected in other proposed changes in this subpart. BOEM also believes the terms proposed for removal are redundant of ''verification.'' BOEM is also proposing to add language in several locations requiring the CVA to verify the commissioning of critical safety systems to be consistent with § 585.705. A new paragraph (f) would clarify BOEM's expectation that the CVA make periodic on-site inspections to verify: (1) the systems and equipment function as designed; and (2) the final commissioning records are complete during periodic on-site inspections. Both the OCS Lands Act and the regulations at § 585.102(a)(1) require that lessees ensure permitted activities are conducted in a manner that provides for safety. BOEM will rely on the CVA to verify that the commissioning of critical safety systems meets this obligation. The remaining changes are proposed to enhance organization, clarity, or consistency with amendments to other sections of this subpart.

§ 585.712 What are the CVA's or project engineer's reporting requirements?

The proposed rule would eliminate the paper copy requirement, consistent with BOEM's proposed changes to § 585.110.

The proposed rule also would add a requirement that the CVA report summarize any issues with facility design, fabrication, or installation, or the commissioning of critical safety systems. This requirement would allow BOEM to catalog a history of successfully resolved issues and lessons learned, enabling BOEM to assess and facilitate the improvement and evolution of the OCS renewable energy industry and the CVA program. Adding this provision to the CVA report also would codify a standard industry practice.

§ 585.713 [Reserved]

Section 585.713 in the existing regulations is entitled ''What must I do after the CVA or project engineer confirms conformance with the Fabrication and Installation Report on my commercial lease?'' Under this section in the existing regulations a lessee must notify BOEM within 10-business days of commencing commercial operations. For clarity and better organization, BOEM proposes moving that requirement from § 585.713 in the existing regulations to § 585.637 in the proposed rule to consolidate this provision with the other requirements in § 585.637 related to the commencement of commercial operations. As that was the sole provision under § 585.713, this section title would be deleted and the section would be reserved for future use.

§ 585.714 What records relating to FDRs, FIRs, and Project Modification and Repair Reports must I keep?

BOEM proposes adding a requirement that the records of the commissioning of critical safety systems must also be kept and made available to BOEM representatives until BOEM releases the lessee from its financial assurance. The proposed rule would also require the lessee to provide BOEM with the location of the records of the commissioning of its critical safety systems. This revision would help ensure the availability of proper records prior to release of the financial assurance.

BOEM proposes a technical correction to this section to clarify that the recordkeeping requirements apply to the design, engineering, and modification and repair reports regulated in this subpart. Reference to recordkeeping requirements for SAPs, COPs, and GAPs are removed because they are addressed in the existing and proposed § 585.602. BOEM also proposes to add records of commissioning of critical safety systems to the list of records to reflect changes proposed elsewhere.

I. 30 CFR Part 585, Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs

Subpart H, Environmental and Safety Management, Inspections, and Facility Assessment for Activities Conducted Under SAPs, COPs, and GAPs, is being redesignated as subpart I to accommodate the addition of a new subpart B, as noted in section VI.B above.

§ 585.803 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?

The proposed rule would correct a typographical error in paragraph (b).

Safety Management Systems

§ 585.810 When must I submit a Safety Management System (SMS) and what must I include in my SMS?

The existing § 585.810 broadly outlines the elements that must be described in the SMS. BOEM is proposing changes that would provide greater detail regarding what the SMS must include without changing the substantive requirements. The complexity of the SMS would be dependent on the complexity of the underlying activities that it covers and proportionate to the scope of the activity being evaluated.

As discussed in section V.H above, entitled ''Safety Management Systems,'' two factors prompted these proposed changes. First, the offshore wind energy industry repeatedly has requested additional detail regarding BOEM's expectations of what must be included in the SMS. Second, in coordination with OSHA and USCG, DOI has assumed primary Federal regulatory responsibility for worker safety on OCS renewable energy facilities. Both of these factors highlight the need for BOEM to elaborate on its expectations for what must be included in the SMS. The proposed rule would provide such elaboration.

The proposed rule would require a lessee to use an SMS for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide its SMS to BOEM upon request. The lessee would also be required to submit a detailed description of the SMS with its COP (as provided under § 585.627(d)), SAP (as provided in § 585.614(b)), or GAP (as provided in § 585.651). This addition clarifies that a structured approach to safety is both expected and required for all lease-associated work. This structured approach should take into account the risks to personnel and the environment associated with work undertaken on the OCS. The SMS is intended to increase awareness and communication of those risks, mitigate those risks, and implement a disciplined organizational approach for ensuring effective risk mitigation. The proposed regulation provides a more robust framework for the SMS submission to provide clarification of BOEM's expectations, facilitate compliance review, and to ensure the submitted SMS addresses critical subjects such as the safety of personnel, remote monitoring, control and shut down capabilities, emergency response procedures, fire suppression equipment, testing of the SMS, and proper personnel training.

The SMS is required to cover only those activities that are to take place on the OCS at any given time, from met buoy placement and site assessment work through decommissioning. Each SMS needs to be only as complex as the activities with which it is associated. Should incidents occur, investigations can focus on the role and success of the SMS with the purpose of guiding continual improvement. The requirement to have an SMS in place before placement of a met buoy or engaging in site assessment activities may create a small additional burden. However, BOEM's obligations under the OCS Lands Act to provide for personnel safety and protection of the environment justify the inclusion of such a requirement.

§ 585.811 Am I required to obtain a certification of my SMS?

The proposed rule would add a new § 585.811 stating that third-party SMS certification may be obtained from accredited safety and environmental CABs. Such certification would possibly benefit a lessee or a grant holder through reduced frequency or scope of BOEM's safety inspections and oversight of corrective actions arising from lessee or grant holder self-inspections. As discussed in section V.H. above, entitled ''Safety Management Systems,'' BOEM could rely on such third-party certifications for assurance of SMS compliance in lieu of direct inspection on the part of BOEM. Additionally, BOEM believes that a CAB's use of a consensus safety standard—such as ANSI Z10 or ISO/IEC 45001—would allow the incorporation of the most current safety approaches in a rapidly evolving industry without the need for additional rulemaking.

§ 585.812 How must I implement my SMS?

BOEM proposes to revise the section heading to reflect its expanded scope, to eliminate the word ''fully'' from the current ''fully functional'' requirement, to add the phrase ''and must remain functional while you perform'', and to abbreviate ''Safety Management Systems'' as ''SMS'' to improve readability. The proposed rule also would redesignate the existing regulatory text as paragraph (a) and modify it to be consistent with the clarifications in proposed § 585.810.

The proposed rule would also add a new paragraph (b) containing two reporting requirements. The first proposed report would be an annual summary of safety performance data due March 31 covering the previous calendar year during which site assessment, construction, operations, or decommissioning activities occurred, using a form available on the BOEM website.[95] That form is similar to the one currently required in BSEE's OCS oil, gas, and sulfur regulations. The second proposed report would be a summary of the most recent SMS audit, corrective actions implemented or pending as a result of that audit, and an updated SMS description highlighting changes made since the last report. This report would be due every 3 years or upon BOEM's request.

The proposed revisions to this section would allow DOI and relevant stakeholders to measure the success of the SMS approach to ensure safety. It also would provide credible data for comparisons of an individual project's safety performance to that of the overall OCS renewable energy industry.

Equipment Failure and Adverse Environmental Effects

§ 585.815 What must I do if I have facility damage or an equipment failure?

The proposed rule would correct an erroneous cross-reference in paragraph (a) and would make other minor edits to enhance readability.

Inspections and Assessments

§ 585.820 Will BOEM conduct inspections?

The proposed rule would update the regulations so that BOEM's conduct of an inspection of any OCS facilities and vessels engaged in activities under this subpart is optional, to complement changes being proposed to the industry self-inspection requirements under § 585.824. The proposed rule would clarify that during the inspections BOEM would verify that activities are conducted in compliance with the OCS Lands Act; the regulations in this part; the terms, conditions, and stipulations of the lease or grant; approved plans; and other applicable laws and regulations. BOEM would also determine whether proper safety equipment has been installed and is operating properly according to the

[95] The proposed form is posted to this proposed rule's docket at *https://www.regulations.gov/docket?D=BOEM-2020-0033.* To access the form as part of the information collection review, *see infra* note 94.

SMS, as required in § 585.810. These revisions would provide clarity and transparency to the BOEM inspections process.

§ 585.821 Will BOEM conduct scheduled and unscheduled inspections?

The proposed rule would clarify that BOEM may conduct both scheduled and unscheduled inspections. This revision would provide greater flexibility for how BOEM conducts inspections.

§ 585.822 What must I do when BOEM conducts an inspection?

BOEM proposes a technical correction to clarify that, for BOEM inspections, access for BOEM inspectors must be provided to all facilities and vessels used for activities authorized under this subpart. The proposed rule would also require that certain records be retained until BOEM releases the associated financial assurance and that the lessee make these records available to BOEM upon request. This revision would help ensure the availability of proper documentation during inspection.

§ 585.824 How must I conduct self-inspections?

The proposed rule would require that you conduct an onsite inspection of each of your facilities at least once a year. This revision would allow BOEM to have flexibility in conducting the annual onsite inspection required under the OCS Lands Act by allowing BOEM to rely upon the lessee's self-inspection to fulfill this requirement in the event BOEM does not inspect a particular facility in a given year. The proposed rule provides that the inspection must include, but is not limited to, all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents. The proposed rule would also require that the lessee maintain records of the facility inspections, summarize the results of those inspections, and provide the records and result summaries to BOEM upon request.

Incident Reporting and Investigation

§ 585.830 What are my incident reporting requirements?

The proposed rule would correct an erroneous cross-reference in paragraph (d) to provide the appropriate BSEE regulatory citation for reporting oil spills.

J. 30 CFR Part 585, Subpart J—Decommissioning

Subpart I, Decommissioning, is being redesignated as subpart J to accommodate the addition of a new subpart B, as noted in section VI.B above.

Decommissioning Obligations and Requirements

§ 585.900 Who must meet the decommissioning obligations in this subpart?

Proposed subpart J contains requirements for decommissioning all facilities and obstructions on a lease, RUE, or ROW issued under BOEM's renewable energy regulations. BOEM proposes to add a new paragraph (c) establishing a limited exception to its proposed subpart J requirements for facilities that are approved by, and subject to the decommissioning requirements of, another Federal authority. This proposed amendment is primarily intended to cover met buoys that would no longer require a SAP under proposed § 585.600. Such buoys would be subject to the site clearance requirements in USACE's NWP 5 and may be subject to financial assurance requirements, prior to deployment, at the discretion of USACE. The USACE permit requires that met buoys that are no longer in use are removed within 30 days. Noncompliance with the site clearance requirements would be dealt with in accordance USACE regulations at 33 CFR part 326, which provide for administrative penalties and/or legal actions in conjunction with the appropriate U.S. Attorney's Office.

BOEM believes that the USACE procedures for met buoys are an adequate substitute for any requirements that BOEM would have otherwise imposed under this subpart.[96] However, in the event that USACE did not require the removal of a met buoy deployed under a BOEM lease, BOEM would exercise its authority to enforce the decommissioning requirements in proposed subpart J and its enforcement options for noncompliance by lessees in proposed subpart E.[97]

§ 585.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?

The proposed rule would allow BOEM to order decommissioning of facilities earlier than 2 years following lease termination if the facilities are no longer useful for operations. This mirrors the corresponding ''idle iron'' authority found in the OCS oil and gas regulations at 30 CFR 250.1703 and described for those purposes in NTL No. 2018–G03. Idle facilities pose potential threats to the OCS environment and potential financial liabilities if destroyed or damaged in a future event, such as a hurricane. The cost and time to remove damaged facilities are significantly higher than decommissioning undamaged facilities. These increased costs have potential ramifications on financial assurance requirements and may impact the future financial viability of a lessee or operator.

BOEM is soliciting comments on the meaning of the term ''no longer useful for operations'' and whether this is the best or most appropriate standard for BOEM to use to describe facilities that should be required to be decommissioned.

Decommissioning Applications

§ 585.905 When must I submit my decommissioning application?

BOEM proposes to add paragraph (e) to address the timing of applications pursuant to the proposed ''idle iron'' authority under § 585.902.

K. 30 CFR Part 585, Subpart K—Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities

Subpart J, Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities, is being redesignated as subpart K to accommodate the addition of a new subpart B, as noted in section VI.B above. BOEM proposes technical corrections to hyphenate ''rights-of-use'' in the proposed subpart K heading.

Requesting an Alternate Use RUE

§ 585.1005 How do I request an Alternate Use RUE?

The proposed rule would clarify the information requirements for an alternate use RUE and would broaden the alternate use RUE specifications to clarify that any OCS facility could be converted to an alternate use RUE. In contrast, the existing regulations were written in such a manner as to make the

[96] USACE procedures are described in detail in the Permit 10 requirements contained in the final rule ''Issuance and Reissuance of Nationwide Permits'' (82 FR 4, Jan. 6, 2017), available at the following URL: *https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Permitting/Nationwide/NWP10TX.pdf*.

[97] This proposed rule also would allow FERC to substitute its own decommissioning obligations for marine hydrokinetic projects that it has licensed. Such projects would be sited on leases issued by BOEM, which would retain the authority to require supplemental financial assurance under 30 CFR 585.516(c).

provisions of this section applicable only to existing oil and gas facilities.

Decommissioning an Alternate Use RUE

§ 585.1018 Who is responsible for decommissioning an OCS facility located on an Alternate Use RUE?

The proposed rule would correct an outdated cross-reference in paragraph (b).

VII. Procedural Matters

A. Statutes

1. National Environmental Policy Act of 1969

BOEM has concluded that this rule as proposed falls under categorical exclusions established by DOI and BOEM, does not constitute a major Federal action significantly affecting the quality of the human environment, and does not require preparation of an environmental impact statement. Most provisions of this proposed rule fall under a DOI categorical exclusion for ''regulations . . . that are of an administrative, financial, legal, technical, or procedural nature[.]'' [98] Moreover, the entirety of the proposed rule fits into the BOEM categorical exclusion for ''[i]ssuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators . . . for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal.'' [99] BOEM has determined that the proposed rule does not trigger any of the extraordinary circumstances that would require analysis under NEPA.[100] A final decision on the level of NEPA analysis required will be made at the final rule stage.

2. Paperwork Reduction Act of 1995

This proposed rule references existing and new information collections for regulations at 30 CFR part 585. Submission to OMB for review under the Paperwork Reduction Act of 1995 [101] is required. Therefore, BOEM will submit an IC request to OMB for review and approval and will request a new OMB control number, designated in this discussion as ''1010–NEW.'' Once the 1010–AE04 final rule is effective, BOEM will transfer the hour burden and non-hour costs burden from 1010–NEW to OMB Control Number 1010–0176, which expires March 31, 2023, then discontinue the new number associated with this rulemaking. BOEM may neither conduct nor sponsor, nor are you required to respond to, an information collection unless it displays a currently valid OMB control number. The proposed regulations would establish revise current requirements and establish new requirements in 30 CFR part 585. The proposed rule would increase annual burden hours by 588 and number of responses by 7; the non-hour costs would remain unchanged. The following table and narrative provides a breakdown of the paperwork hour burdens for this proposed rule. As discussed in the section-by-section analysis above and in the supporting statement available at *Reginfo.gov*, this rule proposes to add or revise the following:

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Burden changes and/or additions
Subpart B—The Renewable Energy Leasing Schedule		
150	This section references the leasing schedule published by the Secretary	New Subpart B added. No new annual burden hours.
Subpart C—Issuance of OCS Renewable Energy Leases		
231(b)	Submit comments in response to **Federal Register** notice re interest of unsolicited request for a lease.	Not considered IC as defined in 5 CFR 1320.3(h)(4). Therefore, the burden will be 0 (−16 annual burden hours and −4 responses from approved OMB control number).
Subpart E—Lease and Grant Administration		
413	Submit merger application, negotiate with BOEM any inconsistencies on terms and conditions.	10 hour burdens × 1 request = 10 annual burden hours.
Subpart F—Payments and Financial Assurance Requirements		
506(c)(4)	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease—use same form as authorized by the Department of Energy U.S. Energy Information Administration (EIA). (OMB Control Number 1905–0129 covers burden to gather info and fill out form. BOEM's burden is for submitting a copy.).	.5 hour burden × 2 submissions = 1 annual burden hour.
Subpart G—Plans and Information Requirements		
600(a); 601(a), (b); 605 thru 614; 238; 810.	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of SAP, including required information to assist BOEM to comply with NEPA/Coastal Zone Management Act (CZMA) such as hazard info, air quality, SMS, and all required information, certifications, requests, etc., in format specified.	−240 annual burden hours (−240 burden hours and −1 SAP from approved OMB control number).
615(b)	Submit annual report summarizing compliance from site assessment activities	−60 annual burden hours (−60 burden hours and −2 reports from approved OMB control number).

[98] 43 CFR 46.210(i).

[99] Dep't of the Interior, Departmental Manual part 516, section 15.4C(1) (2004).

[100] See 43 CFR 46.215.

[101] 44 U.S.C. 3501 *et seq.*

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement [1]	Burden changes and/or additions
Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs		
810; 614; 627; 632(b); 651.	*Use a Safety Management System for all activities conducted pursuant to a lease and make available to BOEM upon request.* Submit safety management system description with a COP, or with a SAP or GAP, if facilities being installed are deemed by BOEM to be complex or significant.	35 hour burdens × 2 submissions = 70 annual burden hours.
812(b)(i), Form BOEM–NEW.	Submit safety and environmental performance data (Form BOEM–NEW, Performance Data Measures).	82 hour burdens × 10 submissions = 820 annual burden hours.
812(b)(ii)	Provide report summary on SMS audit, corrective actions, and changes to SMS	5 annual burdens hours added to existing OMB approval (no additional responses).
830(d)	Report oil spills as required by *BSEE 30 CFR 250.187*	Burden covered under BSEE 1014–0007. (−2 annual burden hours and −1 report).
Total Burden	7 Responses	588 Hours.

Subpart B. The proposed rule would add a new subpart B for the renewable energy leasing schedule published by the Secretary of the Interior. BOEM estimates no burdens for this subpart.

Subpart C. Section 585.216(c) relates to eligibility for bidding credits as set forth in the FSN before the lease auction takes place. Bidders must establish that they are eligible for each bidding credit that they seek. BOEM proposes to keep the annual burden hours the same as in the 2020 approved OMB Control Number 1010–0176 (2020 approval) but would attribute the hours to the requirements of the bidding credit eligibility criteria.

Section 585.231(b) relates to requests for competitive interest during the noncompetitive leasing process. Requests for competitive interest do not constitute an information collection under the PRA implementing regulations at 5 CFR 1320.3(h)(4). Therefore, BOEM proposes removing 16 annual burden hours from § 585.231(b).

Subpart E. Proposed § 585.413 would align the regulations with the existing practice allowing lease and grant consolidation. BOEM proposes to add 10 annual burden hours to the 2020 approval attributable to § 585.413 to account for submission of applications to consolidate all or part of two or more adjacent leases or grants by the same lessee or grant holder into one new lease or grant, and to negotiate with BOEM on inconsistencies in terms and conditions.

Subpart F. BOEM previously did not account for burden hours relating to § 585.506(c)(4) because the required reporting of gross annual electrical production by a generating facility uses a DOE form under OMB Control Number 1905–0129. However, BOEM would like to receive this form already completed for DOE. BOEM proposes to add one annual burden hour to § 585.506(c)(4).

Subpart G. Proposed § 585.600(a) would significantly revise the requirement for SAPs. Under the proposed rule, a SAP would be required only when site assessment activities involve an engineered foundation. BOEM would not require a SAP for floating site assessment facilities, such as met buoys. BOEM also would have the discretion to waive certain information requirements in a proposed plan, which could add flexibility to the permit application process. BOEM proposes to remove 240 annual burden hours from § 585.600(a).

Existing and proposed § 585.615(b) relates to other reports or notices that must be submitted periodically under an approved SAP. With the narrowing of the SAP requirement to site assessment activities involving an engineered foundation, BOEM estimates fewer reports or notices would be filed under this section. BOEM proposes to remove 60 annual burden hours from § 585.615(b).

The proposed rule would allow the deferral of detailed geotechnical survey reporting from COP submission under the existing § 585.626(b) to FDR submission under the proposed § 585.701(a). This change would not increase annual burden hours, though it likely would change the allocation of existing burden hours between §§ 585.626(b) and 585.701(a). BOEM welcomes input regarding the appropriate reallocation of geotechnical survey reporting hours.

Subpart H. Proposed § 585.700(b) would allow separate FDRs and FIRs for major project components if an explanation is included in the reports describing how the systems comprising the project will function together effectively in an integrated manner in accordance with the project design basis. BOEM welcomes input regarding the number of annual burden hours necessary to complete this integration statement if separate FDRs and FIRs for major components are submitted. Proposed § 585.704 would allow BOEM 20-calendar days to deem the FDR and/or FIR submitted prior to commencing the 60-calendar day review time. Proposed § 585.704 would also allow BOEM 20-calendar days to deem the project verification reports submitted prior to commencing the 30-calendar day review time. This would allow BOEM 20-calendar days to ensure completeness, identify deficiencies, and would provide BOEM with the ability to ask for clarifications in order to meet the 60-calendar day review time for FDRs and/or FIRs or the 30-calendar-day review time for project verification reports. Once BOEM has made the determination that an FDR and/or FIR or project verification report is deemed submitted, the previous 60- or 30-day review times specified in the current regulations would continue to remain in effect.

Subpart I. Proposed § 585.810 clarifies that an SMS is required to conduct activities pursuant to a lease, from met buoy placement and site assessment work through decommissioning. While a description of the SMS is required to be submitted for review by BOEM with a COP, and for review of a SAP or GAP if the facilities being installed are deemed by BOEM to be complex or significant, this addition makes it clear that a structured approach to safety is both expected and required for all lease-associated work. BOEM proposes to add –70 annual burden hours to the 2020 approval.

Proposed § 585.812(b)(i) and (ii) would add new reporting requirements. Proposed § 585.812(b)(i) would require

an annual summary of safety performance data covering the previous calendar year during which site assessment, construction, operations, or decommissioning activities occurred by submitting form BOEM–NEW, Performance Data Measures—Renewable Energy.[102] This form would include company identification and number of injuries, illnesses, and hours worked by company employees and contractors. This information would be used to develop incident rates that would help assess workplace safety and environmental compliance across the OCS renewable energy industry. Incident rates would enable benchmarking of individual projects against industry-wide performance to facilitate needed improvement. Also, these rates would allow BOEM and BSEE to better focus their regulatory and research programs by highlighting areas below expected safety performance. BOEM proposes to add 820 annual burden hours to § 585.812(b)(i).

Proposed § 585.812(b)(ii) would require a summary of the most recent SMS audit, corrective actions implemented or pending because of that audit, and an updated SMS description highlighting changes made since the last report. This report would be due every 3 years or upon BOEM's request. BOEM proposes to add 75 annual burden hours to § 585.812(b)(ii).

For § 585.830(d), BOEM is proposing to remove two burden hours since the burdens for reporting oil spills falls under OMB Control Number 1014–0007.

Title of Collection: Renewable Energy Modernization (Notice of Proposed Rulemaking).

OMB Control Number: 1010–NEW.

Form Numbers:

- BOEM–NEW, Performance Data Measures—Renewable Energy.

Type of Review: New.

Respondents/Affected Public: Respondents primarily would be private sector companies interested in developing or operating OCS renewable energy leases and grants; affected State, local, and tribal governments; and other companies that submit information regarding OCS renewable energy projects.

Total Estimated Number of Annual Responses: 7 responses.

Total Estimated Number of Annual Burden Hours: 588 hours.

Respondent's Obligations: Responses to information collections under this part would be mandatory to obtain, or retain, an OCS renewable energy lease or grant.

Frequency of Collection: The frequency of collection would vary depending upon BOEM's decisions to issue OCS leases or grants for renewable energy development, a company's decision to seek a lease or grant, and the manner in which the lessee or grant holder elects to develop its lease or grant.

Total Estimated Annual Non-Hour Burden Cost: No non-hour costs.

If this proposed rule becomes effective and OMB approves the information collection request 1010–NEW, BOEM would revise the existing OMB Control Number 1010–0176 for the affected subparts discussed above and would adjust the annual burden hours accordingly. The information collections related to 30 CFR part 585 do not include questions of a sensitive nature. BOEM will continue to protect proprietary information according to FOIA and DOI's implementing regulations, which address disclosure of information to the public.[103]

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. BOEM solicits your comments regarding non-hour cost burdens arising from this proposed rule. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component, and (2) annual operation, maintenance, and disclosure cost component to provide the information. You should describe the methods you use to estimate your cost components, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the information collection arising from this proposed rule; (3) for reasons other than to provide information or to keep records for the U.S. Government; or (4) as part of customary and usual business or private practices.

As part of BOEM's continuing effort to reduce paperwork and respondent burdens, BOEM invites the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Is the proposed information collection necessary or useful for BOEM to properly perform its functions?

(2) Are the estimated annual burden hour increases and decreases resulting from the proposed rule reasonable?

(3) Is the estimated annual non-hour cost burden resulting from this information collection reasonable?

(4) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(5) Is there a way to minimize the information collection burden on those who must respond, such as by using appropriate automated digital, electronic, mechanical, or other forms of information technology?

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare and to provide a regulatory flexibility impact analysis when a regulation will have a significant economic impact on a substantial number of small entities and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities.[104]

When an agency issues a notice of proposed rulemaking, the RFA requires the agency to ''describe the impact of the proposed rule on small entities'' in its initial regulatory flexibility impact analysis.[105] The RFA does not require a regulatory flexibility impact analysis when an agency certifies that the proposed rule will not impose a significant economic impact on a substantial number of small entities.[106]

(a) Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

This proposed rule would directly affect all current and future OCS renewable energy developers.[107]

Renewable energy companies operating on the OCS are generally organized under North American Industry Classification System (NAICS) code 221115 Wind Electric Power Generation in Sector 22 (Utilities). The size standard for determining a small business in this category is 250 employees or fewer. OCS renewable energy companies may be financially

[102] To see a copy of the proposed form, go to *https://www.reginfo.gov,* select ''Information Collection Review,'' and, in the ''Currently under Review'' heading, select Department of the Interior, find OMB Control Number 1010–NEW, click on the ICR Reference Number, and click on ''View Supporting Statement and Other Documents;'' or you may obtain a copy of the proposed form from BOEM's Information Collection Clearance Officer, whose mailing address and email may be found in the **ADDRESSES** section of the preamble. The proposed form also is available through this proposed rule's docket at *https://www.regulations.gov/docket?D=BOEM-2020-0033.*

[103] See 43 CFR part 2 and 30 CFR 585.113.

[104] See 5 U.S.C. 601–612.

[105] 5 U.S.C. 603(a).

[106] 5 U.S.C. 605(b).

[107] *See supra* note 1 for discussion of developers.

supported by investment fund portfolios. The revenue threshold for determining a small Portfolio Management company, NAICS code 523940, is $41.5 million.

The Small Business Administration's (SBA) Office of Advocacy provides guidelines for complying with the RFA. The SBA's best practice for understanding impacts to small businesses is to conduct analysis at the firm level. In the case of OCS renewable energy, the 28 active commercial OCS renewable energy leases are held by 10 lessees. All these lessees are subsidiaries of large parent companies or are majority-owned by portfolio management companies; none fit the definition of a small firm or business. To date, companies that have submitted bids in BOEM auctions are either large firms or partners with large firms in joint ventures.

Developing and operating OCS wind sites requires significant upfront capital typical of large firms or investment portfolios. Pilot-scale commercial projects cost hundreds of millions of dollars to install and operate, and utility-scale projects cost multiple billions of dollars. As a result, it is unlikely that small entities will be constructing or operating wind facilities on the OCS in the foreseeable future.

The reduction in developmental and operational costs resulting from this proposed rule would be available to all companies developing and operating OCS renewable energy facilities, whether large or small. Therefore, BOEM has determined that the proposed rule likely does not have a significant adverse economic impact on a substantial number of small entities.

Nonetheless, BOEM has prepared an initial regulatory impact analysis (IRIA) to quantify the cost savings arising from this proposed rule and solicit public comment.[108]

BOEM does not consider the potential impacts from this rule on small fishing businesses or small coastal communities in the IRIA, as they are not the regulated entity. BOEM does not anticipate that this proposed regulation would have any positive or negative impacts to these communities above those outlined in the baseline scenario. However, BOEM requests that if small fishing industries businesses or small coastal communities believe they are impacted as a result of this proposed rule, they submit comments during the comment period.

(b) Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The proposed rule would add modest reporting, recordkeeping, and other compliance requirements. Specifically, proposed § 585.812 would require annual reporting of safety related information once an OCS renewable energy project begins construction and triennial reporting of safety audits and corrective actions. The information collection burden of these reports is analyzed in section VII.A.2.

(c) Identification of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

The proposed rule would neither conflict, duplicate, nor overlap with any relevant Federal rules. Indeed, it would eliminate duplication with USACE permitting requirements.

(d) Description of Significant Alternatives to the Proposed Rule

The regulatory alternatives are discussed in the accompanying IRIA.

4. Small Business Regulatory Enforcement Fairness Act

BOEM anticipates the proposed rule would have neither significant employment nor small business impacts; nor cause major price increases for consumers, businesses, or governments; nor significantly degrade competition, employment, investment, productivity, innovation, or the ability of U.S. businesses to compete against foreign businesses. It is estimated to have an annual economic effect of $100 million or more [109] and, therefore, this proposed rule is a major rule under the Small Business Regulatory Enforcement Fairness Act.[110] This rule seeks to enhance U.S. energy independence by reducing unnecessary regulatory costs and uncertainty within the OCS renewable energy industry while ensuring safety and appropriate environmental analyses and mitigations and providing fair return to the U.S. taxpayer.

5. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate on State, local, or tribal Governments, nor would it have a significant or unique effect on State, local, or tribal Governments. Thus, the proposed rule would not have disproportionate budgetary effects on these governments. BOEM also has determined that this proposed rule would not impose costs on the private sector of more than $182 million in a single year.[111] Therefore, the proposed rule does not trigger the requirement to prepare a written statement under this act.[112]

6. Congressional Review Act

Pursuant to the Congressional Review Act [113] and OMB guidance,[114] the Office of Information and Regulatory Affairs (OIRA) must decide whether this rule is a major rule as defined by that act.[115] Given its economic implications, OMB has determined that this rule is significant and major. The rule has also been designated by OMB as a significant rulemaking.

B. Executive Orders

1. Executive Order 12630—Takings Implication Assessment

Under E.O. 12630 section 2(a)(1) criteria, this proposed rule would not have takings implications. This proposed rulemaking is a Federal action that would not interfere with constitutionally protected private property rights. To the extent OCS renewable energy lessees and grant holders possess private property rights under the terms of BOEM leases, this proposed rulemaking is not expected to reduce the value of those rights. A takings implication assessment is not required.

2. Executive Order 12866—Regulatory Planning and Review; and Executive Order 13563—Improving Regulation and Regulatory Review

OIRA has determined that this proposed rule is a ''significant regulatory action'' under E.O. 12866 section 3(f). BOEM has prepared an IRIA that estimates a $1 billion net benefit (7 percent discounting) over a 20-year period resulting from the compliance cost savings realized by the OCS renewable energy industry.

This proposed rule would reform, streamline, reorganize, update, and clarify existing regulations. As economic impact is realized in cost savings by developers, it is not expected to have an adverse, material effect on the economy, an economic sector,

[108] The IRIA is posted to this proposed rule's docket at *https://www.regulations.gov/docket?D=BOEM-2020-0033*.

[109] *See infra* section VII.B.2 discussion of E.O. 12866 and E.O. 13563.

[110] *See* 5 U.S.C. 804(2).

[111] The private-sector cost threshold established in UMRA in 1996 was $100 million. After adjusting for inflation, the 2022 private-sector threshold is $182 million.

[112] See 2 U.S.C. 1532.

[113] 5 U.S.C. 801 *et seq*.

[114] Office of Mgmt. & Budget, Exec. Office of the President, OMB M–19–14, Guidance on Compliance With the Congressional Review Act (2019).

[115] 5 U.S.C. 804(2).

productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule would not create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency. This proposed rule would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. OIRA has also determined that this proposed rule is significant under E.O. 12866. This proposed rule is promulgated under the authority granted to the Secretary in the OCS Lands Act to authorize and regulate OCS renewable energy activities.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for systemic regulatory improvements to promote predictability, reduce uncertainty, and leverage the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens, promote flexibility, and maintain the public's freedom of choice when these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes that the best available science must inform and guide new regulations and that an open exchange of ideas benefits the rulemaking process. BOEM has developed this proposed rule in a manner consistent with these requirements. E.O. 13563 also calls for additional consideration of the regulatory impact on employment. The proposed rule is not expected to impact employment within the OCS renewable energy and associated industries in any material way.

The proposed rule includes changes across the renewable energy regulatory framework. While these proposed changes are important for reforming, streamlining, and clarifying the regulatory requirements, BOEM was unable to quantify the impact of all the proposed changes. Those deregulatory changes, including revisions to CVA requirements, are analyzed qualitatively. Minor additional compliance costs are estimated for SMS reporting.

The proposed changes would allow greater flexibility in using decommissioning accounts. BOEM's existing regulations require full funding of a decommissioning account before each OCS renewable energy facility (*i.e.,* wind turbine) is constructed. The proposed change to § 585.529 would allow incremental funding of a decommissioning account under a BOEM-approved schedule during the operations period. This would reduce a project's upfront capital costs, would enable a lessee or a grant holder to invest available capital in planning and construction (rather than tying up excessive capital for decommissioning costs that will occur no less than 20–30 years in the future), and would result in savings through the time value of money concept.

For site assessment activities, the proposed rule would remove met buoys—used primarily to collect energy resource, oceanographic, meteorological, and other environmental data to assess OCS areas for renewable energy development—from the reach of BOEM's regulations requiring submission of a SAP (§§ 585.600 through 585.618).[116] Currently, both BOEM and USACE regulate met buoys. BOEM proposes to eliminate its permitting requirements for met buoys because they are unnecessarily burdensome and duplicative of USACE's NWP 5 permitting. BOEM estimates that this regulatory change would enable significantly cheaper and quicker deployment of met buoys because a SAP and BOEM approval would be no longer necessary. Instead, a USACE NWP 5 permit would be the only Federal approval necessary to deploy a met buoy. BOEM believes that the USACE permitting process adequately ensures met buoys are deployed in a safe and an environmentally responsible manner.

The proposed rule also addresses geotechnical surveys, which are required before COP submittal by § 585.626. BOEM proposes to defer certain detailed geotechnical survey requirements from COP submittal to the FDR and FIR submittals, which occur subsequent to COP approval. This change would give a lessee or a grant holder more time to complete the surveys and would reduce upfront financial costs. BOEM recognizes that the current timing of geotechnical survey requirements is premature and limits flexibility. This proposed deferral would provide time value of money savings to a lessee or a grant holder, who also would benefit from more flexibility.

Existing regulations also require geotechnical core analysis for each renewable energy facility foundation. The proposed rule would allow a lessee or a grant holder—subject to BOEM approval—to provide data from fewer than all facility foundation locations if they can demonstrate that the project area consists of generally uniform, predictable geophysical characteristics. This would allow a lessee and a grant holder to potentially realize cost savings by reducing the number of geotechnical investigations. For this analysis, BOEM estimated a 10 percent reduction in the number of geotechnical investigations needed.

The tables below summarize BOEM's estimated 20-year compliance cost savings for the proposed changes related to decommissioning accounts, met buoys, and geotechnical surveys. The IRIA contains additional information on assumptions, compliance costs, savings, and benefits.[117]

TABLE—20-YEAR (2023–2042) NET PRESENT VALUE BY AFFECTED CATEGORY OF REGULATORY CHANGE

[Millions]

Proposed revisions	Discounted at 3%	Discounted at 7%
Decommissioning Accounting Changes	−$1,248.5	−$905.3
Meteorological Buoy Streamlining	−16.3	−11.6
Geotechnical Regulatory Revisions	−121.6	−88.2
Safety Management System Reporting	5.3	3.5
Total	−1,381	−1.001.5

[116] The proposed rule would eliminate BOEM's approval requirement for met buoys deployed both on and off a commercial lease. The proposed change to off-lease met buoy deployment is not analyzed quantifiably because historical activity is lacking.

[117] *See supra* note 100 for location of IRIA.

TABLE—20-YEAR ANNUALIZED COST SAVINGS BY REGULATORY PROVISION CATEGORY

[Millions]

Proposed revisions	Discounted at 3%	Discounted at 7%
Decommissioning Accounting Changes	−$83.9	−$85.4
Meteorological Buoy Streamlining	−1.1	−1.1
Geotechnical Regulatory Revisions	−8.2	−8.3
Safety Management System Reporting	0.35	0.33
Total	−92.8	−94.5

3. Executive Order 12988—Civil Justice Reform

This proposed rule complies with E.O. 12988 sections 3(a) and (b)(2) requirements. This rule was reviewed to eliminate technical errors and ambiguity, simplify the existing regulatory framework, minimize litigation, and provide clear legal standards.

4. Executive Order 13132—Federalism

This proposed rule would not have sufficient federalism implications to warrant a summary impact statement under E.O. 13132 section 1(a) because it neither imposes direct compliance costs on States; nor does it preempt State law; nor does it have substantial direct effects on the States, nor on the relationship between the Federal and State Governments, nor on the distribution of power and responsibilities between various governmental levels in the United States. Thus, a federalism impact statement is unnecessary.

5. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

BOEM strives to strengthen its government-to-government relationship with American Indian and Alaska Native tribes through a commitment to consultation with federally recognized tribes (Tribes) and recognition of their right to self-governance and tribal sovereignty. BOEM also is respectful of its responsibilities for consultation with ANCSA corporations. BOEM has evaluated this proposed rule under DOI's consultation policy,[118] BOEM's tribal consultation guidance,[119] and the criteria in E.O. 13175. BOEM does not believe that this proposed rule itself would have substantial direct effects on Tribes or ANCSA corporations and, hence, has concluded that consultation under the DOI and BOEM tribal consultation policies is not required.

BOEM reached this determination in part because the requirements of this proposed rule are, in sum, administrative, technical, procedural, or interpretive in nature and they would not themselves have foreseeable particular, substantial direct impacts on tribal resources. That does not mean that future actions under the rule will not have tribal implications requiring consultation. BOEM will review future actions carefully and will invite Tribes and ANCSA Corporations to consult when any such future actions may have a substantial direct effect on them. BOEM will also continue outreach to strengthen collaboration with Tribes and ANCSA corporations that have expressed an interest in or concern about renewable energy activities on the OCS and their impacts.

6. Executive Order 13211—Effects on the Nation's Energy Supply

Under E.O. 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for ''significant energy actions.'' This proposed rule does not add new regulatory compliance requirements that would lead to adverse effects on the nation's energy supply, distribution, or use. Rather, the regulatory changes would help reduce compliance burdens on the OCS renewable energy industry that may hinder the continued development or use of domestically produced energy resources. Reduced regulatory burdens do not adversely affect productivity, competition, or prices within the energy sector. This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

7. Presidential Memorandum of June 1, 1998, on Regulation Clarity

Under the criteria in Presidential Memorandum of June 1, 1998, this proposed rule is logically organized into easily read, short sections using both sentences that are clearly written in the active voice and common words rather than jargon. If you believe this proposed rule fails these requirements, please send specific comments to BOEM by one of the methods listed in the **ADDRESSES** section.

[118] Dep't of the Interior, Departmental Manual part 512, chapters 4 through 5 (2015).

[119] Memorandum from William Y. Brown, Chief Environmental Officer, Bureau of Ocean Energy Mgmt., to Bureau Program Chiefs and Regional Directors (June 29, 2018), *available at https://www.boem.gov/BOEM-Tribal-Consultation-Guidance/*.

List of Subjects in 30 CFR Part 585

Administrative practice and procedure, Assessment plans, Coastal zone, Compliance, Continental shelf, Electric power, Energy, Environmental protection, Government leases, Intergovernmental relations, Marine resources, Natural resources, Ocean resources, Offshore energy, Offshore structures, Outer continental shelf, Payments, Planning, Power resources, Renewable energy, Reporting and recordkeeping requirements, Revenue sharing, Rights-of-way, Rights-of-use-and-easement, Wind energy.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary Land and Minerals Management.

For the reasons discussed in the preamble, the Bureau of Ocean Energy Management proposes to amend 30 CFR part 585 as follows:

PART 585—RENEWABLE ENERGY AND ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 585 is revised to read as follows:

Authority: 43 U.S.C. 1337(p).

Subpart A—General Provisions

■ 2. Amend § 585.102 by revising paragraph (a) introductory text to read as follows:

§ 585.102 What are BOEM's responsibilities under this part?

(a) BOEM will ensure that any activities authorized in this part are carried out in a manner that provides for and balances the following goals, none

of which inherently outweighs or supplants any other:

* * * * *

■ 3. Amend § 585.103 by revising the section heading and paragraph (a) to read as follows:

§ 585.103 When may BOEM prescribe or approve departures from the regulations in this part?

(a) BOEM may prescribe or approve a departure from these regulations when BOEM deems the departure necessary because the applicable provision(s) as applied to a specific circumstance:

(1) Are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program;

(2) Fail to conserve the natural resources of the OCS;

(3) Fail to protect life (including human and wildlife), property, or the marine, coastal, or human environment; or

(4) Fail to protect sites, structures, or objects of historical or archaeological significance.

* * * * *

■ 4. Revise § 585.104 to read as follows:

§ 585.104 Do I need a BOEM lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?

Except as otherwise authorized by law, it is unlawful for any person to construct, operate, or maintain any facility to produce, transport, or support generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS, except in accordance with the terms of a lease, easement, or ROW issued under the OCS Lands Act. For the purposes of this section, site assessment activities do not produce, transport, or support the generation of electricity or other energy product.

■ 5. Amend § 585.105 by revising paragraph (d) to read as follows:

§ 585.105 What are my responsibilities under this part?

* * * * *

(d) Comply with all applicable laws and regulations, the terms of your lease or grant under this part, reports, notices, and approved plans prepared under this part, and any conditions imposed by BOEM through its review of any of these reports, notices, and approved plans, as provided in this part;

* * * * *

■ 6. Amend § 585.106 by revising the section heading, paragraphs (a) introductory text, (a)(6), (b) introductory text, and (b)(3) and adding paragraph (c) to read as follows:

§ 585.106 Who can acquire or hold a lease or grant under this part?

(a) You may acquire or hold a lease or grant under this part if you can demonstrate that you have the technical and financial capabilities to conduct the activities authorized by the lease or grant and you are a(n):

* * * * *

(6) State of the United States; or

* * * * *

(b) You may not acquire or hold a lease or grant under this part or acquire an interest in a lease or grant under this part if:

* * * * *

(3) After written notice and your opportunity to be heard, BOEM determines that:

(i) You no longer meet the qualification requirements for acquiring or holding a lease or grant in paragraph (a) of this section and § 585.107; or

(ii) You have:

(A) Violated an applicable law, regulation, order, lease or grant provision, approved plan, or the prohibitions prescribed in a final sale notice; or otherwise engaged in illegal activity, anti-competitive or collusive behavior, fraud, or misrepresentation; and

(B) Failed to take timely remedial action as specified in the notice of the proposed disqualification to re-establish eligibility to participate in any BOEM lease or grant sale and eligibility to acquire or hold an interest in a lease or grant under this part.

(c) So long as a party is ineligible to acquire or hold a lease or grant under this part, it is also ineligible to participate in BOEM's competitive and noncompetitive lease or grant issuance processes, including auctions, conducted under this part, even as an agent for another entity. A party can restore its eligibility by completing the remedial action specified in the notice of the proposed disqualification.

■ 7. Amend § 585.107 by revising paragraph (b) to read as follows:

§ 585.107 How do I show that I am qualified to be a lessee or grant holder?

* * * * *

(b) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It does not need to be notarized nor give the age of the individual. A resident alien may submit a photocopy of the form issued by the appropriate Federal immigration authority evidencing legal status as a resident alien.

* * * * *

■ 8. Revise § 585.110 to read as follows:

§ 585.110 How do I submit plans, applications, reports, or notices required by this part?

Unless otherwise stated, you must submit one electronic copy of all plans, applications, reports, or notices required by this part to BOEM. BOEM will inform you if it requires paper copies of specific documents. Unless stated otherwise, documents should be submitted to the relevant contacts listed on the BOEM website.

■ 9. Amend § 585.112 by:

■ a. Adding in alphabetical order a definition for ''Bidding credit(s)'';

■ b. Revising the definitions of ''Commercial activities'' and ''Commercial operations'';

■ c. Adding in alphabetical order definitions for ''Critical safety system'', ''Engineered foundation'', ''Fabrication'', ''Lease area'', ''Multiple factor auction''. ''Project design envelope'', ''Provisional winner'', and ''Receipt''; and

■ d. Revising the definition of ''Site assessment activities''.

The additions and revisions read as follows:

§ 585.112 Definitions.

* * * * *

Bidding credit(s) means the value assigned by BOEM, expressed in monetary terms, to the factors or actions demonstrated, or committed to, by a bidder at a BOEM lease auction during the competitive lease award process. The type(s) and value(s) of any bidding credit(s) awarded to any given bidder will be set forth in the Final Sale Notice.

* * * * *

Commercial activities means, under renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy product from a renewable energy project on the OCS, and where such electricity or other energy product is intended for distribution, sale, or other commercial use, except for electricity or other energy product distributed or sold pursuant either to technology-testing activities on a limited lease or facilities testing on a commercial lease needed to prepare a final FIR. This term also includes activities associated with such development, including initial site characterization and assessment, facility construction, and project decommissioning.

* * * * *

Commercial operations means the generation of electricity or other energy product for commercial use, sale, and distribution on a commercial lease, but

does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis.

Critical Safety System means safety systems and equipment designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment in the area of your facilities.

* * * * *

Engineered foundation means any structure installed on the seabed using a fixed-bottom foundation constructed according to a professional engineering design (based on an assessment of relevant sedimentary, meteorological, and oceanographic conditions).

Fabrication means the cutting, fitting, welding, or other assembly of project elements of a custom design conforming to project-specific requirements. Fabrication does not include the procurement of discrete parts of the project that are commercially available in standardized form or with type-certified components.

* * * * *

Lease area means an area on the OCS that BOEM has identified for leasing for potential development of renewable energy resources.

* * * * *

Multiple factor auction means an auction that involves the use of bidding credits to incentivize goals or actions that support public policy objectives or maximize public benefits through the competitive leasing auction process. For any multiple factor auction, the monetary value of the bidding credits, if any, would be added to the value of the cash bid to determine the highest bidder.

* * * * *

Project Design Envelope (PDE) is means a reasonable range of design parameters proposed in a lessee's plan for components of the project, such as type, dimensions, and number of wind turbine generators; foundation type; location of the export cable route; location of an onshore substation; location of the grid connection point; and construction methods and timing.

* * * * *

Provisional winner means a bidder that BOEM determines at the conclusion of the auction to have submitted the winning bid. The provisional winner becomes the winning bidder after the favorable completion of BOEM's bid review, Department of Justice antitrust review, bidder obligations under § 585.225, and any appeals process under § 585.118(c).

Receipt, as used in this part to describe the time when a document is received by any party in the absence of documentation to the contrary, is deemed to have taken place: 5-business days after the date the document was given to the U.S. Postal Service (or deposited in one of its mailboxes), properly addressed and with proper postage affixed, or was given to a delivery service (or deposited in one of its receptacles), properly addressed and with the delivery cost prepaid; or, on the date on which the document was properly addressed and sent electronically. This definition also applies to variants of the words ''receipt'' and ''receive'' where those terms are used in this part to describe the receipt of a document when the timing of receipt triggers a regulatory time period or consequence.

* * * * *

Site assessment activities mean those initial activities conducted to assess an area on the OCS, such as resource assessment surveys (*e.g.,* meteorological and oceanographic) or technology testing, involving the installation of bottom-founded facilities.

* * * * *

■ 10. Amend § 585.113 by revising paragraph (b)(1)(i) to read as follows:

§ 585.113 How will data and information obtained by BOEM under this part be disclosed to the public?

* * * * *

(b) * * *

If you have a . . .	Then BOEM will review data and information for possible release:
(1) Commercial lease.	(i) 3 years after the initiation of commercial operations or.
* * * * *	

* * * * *

■ 11. Amend § 585.114 by revising paragraphs (e)(2) through (10) and adding paragraph (a)(11) to read as follows:

§ 585.114 Paperwork Reduction Act statements—information collection.

* * * * *

(e) * * *

30 CFR 585 subpart, title, and/or BOEM form (OMB control No.)	Reasons for collecting information and how used
* *	* * * * *
(2) Subpart B—The Renewable Energy Leasing Schedule.	To enable BOEM to publish a proposed five-year leasing schedule for the OCS renewable energy program.
(3) Subpart C—Issuance of OCS Renewable Energy Leases.	To provide BOEM with information needed to determine when to use a competitive process for issuing a renewable energy lease, to identify auction formats and bidding systems and variables that we may use when that determination is affirmative, and to determine the terms under which we will issue renewable energy leases.
(4) Subpart D—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities.	To issue ROW grants and RUE grants for OCS renewable energy activities that are not associated with a BOEM-issued renewable energy lease.
(5) Subpart E—Lease and Grant Administration	To ensure compliance with regulations pertaining to a lease or grant, including designation of operator, assignment, segregation, consolidation, suspension, renewal, termination, relinquishment, and cancellation.
(6) Subpart F—Payments and Financial Assurance Requirements.	To ensure that payments and financial assurance payments for renewable energy leases comply with subpart F.
(7) Subpart G—Plans and Information Requirements.	To enable BOEM to comply with the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), and other Federal laws and to ensure the safety of the environment on the OCS.
(8) Subpart H—Facility Design, Fabrication, and Installation.	To enable BOEM to review the final design, fabrication, and installation of facilities on a lease or grant to ensure that these facilities are designed, fabricated, and installed according to appropriate standards in compliance with BOEM regulations, and where applicable, the approved plan.

30 CFR 585 subpart, title, and/or BOEM form (OMB control No.)	Reasons for collecting information and how used
(9) Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs.	To ensure that lease and grant operations are conducted in a manner that is safe and protects the environment. To ensure compliance with other Federal laws, these regulations, the lease or grant, and approved plans.
(10) Subpart J—Decommissioning	To determine that decommissioning activities comply with regulatory requirements and approvals. To ensure that site clearance and platform or pipeline removal are properly performed to protect marine life and the environment and do not conflict with other users of the OCS.
(11) Subpart K—Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities.	To enable BOEM to review information regarding the design, installation, and operation of RUEs on the OCS, to ensure that RUE operations are safe and protect the human, marine, and coastal environment. To ensure compliance with other Federal laws, these regulations, the RUE grant, and, where applicable, the approved plan.

■ 12. Revise § 585.116 to read as follows:

§ 585.116 Requests for information.

BOEM may publish a request for information (RFI) in the **Federal Register** for the following reasons:

(a) To solicit information from industry, State and local agencies, federally recognized Tribes, and other interested entities for evaluating the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development. An RFI may relate to the identification of environmental, technical, regulatory, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. BOEM may use the information received to refine its renewable energy program, including to facilitate OCS renewable energy development in a safe and environmentally responsible manner and to ensure a fair return to the United States for use of the OCS.

(b) To assess interest in leasing all or part of the OCS for activities authorized in this part.

(c) To determine whether there is competitive interest in a specific OCS renewable energy proposal received by BOEM, such as an unsolicited request for a lease under § 585.231(b) or a RUE or ROW grant under § 585.307(a).

(d) To seek other information that BOEM needs for this program.

■ 13. Revise § 585.118 to read as follows:

§ 585.118 What are my appeal rights?

(a) Except as stated in paragraph (c) of this section, any party adversely affected by a final decision issued by BOEM under this part may appeal that decision to the Interior Board of Land Appeals (IBLA), under part 590 of this chapter and 43 CFR part 4, subpart E.

(b) Any final decision will remain in full force and effect during the pendency of an appeal unless a stay is granted under 43 CFR part 4.

(c) A bidder adversely affected by BOEM's determination of a provisional winner made under this part may appeal to the BOEM Director; but decisions determining a provisional winner may not be appealed to the IBLA.

(1) A bidder that elects to appeal a provisional winner selection decision must file a written appeal with the Director within 15 business days after receipt of the decision.

(2) Such appeal must be accompanied by a statement of reasons. Before reversing a provisional winner selection decision, the Director will provide the provisional winner a reasonable opportunity to respond in writing to the appellant's statement of reasons. The Director will issue a written determination either affirming or reversing the decision. The Director's decision is not appealable to the IBLA under this section.

(3) BOEM will not execute a lease or grant until the 15-business-day appeal period closes and all timely filed appeals are resolved.

(4) The review authority of the Office of Hearings and Appeals does not apply to either the provisional winner selection decisions made under this part or the Director's final determination affirming or reversing a provisional winner selection decision.

Subparts B Through J [Redesignated as Subparts C Through K]

■ 14. Redesignate subparts B through J as subparts C through K.

■ 15. Add new subpart B, consisting of § 585.150, to read as follows:

Subpart B—The Renewable Energy Leasing Schedule

§ 585.150 What is the renewable energy leasing schedule?

At least once every 2 years, the Secretary will publish a schedule with a list of locations under consideration for leasing, along with a projection of when lease sales are anticipated to occur for the 5-year period following the schedule's publication. This schedule will include a general description of the area covered by each proposed lease sale, the calendar year in which each lease sale is projected to occur, and the reasons for any changes made to the previous schedule. Any proposed lease sale covered by the schedule will be subject to all applicable regulations, including area identification, coordination with relevant parties, and applicable environmental reviews.

Subpart C—Issuance of OCS Renewable Energy Leases

■ 16. Revise § 585.202 to read as follows:

§ 585.202 What types of leases will BOEM issue?

BOEM may issue commercial or limited leases for OCS activities under § 585.104. BOEM may issue a lease for OCS renewable energy research activities under § 585.238.

■ 17. Revise § 585.203 to read as follows:

§ 585.203 With whom will BOEM consult before issuance of leases?

For leases issued under this part, through either the competitive or noncompetitive process, BOEM, prior to issuing the lease, will coordinate and consult with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid or minimize conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), the Governor of any affected State, the executive of any affected local government, and any affected Indian Tribe, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act or other relevant Federal laws. Federal statutes that require BOEM to consult with interested parties or Federal agencies or to respond to findings of those agencies, include the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act

(MSA). BOEM also engages in consultation with state and tribal historic preservation officers pursuant to the National Historic Preservation Act (NHPA).

■ 18. Revise the undesignated center heading that appears before § 585.210 and revise § 585.210 to read as follows:

Competitive Lease Award Process—Pre-Auction Provisions

§ 585.210 What are the steps in BOEM's competitive lease award process?

(a) BOEM may publish an RFI under § 585.116.

(b) BOEM will award leases through a competitive lease award process unless competitive interest does not exist. BOEM will publish details for each auction and lease through appropriate notices in the **Federal Register**. Each competitive lease award process will include the following steps:

(1) *Call for Information and Nominations (Call).* BOEM will publish a Call in the **Federal Register** requesting information to determine qualifications of prospective bidders and interest in preliminarily identified OCS lease areas.

(2) *Area Identification.* BOEM will identify OCS areas for leasing consideration and related analysis in consultation with appropriate Federal agencies, State and local Governments, federally recognized Tribes, Alaska Native Claims Settlement Act (ANCSA) corporations, and other interested parties.

(3) *Proposed Sale Notice (PSN).* BOEM will publish a PSN, or a notice of its availability, in the **Federal Register**, announcing BOEM's intention to conduct an auction for prospective lease areas. The PSN will set forth provisions and information concerning the proposed auction and lease, and will invite stakeholder comments.

(4) *Final Sale Notice (FSN).* BOEM will publish an FSN, or a notice of its availability, in the **Federal Register** setting forth final information concerning the auction and lease.

(5) *Auction.* BOEM will hold an auction under the regulations in this part and the FSN.

(6) *Lease Award.* BOEM will award leases subsequent to the completion of the aforementioned steps under the regulations in this part and the FSN.

■ 19. Revise § 585.211 to read as follows:

§ 585.211 What is the Call?

(a) The Call is a notice that BOEM will publish in the **Federal Register** requesting responses from stakeholders interested in bidding on designated OCS areas and comments from interested and potentially affected parties. The responses may inform the area identification process and will enable BOEM to determine whether there exists competitive interest in the proposed lease area. BOEM may request additional information from stakeholders related to environmental, economic, and other issues.

(b) The Call may include the following:

(1) The areas that BOEM has preliminarily identified for leasing;

(2) A request for comments concerning geological conditions; archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area (including, for example, navigation, recreation, military, and fisheries); and other socioeconomic, biological, and environmental information;

(3) Request for comments regarding feasibility for development, including the energy resource and opportunity for grid connection;

(4) Possible lease terms and conditions;

(5) A request to potential bidders to nominate one or more areas for a commercial renewable energy lease within the preliminarily identified leasing areas. Such nominations must include:

(i) The specific OCS blocks that the respondent is interested in leasing;

(ii) A general description of the respondent's objectives and how respondent proposes to achieve those objectives;

(iii) A preliminary schedule of the respondent's proposed activities, including those potentially leading to commercial operations, to the extent known;

(iv) Information regarding respondent's coordination, or intent to coordinate, with any other entity for the purposes of acquiring a lease from BOEM, if applicable;

(v) Documentation demonstrating the respondent's qualification to acquire a lease or grant as specified in § 585.107;

(vi) Available and pertinent information concerning renewable energy and environmental conditions in the nominated areas, including energy and resource data and information used to evaluate the areas; and

(vii) Any additional information requested by BOEM in the Call;

(c) Respondents have 45 calendar days from the date the Call is published in the **Federal Register** to reply, unless BOEM specifies another time period, to be no less than 30 calendar days, in the Call.

(d) BOEM may use the information received in response to a Call to:

(1) Identify lease areas;

(2) Develop options for its lease provisions (*e.g.,* stipulations, payments, terms, and conditions);

(3) Inform its environmental analysis conducted under applicable Federal requirements, including, but not limited to, NEPA, ESA, and CZMA; and

(4) Determine whether competitive interest exists in all or a portion of any potential lease area. If BOEM determines no competitive interest exists, BOEM may follow the noncompetitive leasing process set forth in § 585.231(d) through (k).

■ 20. Revise § 585.212 to read as follows:

§ 585.212 What is area identification?

(a) Area identification is the process by which BOEM delineates one or more OCS areas for leasing consideration and environmental analysis if the areas appear appropriate for renewable energy development. This process is based on an area's relevant attributes, such as other uses of the area, environmental factors or characteristics, stakeholder comments, industry nominations, feasibility for development, and other relevant information. BOEM consults with interested parties during this process as specified in § 585.210(b)(2).

(b) BOEM may consider areas nominated by respondents to a Call and other areas determined appropriate for leasing.

(c) For the identified areas, BOEM will evaluate:

(1) The potential effects of leasing the identified areas on the human, marine, and coastal environments. BOEM may develop measures, including lease stipulations, to mitigate potential adverse impacts; and

(2) The feasibility of development.

(d) BOEM may hold public hearings on the environmental analyses associated with leasing the identified areas, after appropriate notice.

(e) At the end of the area identification, BOEM may offer selected areas for leasing.

■ 21. Revise § 585.213 to read as follows:

§ 585.213 What information is included in the PSN?

(a) The PSN is a notice that BOEM will publish in the **Federal Register** for each prospective auction. The PSN will request public comment on the items listed in this section. Public comments will inform BOEM's decisions regarding auction format and lease terms and conditions. At a minimum, the PSN will include or describe the availability of information pertaining to:

(1) The proposed leases to be offered, including:

(i) The proposed lease areas, including size and location;

(ii) The proposed lease terms and conditions, including the proposed rental rate and operating fee rate;

(iii) Other proposed payment requirements, as applicable;

(iv) Proposed requirements for performance under the lease, such as site-specific lease stipulations and environmental mitigation measures;

(2) Steps a bidder must take to obtain and maintain eligibility to participate in the auction (*e.g.,* financial forms, bid deposits);

(3) The proposed availability and potential value of bidding credit(s), if any are offered, and the actions or commitments required to obtain them;

(4) A detailed description of the proposed auction format and procedures as further described in § 585.223;

(5) The maximum number or specific sets of lease areas that any given bidder may be allowed to bid on or to acquire in an auction, if applicable;

(6) Lease award procedures, including how and when a lease will be awarded and executed, and how BOEM will address unsuccessful bids and applications;

(7) A copy of, or a reference to, the official BOEM lease form; and

(8) Other relevant matters, as determined by BOEM.

(b) The PSN may be used to gauge competitive interest by requiring prospective bidders to reaffirm their intent to participate in the auction as a prerequisite for continued eligibility.

(c) A prospective bidder is encouraged to identify in its comments any specific proposed terms and conditions in the PSN that may preclude its participation in the auction.

(d) The PSN's public comment period is 60 calendar days from the date of its publication in the **Federal Register**, unless BOEM specifies another time period of not less than 30 calendar days in the PSN.

(e) BOEM will notify any potentially affected States, local governments, Alaska Native and American Indian Tribes, and ANCSA corporations of the PSN's publication, and will provide copies of the PSN to these entities upon written request.

■ 22. Revise § 585.214 to read as follows:

§ 585.214 What information is included in the FSN?

(a) The FSN is a notice that BOEM will publish in the **Federal Register** at least 30 calendar days before each prospective auction. The FSN will describe the final auction details and will include or describe the availability of information pertaining to:

(1) The leases to be offered, including:

(i) The lease areas, including size and location;

(ii) Lease terms and conditions, including the rental rate and the operating fee rate;

(iii) Other payment requirements, as applicable;

(iv) Requirements for performance under the lease, including site-specific lease stipulations and environmental mitigation measures;

(2) Steps a bidder must take to ensure eligibility to participate in the auction (*e.g.,* financial forms, bid deposits);

(3) The availability and potential value of bidding credit(s), if any are offered, and the actions or commitments required to obtain them.

(4) A detailed description of the auction format and procedures as further described in § 585.223;

(5) The maximum number or specific sets of lease areas that any given bidder may be allowed to bid on or to acquire in an auction, if applicable;

(6) Lease award procedures, including how and when a lease will be awarded and executed, and how BOEM will handle unsuccessful bids and applications;

(7) A copy of, or a reference to, the official BOEM lease form; and

(8) Other relevant matters as determined by BOEM.

(b) The terms of the FSN may differ from the proposed terms of the PSN.

■ 23. Revise § 585.215 to read as follows:

§ 585.215 What may BOEM do to assess whether competitive interest for a lease area still exists before the auction?

(a) At any time BOEM has reason to believe that competitive interest in any lease area no longer exists before the area's auction, BOEM may issue a notice in the **Federal Register**, as described in § 585.116, requesting information regarding competitive interest in that area. BOEM will consider respondents' comments to determine whether competitive interest in that area remains. BOEM may decide to end the competitive process for any area if it determines that competitive interest no longer exists.

(b) If BOEM determines after considering respondents' comments to such a notice that competitive interest remains, BOEM will continue with the competitive process set forth in §§ 585.210 through 585.226.

(c) If BOEM determines at any time before the auction that only a single party remains interested in a lease area, BOEM may proceed either with the auction or with the noncompetitive process set forth in § 585.231(d) through (k) following payment by that party of the acquisition fee specified in § 585.502(a).

■ 24. Revise § 585.216 to read as follows:

§ 585.216 How are bidding credits awarded and used?

(a) BOEM will determine the highest bid, taking into account the combined value of the monetary (cash) component and the non-monetary component(s), represented by bidding credits. The PSN and FSN will explain the following details, if bidding credit(s) are available for that auction:

(1) Eligibility and application requirements;

(2) The value of each available bidding credit, which will be either a sum certain or a percentage of the cash bid; and

(3) Procedures for applying each available bidding credit to bids submitted during the auction.

(b) Eligibility for bidding credits must be established in advance of any lease auction, in accordance with the specifications of the FSN. Such eligibility may be based on actions that the bidder has already undertaken or actions that it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. BOEM may offer bidding credits for any of the following:

(1) Power purchase agreements;

(2) Eligibility for, or applicability of, renewable energy credits or subsidies;

(3) Development agreements by a potential lessee that facilitate shared transmission solutions and grid interconnection;

(4) Technical merit, timeliness, or financing and economic considerations;

(5) Environmental considerations, public benefits, or compatibility with State and local needs;

(6) Agreements or commitments by the developer that would facilitate OCS renewable energy development or other OCSLA goals; or

(7) Any other factor or criteria to further development of offshore renewable energy, as identified by BOEM in the PSN and FSN.

(c) Before the auction, bidders seeking to use bidding credits must establish that they meet the eligibility criteria for each bidding credit according to the FSN provisions.

(d) Before the auction, BOEM will determine each bidder's eligibility for bidding credits, and the value of those bidding credits, and will inform each eligible bidder of the value of the bidding credits to which it may be entitled.

(e) A provisional winner who is awarded bidding credits must pay an amount equal to the cash component of its winning bid less any bid deposit retained by BOEM under § 585.501.

■ 25. Revise the undesignated center heading that appears before § 585.220 and revise § 585.220 to read as follows:

Competitive Lease Award Process—Auction Provisions

§ 585.220 How will BOEM award leases competitively?

(a) BOEM will award leases competitively using an objective, fair, reasonable, and competitive auction process that provides a fair return to the United States. As described in the FSN, leases will be awarded to the highest bidder.

(b) BOEM may use any analog or digital method to conduct the auction. The specific process and procedural details for each auction will be noticed in the PSN and finalized in the FSN.

■ 26. Revise § 585.221 to read as follows:

§ 585.221 What general provisions apply to all auctions?

(a) If BOEM determines competitive interest exists to develop a renewable energy resource in any OCS area and decides to issue a lease for that area, BOEM will conduct an auction to award the lease.

(b) The auction's format, procedures, and other details will be specified in the FSN, as outlined in § 585.214. Possible auction formats include, but are not limited to, sealed bidding and ascending bidding.

(c) The FSN will specify the potential use of alternatives if the primary auction method, system, or mechanism malfunctions. Alternatively, BOEM may take action consistent with paragraph (d) of this section until the malfunction is resolved.

(d) Any time before a provisional winner is determined, BOEM may delay, suspend, or cancel an auction due to a natural or man-made disaster, technical malfunction, security breach, unlawful bidding activity, administrative necessity, or any other reason that BOEM determines may adversely affect the fair and efficient conduct of the auction. In its discretion, BOEM may restart the auction at whatever point it deems appropriate, reasonable, fair, and efficient for all participants; or, alternatively, BOEM may cancel the auction in its entirety.

(e) BOEM will determine the provisional winner for each lease area under the auction rules and bidding procedures prescribed in the FSN.

■ 27. Revise § 585.222 to read as follows:

§ 585.222 What other auction rules must bidders follow?

(a) Bidders must submit a deposit to participate in an auction under § 585.501, unless otherwise specified in the FSN. A provisional winner's bid deposit will be credited toward the balance due on its bid.

(b) Only bidders qualified by BOEM under §§ 585.106 and 585.107 are permitted to bid during an auction.

(c) Only an authorized agent may act on a bidder's behalf during an auction. Bidders must submit the names of their authorized agents to BOEM before the auction, as prescribed in the FSN.

(d) Each bidder must follow the auction process specified in the FSN and may not take any action to disrupt or alter the process beyond its intended function.

(e) A bidder is responsible for immediately contacting BOEM if it is unable to submit its bid for any reason during an auction. If a bidder fails to timely notify BOEM of its inability to bid, it may not dispute the auction or lease award on that basis. If a bidder timely notifies BOEM of its inability to submit a bid, BOEM, in its discretion, may suspend the auction, continue the auction using an alternative method, or continue the auction without the participation of the affected bidder.

(f) Bidders may not disclose their auction strategies or economic valuations of a lease area to other bidders listed in the FSN.

■ 28. Revise § 585.223 to read as follows:

§ 585.223 What supplemental information will BOEM provide in a PSN and FSN?

(a) In addition to the information described in §§ 585.213 and 585.214, BOEM may provide the following auction information, as appropriate, in the PSN and FSN:

(1) *Bidding instructions, procedures, and systems, including the bid variables.* How the auction will be conducted and what systems and procedures will be utilized.

(2) *Bid deposit.* The amount a bidder must pay under § 585.501 to be eligible to bid. The FSN will prescribe the process and deadline for submitting a bid deposit.

(3) *Mock auction.* Notice of a practice auction before the actual auction. Only bidders eligible for the actual auction will be permitted to participate in the mock (*i.e.,* practice) auction.

(4) *Auction date, starting time and location.* The starting time will include the relevant time zone, and the location will indicate where the auction will take place.

(5) *Minimum bid.* The price at which the bidding will start.

(6) *Information BOEM will release to bidders between rounds.* This information may include prior round results and other updates.

(7) *Tie-breaking provision.* This provision describes the method that BOEM will use to break a tie between two or more identical high bids offered for the same lease area, or package of lease areas.

(8) *Next highest bidder.* The method that BOEM will use to determine the next highest bidder of a completed auction in the event the provisional winner fails to meet its obligations or is unable to acquire a lease for any reason, or if a competitively issued lease or any portion thereof is relinquished or cancelled within six months of the auction.

(b) The list in paragraph (a) of this section is not exhaustive. BOEM may include in the FSN any other information relevant to that auction.

■ 29. Add an undesignated center heading before § 585.224 and revise § 585.224 to read as follows:

Competitive Lease Award Process—Post-Auction Provisions

§ 585.224 What will BOEM do after the auction?

(a) At the conclusion of the auction, BOEM will:

(1) Declare the bidding closed.

(2) Assess whether the bids meet the requirements of BOEM's regulations and the FSN. BOEM may disqualify bids based on this review.

(3) Under 43 U.S.C. 1337(c), provide the Department of Justice, in consultation with the Federal Trade Commission, the opportunity to conduct an antitrust review of the lease sale results. BOEM may disqualify bids based on the results of this review.

(4) BOEM will declare the provisional winner of each lease area.

(b) BOEM may reject any and all bids received, regardless of the amount offered.

(c) BOEM will accept or reject bids within 90 calendar days of auction closure; BOEM may extend that time by notice to bidders within 15 calendar days before the 90-calendar day period ends.

(d) BOEM will deem rejected any bid not accepted within the 90-calendar-day period, or any extension. BOEM will provide each rejected bidder a written explanation for the rejection and will refund, without interest, any monies deposited by the rejected bidder.

(e) BOEM may withdraw all or part of a lease area from the lease sale between auction closure and lease execution. In the event that a portion of the lease area is withdrawn, the provisional winner has the option to refuse the lease without penalty, to propose new lease terms for BOEM's concurrence, or to accept the lease with the reduced area.

(f) BOEM may re-auction any lease area or portions thereof that remain unsold at the conclusion of an auction. BOEM may restart the competitive leasing process at any point in the process set forth in § 585.210 that it deems reasonable and appropriate (*e.g.,* RFI, Call, area identification, PSN, or FSN).

■ 30. Revise § 585.225 to read as follows:

§ 585.225 What happens if BOEM accepts a bid?

(a) BOEM will identify and notify the lease area's provisional winner of the amount due on each winning bid, which equals the cash component of the provisional winner's bid less its bid deposit retained by BOEM under § 585.501 and paragraph (c) of this section. BOEM will provide three unsigned copies of the lease to the provisional winner.

(b) Within 10 business days after receipt of the unsigned copies, or as otherwise specified by BOEM under paragraph (d) of this section, the provisional winner must:

(1) Execute all three copies of the lease and return them to BOEM;

(2) File financial assurance as required by §§ 585.515 through 585.537; and

(3) Pay the amount due.

(c) When the bid deposit exceeds the amount due, BOEM will refund the overage without interest.

(d) A provisional winner may request in writing an extension of the 10-day time limit in paragraph (b) of this section. BOEM, in its discretion, may grant such a request.

(e) BOEM will execute the lease by signing the three returned copies on behalf of the United States only after the provisional winner completes the requirements in paragraph (b) of this section and any appeals timely filed under § 585.118(c)(1) have been resolved. After BOEM executes the lease, the provisional winner becomes the winning bidder, and BOEM will send the winning bidder one fully executed copy of the lease. The lease takes effect as set forth in § 585.237.

(f) The winning bidder must pay the first 12 months' rent under § 585.503(a) within 45-calendar days after receiving a copy of the executed lease from BOEM.

(g) In the event that a lessee does not meet the commitments it made to obtain any bidding credits, the lessee will be required to repay the value of the bidding credits that it received, adjusted for inflation.

■ 31. Add § 585.226 to read as follows:

§ 585.226 What happens if the provisional winner fails to meet its obligations?

(a) If BOEM determines that a provisional winner has failed to timely complete the steps outlined in § 585.225(b) or § 585.316, or has otherwise failed to comply with applicable laws, regulations, or FSN provisions, BOEM may take one or more of the following actions:

(1) Decline to execute the applicable lease.

(2) Decline to execute the lease for any other lease areas that the provisional winner won during the auction.

(3) Require forfeiture of the bid deposit. In the event the bid deposit exceeds the amount of the winning bid, BOEM would limit the required forfeiture to the lesser amount.

(4) Refer the matter to the Department of the Interior's Administrative Remedies Division for suspension or debarment review pursuant to 2 CFR part 180 as implemented at 2 CFR part 1400.

(5) Pursue any other remedy available.

(b) If BOEM declines to execute a lease with the provisional winner under paragraph (a) of this section, BOEM may decide to select a new provisional winner by either repeating the auction under § 585.224(f), or pursuant to the procedures in § 585.224(a)(3), by selecting the next highest bid submitted during the auction, or by using other procedures specified in the FSN.

(c) BOEM's decisions under this section are appealable under § 585.118(a).

■ 32. Revise § 585.231to read as follows:

§ 585.231 Will BOEM issue leases noncompetitively?

(a) BOEM will consider unsolicited requests for a lease on a case-by-case basis and may issue a lease noncompetitively in accordance with this part. BOEM will issue a lease noncompetitively only if it has determined after public notice that no competitive interest exists. BOEM will not consider an unsolicited request for a lease under this part that is proposed in a lease area that is scheduled for a lease auction under this part.

(b) At BOEM's discretion, BOEM may issue an RFI under § 585.116 relating to your unsolicited lease request and will consider comments received to determine if competitive interest exists. If BOEM decides not to issue an RFI and, therefore, not to continue processing your unsolicited lease request, it will refund your acquisition fee.

(c) If BOEM determines that competitive interest exists in the lease area:

(1) BOEM will proceed with the competitive process set forth in §§ 585.210 through 585.226;

(2) If you submit a bid for the lease area in a competitive lease sale, your acquisition fee will be applied to the deposit for your bonus bid; and

(3) If you do not submit a bid for the lease area in a competitive lease sale, BOEM will not refund your acquisition fee.

(d) If BOEM determines that there is no competitive interest in a lease and that further investigation of the area is in the public interest, it will:

(1) Publish in the **Federal Register** a determination of no competitive interest, and

(2) Prepare and provide you with a written estimate of the proposed fee to pay for the processing costs under § 585.111, including any environmental review that BOEM may require before lease issuance.

(3) Conduct environmental reviews required by Federal law and consult with affected Federal agencies, State and local governments, and Native Alaskan and Indian Tribes.

(e) The following deadlines apply after issuance of a determination of no competitive interest:

(1) Within 90 calendar days of receiving the written estimate of the fee, or longer (as determined at BOEM's discretion), you must pay the fee for any environmental review under § 585.111. Failure to pay the required fee may result in withdrawal of the determination of no competitive interest.

(2) A determination of no competitive interest expires two years after its publication, unless BOEM determines that it should be extended for good cause. BOEM reserves the right to withdraw a determination of no competitive interest before it expires if BOEM determines that you have failed to exercise due diligence in obtaining a lease.

(f) After BOEM publishes the determination of no competitive interest, you will be responsible for submitting any consistency certification and necessary data and information in a timely manner to the applicable State

CZMA agencies and BOEM pursuant to 15 CFR part 930, subpart D.

(g) After completing its review of your lease request, BOEM may offer you a noncompetitive lease.

(h) If you accept the terms and conditions of the lease, BOEM will issue the lease. You must comply with the terms and conditions of your lease and the applicable provisions of this part. If BOEM issues you a lease, BOEM will send you a notice with 3 copies of the lease form.

(1) Within 10 business days after you receive the lease copies you must:

(i) Execute all three copies of the lease; and

(ii) File financial assurance as required under §§ 585.516 through 585.537.

(2) You must pay the first 12 months' rent no later than 45 calendar days after you receive your copy of the executed lease from BOEM under § 585.503(a)(1).

(i) BOEM will publish in the **Federal Register** a notice announcing the issuance of your lease.

(j) If you do not accept the terms and conditions in a timely manner, BOEM will not issue a lease. Additionally, if you do not comply with the requirements for financial assurance, BOEM may decide not to issue a lease. If BOEM does not issue a lease due to your noncompliance or non-acceptance, BOEM will not refund your acquisition fee or any fees paid under paragraph (e)(1) of this section.

■ 33. Amend § 585.232 by revising the section heading and paragraph (c) to read as follows:

§ 585.232 May I acquire a lease noncompetitively after responding to a request for information or a Call for Information and Nominations?

* * * * *

(c) After receiving the acquisition fee, BOEM will follow the process outlined in § 585.231(d) through (i).

■ 34. Revise the undesignated center heading before § 585.235 and revise § 585.235 to read as follows:

Commercial and Limited Lease Periods

§ 585.235 What are the lease periods for a commercial lease?

(a) The lease periods within the term of your commercial lease are defined as follows:

(1) *Preliminary period.* Each commercial lease has a preliminary period of up to five years. During the preliminary period, the lessee must submit a COP. The preliminary period begins on the effective date of the lease and ends either when a COP is received by BOEM for review or at the expiration of five years, whichever occurs first.

(2) *COP review period.* A commercial lease has a COP review period. The COP review period begins when BOEM receives a COP from the lessee and ends upon COP approval, disapproval, or approval with modifications pursuant to § 585.628. During the COP review period, BOEM conducts the necessary reviews and consultations associated with the COP. The lessee must resolve issues identified as incomplete in the COP by BOEM within the first year of the COP review period.

(3) *Design and construction period.* A commercial lease has a design and construction period for the duration specified in the approved COP, which may be modified by mutual agreement of the lessee and BOEM. During the design and construction period, the lessee must submit its FDR and FIR, address any issues raised by BOEM, and complete project construction. The design and construction period begins at COP approval and ends either when commercial operations begin or at the expiration of the period set forth in the approved COP as modified, whichever occurs first.

(4) *Operations period.* A commercial lease has an operations period of 30 years or the duration specified in the lease. The operations period begins at the start of commercial operations. Additional time may be added to the operations period through a lease suspension under § 585.415 issued during this period; a lease extension requested pursuant to paragraph (b) of this section; or a lease renewal under § 585.425.

(b) You may request an extension of any of the lease periods outlined in paragraph (a) of this section for good cause. In its discretion, BOEM may approve your request.

(c) If you intend to develop your lease in phases under § 585.629, you may propose lease period schedules as appropriate for each phase in your COP.

(d) If you intend to segregate or merge your lease under §§ 585.408 through 585.413, you and your assignees may propose lease period schedules in your segregation or merger application.

■ 35. Revise § 585.236 to read as follows:

§ 585.236 If I have a limited lease, how long will my lease remain in effect?

(a) For limited leases, the lease periods are as shown in the following table:

Lease period	Extension or suspension	Requirements
(1) Each limited lease has a preliminary period of 12 months within which to submit a GAP. The preliminary period begins on the effective date of the lease.	If we receive a GAP that satisfies the requirements of §§ 585.640 through 585.648, the preliminary period will be automatically extended for the period of time necessary for us to conduct a technical and environmental review of the GAP.	The GAP must meet the requirements of §§ 585.640 through 585.648
(2) Each limited lease has an operations period as specified by BOEM (if the lease is issued competitively) or negotiated by the parties (if the lease is issued noncompetitively). In either case, the duration of the operations period will depend on the intended use of the lease. The operations period begins on the date that we approve your GAP.	We may order or grant a suspension of the operations period as provided in §§ 585.415 through 585.421.	

(b) You may request an extension of any of the lease periods outlined in paragraph (a) of this section for good cause. In its discretion, BOEM may approve your request.

Subpart D—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities

■ 36. Amend § 585.301 by revising paragraphs (a)(2) and (3) to read as follows:

§ 585.301 What do ROW grants and RUE grants include?

(a) * * *

(2) Is of a width sufficient to accommodate potential changes at the design and installation phases of the

project, with an option for the grant holder to relinquish unused portions of the ROW after construction is complete;

(3) For the associated facilities, is limited to the area reasonably necessary for a power or pumping station or other facilities requested.

* * * * *

■ 37. Amend § 585.302 by revising paragraph (a) to read as follows:

§ 585.302 What are the general requirements for ROW grant and RUE grant holders?

(a) To acquire a ROW grant or RUE grant, you must provide evidence that you meet the qualifications set forth in §§ 585.106 and 585.107.

* * * * *

■ 38. Revise § 585.303 to read as follows:

§ 585.303 How long will my ROW grant or RUE grant remain in effect?

The periods within the term of your grant are defined as follows:

(a) Each ROW or RUE grant has a preliminary period of 12 months from the effective date of the ROW or RUE grant within which to submit a GAP. The preliminary period begins on the effective date of the grant. You must submit a GAP no later than the end of the preliminary period for your grant to remain in effect. However, you may submit a GAP before the issuance of your ROW or RUE grant.

(b) Each ROW or RUE grant has an operations period as set by BOEM (if the grant is issued competitively) or negotiated by the parties (if the grant is issued noncompetitively). In either case, the duration of the operations period will depend on the intended use of the grant. The operations period begins on the date that we approve your GAP.

(c) You may request an extension of any of the grant periods outlined in paragraphs (a) and (b) of this section for good cause. In its discretion, BOEM may approve your request.

■ 39. Amend § 585.305 by revising the introductory text to read as follows:

§ 585.305 How do I request a ROW grant or RUE grant?

You must submit a request for a new or modified ROW grant or RUE grant to BOEM pursuant to § 585.110. You must submit a separate request for each ROW grant or RUE grant you are requesting. The request must contain the following information:

* * * * *

■ 40. Amend § 585.306 by revising paragraph (b) to read as follows:

§ 585.306 What action will BOEM take on my request?

* * * * *

(b) If BOEM determines there is no competitive interest in a ROW or RUE grant, BOEM will publish a notice in the **Federal Register** of such determination. After BOEM publishes this notice, you are responsible for submitting any required consistency certification and necessary data and information under 15 CFR part 930, subpart D, to BOEM and the applicable State CZMA agency. BOEM may establish terms and conditions for a noncompetitive grant and offer the grant to you:

(1) If you accept the terms and conditions of the grant, BOEM will issue the grant.

(2) If you do not accept the terms and conditions of the grant, BOEM may agree to modify the terms and conditions or may decide not to issue the grant.

§ 585.309 [Removed]

■ 41. Remove § 585.309.

§ 585.310 [Redesignated as § 585.309]

■ 42. Redesignate § 585.310 as new § 585.309.

§ § 585.310 [Reserved]

■ 43. Add new reserved § 585.310

§ 585.316 [Amended]

■ 44. Amend § 585.316 in paragraph (a) by removing the acronym ''BOEM'' and adding in its place the words ''Office of Natural Resources Revenue (ONRR)''.

Subpart D—Lease and Grant Administration

■ 45a. Remove the undesignated center heading appearing before § 585.436 and the undesignated heading appearing before § 585.437.

■ 45b. Amend § 585.400 by revising paragraph (f) to read as follows:

§ 585.400 What happens if I fail to comply with this part?

* * * * *

(f) BOEM may assess civil penalties as authorized by section 24 of the OCS Lands Act and as determined under the procedures set forth in 30 CFR part 550, subpart N, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part:

(1) After notice of such failure and expiration of any reasonable period allowed for corrective action; or

(2) Without notice of such failure and expiration of a period allowed for corrective action if BOEM determines the failure may constitute, or constituted, a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

* * * * *

■ 46. Amend § 585.405 by revising first sentence of paragraph (a) to read as follows:

§ 585.405 How do I designate an operator?

(a) If you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your SAP (under § 585.610(a)(3)), COP (under § 585.626(a)(2)), or GAP (under § 585.645(a)(2)), as applicable. * * *

* * * * *

■ 47. Revise the undesignated center heading immediately before § 585.408 and amend § 585.408 by revising the first sentence of paragraph (b) introductory text and first sentence of paragraph (e) to read as follows:

Lease or Grant Assignment, Segregation, and Consolidation

§ 585.408 May I assign my lease or grant interest?

* * * * *

(b) You may assign a lease or grant interest by submitting one paper copy and one electronic copy of an assignment application to BOEM, Form BOEM–0003 for leases and Form BOEM–0002 for grants. * * *

* * * * *

(e) You do not need to request an assignment for business mergers, name changes, or changes of business form. * * *

§ § 585.410 and 585.411 [Redesignated as §§ 585.411 and 585.412]

■ 48. Redesignate §§ 585.410 and 585.411 as §§ 585.411 and 585.412, respectively.

■ 49. Add new § 585.410 to read as follows:

§ 585.410 When will my assignment result in a segregated lease?

(a) When there is an assignment by all record title owners of 100 percent of the record title to one or more aliquots in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, both the new lease and the remaining portion of the original lease are referred to as ''segregated leases'' and the assignee becomes the record title owner of the new lease, which is subject to all the terms and conditions of the original lease. The financial assurance requirements of subpart F of this part apply separately to each segregated lease.

(b) If a record title owner transfers an undivided interest of less than 100 percent of the record title interest in any

given aliquot, that transfer will not segregate the portions of that aliquot, or the whole aliquot, in which part of the record title was transferred, into a separate lease from the portions in which no interest was transferred. Instead, that transfer will create a joint ownership between the assignee and assignor in the portions of the lease in which part of the record title interest was transferred.

■ 50. Amend newly redesignated § 585.412 by revising the first sentence of paragraph (b) to read as follows:

§ 585.412 How does an assignment affect the assignee's liability?

* * * * *

(b) Assignees are bound to comply with each term or condition of the lease or grant and the regulations in this part. * * *

■ 51. Add § 585.413 to read as follows:

§ 585.413 How do I consolidate leases or grants?

(a) You may apply to consolidate all or part of two or more adjacent leases or grants held by the same lessee or grant holder into one new lease or grant, subject to BOEM's approval. The application must include a description of the leases or grants, or portions thereof, to be consolidated, including the relevant lease number, lease blocks, and aliquots.

(b) An approved consolidation will create a new lease or grant that will be subject to the terms and conditions of the consolidated leases and grants.

(c) To the extent the leases and grants to be consolidated have different times remaining in the relevant lease periods, BOEM will default to using the shorter remaining periods in the new lease or grant but will consider requests for extensions pursuant to § 585.235(b).

(d) To the extent the leases and grants to be consolidated have other different terms and conditions, BOEM will default to using the terms and conditions in the most recently issued leases and grants to be consolidated for the new lease. BOEM will consider requests for modifications on a case-by-case basis and, in its discretion, approve such requests for good cause.

(e) Before BOEM will approve your consolidation request, BOEM will assess appropriate financial assurance obligations for the new lease or grant per §§ 585.516 and 585.517 or §§ 585.520 and 585.521.

(f) Any consolidated leases and grants that have been fully absorbed into the new lease or grant in their entirety will be considered terminated at the time of consolidation approval.

■ 52. Amend § 585.415 by revising paragraph (b) to read as follows:

§ 585.415 What is a lease or grant suspension?

* * * * *

(b) A suspension extends the expiration date for the relevant period of your lease or grant for the length of time the suspension is in effect.

* * * * *

■ 53. Revise § 585.416 to read as follows:

§ 585.416 How do I request a lease or grant suspension?

(a) You must submit a written request to BOEM that includes the following information no later than 90 calendar days before the expiration of your appropriate lease or grant period:

(1) The reasons you are requesting suspension of your lease or grant, including an explanation why the suspension is necessary.

(2) The length of additional time requested.

(3) An explanation why it is in the public interest to approve the suspension.

(4) Any other information BOEM may require.

(b) If you are unable to timely submit a COP or GAP, as required, you may request a suspension to extend the preliminary period of your lease or grant. Your request must include a revised schedule for submission of your COP or GAP, as appropriate.

■ 54. Amend § 585.417 by revising paragraph (b)(2) to read as follows:

§ 585.417 When may BOEM order a suspension?

* * * * *

(b) * * *

(2) You must furnish a copy of the study and results to BOEM pursuant to § 585.110;

* * * * *

■ 55. Amend § 585.420 by revising paragraph (b) and removing paragraph (c).

The revision reads as follows:

§ 585.420 What effect does a suspension order have on my payments?

* * * * *

(b) If BOEM approves your request for a suspension under § 585.416, or orders a suspension under § 585.417, BOEM may waive or defer your payment obligations during the suspension. BOEM's decision to waive or defer payments will depend on the reasons for the suspension, including your responsibility for the circumstances necessitating a suspension.

■ 56. Amend § 585.425 by revising the first sentence to read as follows:

§ 585.425 May I obtain a renewal of my lease or grant before it terminates?

You may request renewal of the operations period of your lease or the original authorized period of your grant. * * *

■ 57. Amend § 585.426 by revising paragraph (a)(2) to read as follows:

§ 585.426 When must I submit my request for renewal?

(a) * * *

(2) No later than two years before the termination date of the operations period of your commercial lease.

* * * * *

■ 58. Amend § 585.427 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 585.427 How long is a renewal?

BOEM will set the length of the renewal at the time of renewal on a case-by-case basis.

(a) For commercial leases, the length of the renewal will not exceed the original operations period unless a longer time is negotiated by the parties.

(b) For limited leases, the length of the renewal will not exceed the original operations period.

* * * * *

■ 59. Amend § 585.429 by adding paragraph (g) to read as follows:

§ 585.429 What criteria will BOEM consider in deciding whether to renew a lease or grant?

* * * * *

(g) Other relevant factors, as appropriate.

■ 60. Amend § 585.432 by revising paragraph (a) to read as follows:

§ 585.432 When does my lease or grant terminate?

* * * * *

(a) The expiration of the applicable period of your lease or grant, unless the relevant period is extended under § 585.235(b) or § 585.236(b), a request for renewal of your lease or grant is pending a decision by BOEM, or your lease or grant is suspended or renewed as provided in this subpart, in which case it terminates on the date set forth in the notice of suspension or renewal;

* * * * *

■ 61. Revise the undesignated center heading appearing before § 585.435 and revise § 585.435 to read as follows:

Lease or Grant Relinquishment, Contraction, or Cancellation

§ 585.435 How can I relinquish a lease or a grant or parts of a lease or grant?

(a) You may surrender a lease or grant, or a designated subdivision thereof, by filing with BOEM a properly

completed official relinquishment form available on the BOEM website. A relinquishment takes effect on the date BOEM receives your completed form, subject to the continued obligation of the lessee or grant holder and the surety to:

(1) Make all payments due on the lease or grant, including any accrued rent and deferred bonuses;

(2) Decommission all facilities on the relinquished lease or grant (or portion thereof) to BOEM's satisfaction; and

(3) Perform any other outstanding obligations under the lease or grant.

(b) After you submit a completed relinquishment form for a lease or grant, ONRR will bill you for any outstanding payments that have accrued from obligations arising under the relinquished lease or grant.

■ 62. Add § 585.438 to read as follows:

§ 585.438 What happens to leases or grants (or portions thereof) that have been relinquished, contracted, or cancelled?

(a) If a lease or grant (or portion thereof) is relinquished, contracted, or cancelled under § 585.435, § 585.436, or § 585.437, respectively, BOEM may restart the competitive leasing process at any point set forth in § 585.210 that it deems reasonable and appropriate (*e.g.,* RFI, Call, area identification, PSN, or FSN), subject to all necessary environmental analyses and consultations.

(b) If a competitively issued lease or grant (or portion thereof) is relinquished or cancelled under § 585.435 or § 585.437, respectively, within six months of the auction, BOEM may reoffer the lease or grant (or portion thereof) to the next highest bidder from that auction, if one can be identified. If BOEM decides to reoffer to the next highest bidder, the price will be the next best bid, or a prorated amount based on the size of the relinquished share, as long as the next best bid reflects a fair return to the government.

Subpart F—Payments and Financial Assurance Requirements

■ 63. Amend § 585.500 by revising paragraphs (a) and (c)(1) through (7) and removing paragraph (c)(8).

The revsions read as follows:

§ 585.500 How do I make payments under this part?

(a) For acquisition fees or the initial 12 months' rent paid for the preliminary period of your lease, you must make your electronic payments through the Fees for Services page on the BOEM website at *https://www.boem.gov,* and you must include one copy of the *Pay.gov* confirmation receipt page with your unsolicited request.

* * * * *

(c) * * *

	Payment	Amount	Due date	Payment mechanism	Section reference
Initial payments for leases					
(1) If your lease is issued competitively.	Bid Deposit	As set in Final Sale Notice/depends on bid.	With bid	*Pay.gov*	§ 585.501.
	Bonus Balance		Within 10-business days of receiving unsigned lease.	30 CFR 1218.51	§ 585.225.
(2) If your lease is issued non-competitively.	Acquisition Fee	$0.25 per acre, unless otherwise set by the Director.	With application	*Pay.gov*	§ 585.502.
(3) All leases	Initial Rent	$3 per acre per year	45-calendar days after lease execution.	*Pay.gov*	§ 585.503.
Subsequent payments for leases and project easements					
(4) All leases	Subsequent Rent, unless otherwise provided in the terms of the lease.	$3 per acre per year	Annually	30 CFR 1218.51	§§ 585.503 and 585.504.
(5) If you have a project easement.	Rent, unless otherwise provided in the terms of the grant.	Greater of $5 per acre per year or $450 per year.	When/operations period for associated lease starts, then annually.	30 CFR 1218.51	§ 585.507.
(6) If your commercial lease is producing.	Operating Fee	Determined by the formula in § 585.506.	Annually	30 CFR 1218.51	§ 585.506.
Payments for ROW grants and RUE grants *					
(7) All ROW grants and RUE grants.	Initial Rent	Greater of $5 per acre per year or $450 per year, unless otherwise established in the grant.	Grant execution	*Pay.gov*	§ 585.508.
	Subsequent Rent		Annually or in 5-year batches.	30 CFR 1218.51.	

■ 64. Revise § 585.501 to read as follows:

§ 585.501 What deposits must I submit for a competitively issued lease, ROW grant, or RUE grant?

(a) For a competitively issued lease or grant, BOEM may require a bid deposit before the auction as established in the FSN.

(b) The provisional winner of an auction must pay the balance of its accepted bid in accordance with the FSN.

■ 65. Revise § 585.503 to read as follows:

§ 585.503 What are the rent and operating fee requirements for a commercial lease?

(a) The rent for a commercial lease is $3 per acre per year, unless otherwise established in the FSN or lease.

(1) You must pay ONRR the first 12 months' rent no later than 45 calendar days after you receive your copy of the executed lease from BOEM under § 585.500(a).

(2) You must pay ONRR as provided in 30 CFR 1218.51 the rent due at the beginning of each subsequent 1–year period for the entire lease area until the facility begins commercial operations as specified in § 585.506 or as otherwise specified in the FSN or lease:

(i) For leases issued competitively, BOEM will specify in the FSN and lease any adjustment to the rent that will take effect during the operations period and before commercial operations.

(ii) For leases issued noncompetitively, BOEM will specify in the lease any adjustment to the rent that will take effect during the operations period and before commercial operations.

(3) You must pay ONRR as provided in 30 CFR 1218.51 the rent due for a project easement in addition to the lease rent as provided in § 585.507. You must commence rent payments for your project easement upon BOEM's approval of your COP or GAP.

(b) After your lease begins commercial operations or on the date BOEM specifies in the lease, you must pay operating fees in the amount specified in § 585.506. Regardless of whether the lease is awarded competitively or noncompetitively, BOEM will specify in the lease the date when operating fees commence.

■ 66. Amend § 585.504 by revising the introductory text to read as follows:

§ 585.504 How are my payments affected if I develop my commercial lease in phases?

If you develop your commercial lease in phases as approved by BOEM in your COP under § 585.629, you must pay ONRR as provided in 30 CFR 1218.51:

* * * * *

■ 67. Amend § 585.505 by revising paragraph (c) to read as follows:

§ 585.505 What are the rent and operating fee requirements for a limited lease?

* * * * *

(c) You must pay ONRR as provided in 30 CFR 1218.51 the rent due at the beginning of each subsequent 1-year period on the entire lease area for the duration of your operations period.

* * * * *

■ 68. Amend § 585.506 by:

■ a. Revising the introductory text and the first sentence of paragraph (c)(1);

■ b. Removing the acronym ''DOE'' and adding in its place the words ''Department of Energy (DOE)'' in paragraph (c)(2)(i); and

■ c. Removing the acronym ''BOEM'' and adding in its place the acronym ''ONRR'' in paragraph (d).

The revisions read as follows:

§ 585.506 What operating fees must I pay on a commercial lease?

Once you begin commercial operations, you must pay ONRR as provided in 30 CFR 1218.51 operating fees on your commercial lease as described in § 585.503.

* * * * *

(c) * * *

(1) Unless BOEM specifies otherwise, the operating fee rate ''r'' is 0.02 for each year the operating fee applies when you begin commercial generation of electricity. * * *

* * * * *

■ 69. Amend § 585.507 by revising paragraphs (a) introductory text, (a)(1), and (b)(1) to read as follows:

§ 585.507 What rent payments must I pay on a project easement?

(a) You must pay ONRR, as provided in 30 CFR 1218.51, rent for your project easement in the amount of $5 per acre, subject to a minimum of $450 per year, unless specified otherwise in the lease.

(1) The size of the project easement will be determined according to § 585.628(g)(1).

* * * * *

(b) * * *

(1) You must make the first rent payment when the operations period begins, as provided in § 585.500.

* * * * *

■ 70. Amend § 585.508 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 585.508 What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects?

(a) For each ROW grant BOEM approves under subpart D of this part, you must pay ONRR, as provided in 30 CFR 1218.51, an annual rent of $5 per acre as determined by § 585.301(a), but in no case less than $450, for use of the grant, unless specified otherwise in the grant.

(b) For each RUE grant BOEM approves under subpart D of this part, you must pay ONRR, as provided in 30 CFR 1218.51, a rent in the amount of:

* * * * *

§ 585.509 [Amended]

■ 71. Amend § 585.509 in the section heading by removing the acronym ''BOEM'' and adding in its place the acronym ''ONRR''.

■ 72. Amend § 585.510 by revising the section heading and paragraphs (a), (b) introductory text, (b)(4)(i) and (ii), and (c) to read as follows:

§ 585.510 May BOEM defer, reduce, or waive my lease or grant payments?

(a) The BOEM Director may defer, reduce, or waive the rent or operating fee or components of the operating fee, such as the fee rate or capacity factor, when the Director determines that continued activities would be uneconomic without the requested deferral, reduction, or waiver, or that it is necessary to encourage continued or additional activities.

(b) When requesting a deferral, reduction, or waiver, you must submit an application to BOEM that includes all of the following:

* * * * *

(4) * * *

(i) Continued activities would be uneconomic without the requested deferral, reduction, or waiver, or

(ii) A deferral, reduction, or waiver is necessary to encourage additional activities; and

* * * * *

(c) No more than 6 years of your operations period will be subject to a full waiver of the operating fee.

§ 585.515 [Removed and Reserved]

■ 73. Remove and reserve § 585.515.

■ 74. Revise § 585.516 to read as follows:

§ 585.516 What are the financial assurance requirements for each stage of my commercial lease?

(a) The financial assurance requirements for each stage of your commercial lease are:

Before BOEM will . . .	You must provide . . .
(1) Execute a commercial lease or approve an assignment of an existing commercial lease.	A bond or other authorized financial assurance in the amount of 12 months' rent.

Before BOEM will . . .	You must provide . . .
(2) Allow you to install facilities approved in your SAP.	A supplemental bond or other authorized financial assurance in an amount determined by BOEM based on the anticipated decommissioning costs of the proposed facilities.
(3) Allow you to install facilities approved in your COP.	A supplemental bond or other authorized financial assurance in an amount determined by BOEM based on anticipated decommissioning costs of the proposed facilities. If you propose to incrementally fund your financial assurance instrument, BOEM must approve the schedule for providing the appropriate financial assurance.

(b) Each bond or other authorized financial assurance must guarantee compliance with this part, the applicable plan approvals, and the terms and conditions of the lease.

(c) For hydrokinetic commercial leases, supplemental financial assurance may be required in an amount determined by BOEM prior to installation of facilities pursuant to a FERC license.

■ 75. Revise § 585.517 to read as follows:

§ 585.517 How will BOEM determine the amounts of the supplemental financial assurance requirements associated with commercial leases?

(a) BOEM determines the amount of your supplemental financial assurance based on the estimated costs to meet all accrued lease obligations, including:

(1) The projected amount of annual rent and other payments due the United States over the next 12 months, to the extent that amount is not covered in the initial financial assurance provided in § 585.516(a)(1);

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning required by subpart J of this part.

(b) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of the supplemental financial assurance.

(1) If we propose adjusting your financial assurance amount, we will notify you of the proposed adjustment and give you an opportunity to comment; and

(2) We may approve a reduced financial assurance amount if you request it and if the reduced amount that you request is sufficient to cover your obligations and liabilities calculated under paragraph (a) of this section.

■ 76. Revise § 585.520 to read as follows:

§ 585.520 What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?

Before BOEM will execute your limited lease, ROW grant, or RUE grant, or approve an assignment of an interest therein, you or a proposed assignee must guarantee compliance with all terms and conditions of the lease or grant by providing a bond or other authorized financial assurance in the amount of 12 months' rent.

■ 77. Revise § 585.521 to read as follows:

§ 585.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?

(a) BOEM may require you to increase or allow you to decrease the amount of your financial assurance as activities progress on your limited lease or grant based on the estimated costs to meet all accrued lease or grant obligations.

(b) The total amount of the financial assurance must be no less than the amount required to meet your limited lease and grant obligations, including:

(1) The projected amount of rent and other payments due the United States over the next 12 months;

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning as required by subpart J of this part.

(c) If BOEM proposes adjusting the amount of your financial assurance to ensure your limited lease and grant obligations are met, BOEM will notify you of the proposed adjustment and will provide you an opportunity to object.

(d) You may submit a written request to BOEM to reduce the amount of your financial assurance if your proposed amount is not less than the sum of your obligations listed in paragraph (b) of this section. BOEM may approve your request in its discretion.

(e) You may satisfy the requirement for increased financial assurance on your limited lease or grant by increasing the amount of your existing bond or by providing a supplemental bond or other financial assurance.

(1) The supplemental bond or other financial assurance must meet the requirements specified in §§ 585.525 through 585.529.

(2) If you propose to incrementally fund your financial assurance, BOEM must approve the schedule for providing the appropriate financial assurance.

■ 78. Amend § 585.526 by:

■ a. Revising paragraph (a)(2);

■ b. Removing the word ''and'' after the semi-colon at the end of paragraph (a)(5); and

■ c. Adding paragraphs (a)(7) through (9).

The revision and additions read as follows:

§ 585.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?

(a) * * *

(2) A pledge of cash, in an amount equal to the required dollar amount of the financial assurance, to be deposited and maintained in a Federal depository account of the U.S. Treasury;

* * * * *

(7) Letters of credit, subject to the following conditions:

(i) The letter of credit provider must have an issuer credit rating from an Nationally Recognized Statistical Rating Organization (NRSRO) greater than or equal to investment grade from either Standard & Poor's Ratings Service or from Moody's Investor Service, or a proxy credit rating determined by BOEM based on audited financial information (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to either investment grade from Standard & Poor's Ratings Service or from Moody's Investor Service;

(ii) The letter of credit must grant BOEM full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease or regulatory obligations;

(iii) The letter of credit must be irrevocable during its term and will be subject to collection by BOEM if not replaced by another letter of credit or other form of financial assurance at least 30 calendar days before its expiration date;

(iv) The expiration date of the letter of credit must not be less than 1 year following the date it becomes effective;

(v) The letter of credit must contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice of cancellation to BOEM at least 90 calendar days before the expiration date; and

(vi) The letter of credit must contain a venue provision, which requires any disputes to be adjudicated in a U.S. Federal court that is mutually agreed upon by BOEM and the issuers of the letter of credit.

(8) Another form of security approved by BOEM in its discretion; or

(9) A combination of paragraphs (a)(1) through (8) of this section.

■ 79. Amend § 585.528 by revising the first sentence of paragraph (a), the second sentence of paragraph (c) introductory text, paragraph (c)(4), and the first sentence of paragraph (c)(5) to read as follows:

§ 585.528 May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities?

(a) You may use a third-party guaranty to secure all or part of the obligations for which financial assurance was demanded by BOEM if the guarantor meets the criteria prescribed in paragraph (b) of this section and submits an agreement meeting the criteria prescribed in paragraph (c) of this section. * * *

* * * * *

(c) * * * All parties are bound jointly and severally, and the guarantor must meet the legal and financial qualifications set forth in §§ 585.106 and 585.107.

* * * * *

(4) The guaranty agreement must contain a confession of judgment providing that, if BOEM determines that you or your operator are in default, the guarantor must not challenge the determination and must remedy the default.

(5) If you or your operator fail to comply with any law, term, or regulation, your guarantor must either take corrective action or provide, within 7 calendar days or other agreed upon time period, sufficient funds, up to the value of the guaranty, for BOEM to complete corrective action. * * *

* * * * *

■ 80. Amend § 585.529 by removing ''; and'' from the end of the paragraph (a)(1), revising paragraph (a)(2), and adding paragraph (a)(3).

The revision and addition read as follows:

§ 585.529 Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning?

(a) * * *

(2) You must fund the account in the amount determined by and according to the payment schedule approved by BOEM. BOEM will estimate the cost of decommissioning, including site clearance; and

(3) Subject to BOEM's approval, a decommissioning account may be funded in whole or in part during the operations period of a lease or grant.

* * * * *

■ 81. Amend § 585.532 by revising the section heading, the first sentence of paragraph (a) introductory text, and the first and second sentences of paragraph (b) to read as follows:

§ 585.532 What happens if my surety wants to terminate the period of liability of my financial assurance?

(a) Terminating the period of liability of your financial assurance ends the period during which surety liability continues to accrue. * * *

* * * * *

(b) Your surety must submit to BOEM its request to terminate the period of liability under its financial assurance and notify you of that request no less than 90 days before the proposed termination date. If you intend to continue activities on your lease or grant, you must provide replacement financial assurance of equivalent or greater value. * * *

■ 82. Revise § 585.533 to read as follows:

§ 585.533 How does my surety obtain cancellation of my financial assurance?

BOEM will allow a surety to cancel financial assurance and will relieve the surety from liability for accrued obligations on the earliest to occur of the following:

(a) BOEM determines that there are no outstanding obligations covered by the financial assurance;

(b) The following occurs:

(1) BOEM accepts replacement financial assurance in an amount equal to or greater than the financial assurance to be cancelled to cover the period of liability prior to termination; or

(2) The surety issuing the new financial assurance has expressly agreed to assume all outstanding liabilities under the original financial assurance that accrued during the period of liability that was terminated;

(c) Seven years have elapsed since the termination of the period of liability if the new surety did not assume the accrued obligations for the terminated period of liability; or

(d) A longer period as necessary to complete any appeals or judicial litigation related to your liabilities covered by the financial assurance.

■ 83. Revise § 585.534 to read as follows:

§ 585.534 When may BOEM cancel my financial assurance?

(a) When your lease or grant ends, your sureties remain responsible, and BOEM will cancel your financial assurance as shown in the following table:

Financial assurance	Your financial assurance will not be cancelled until . . .
(1) Financial assurance for commercial leases submitted under § 585.516(a)(1), and for grants or limited leases submitted under §§ 585.520 and 585.521.	Seven years after all operations and activities under the lease or grant cease, including decommissioning and site clearance, or a longer period as necessary to complete any appeals or judicial litigation related to your financial assurance obligation. BOEM may reduce or cancel your financial assurance or return some or all of your security if BOEM determines that the full amount is no longer needed.

Financial assurance	Your financial assurance will not be cancelled until . . .
(2) Supplemental financial assurance for commercial leases submitted under § 585.516 and for grants or limited leases submitted under §§ 585.520 and 585.521.	(i) The lease or grant expires or is terminated and BOEM determines you have met your secured obligations, unless BOEM: (A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of your lease-specific financial assurance; and (B) Notifies the provider of the supplemental financial assurance that BOEM will wait 7 years before cancelling all or a part of the supplemental financial assurance (or longer period as necessary to complete any appeals or judicial litigation related to your secured obligations); or (ii) At any time when: (A) BOEM determines, in its discretion, that you no longer need to provide the supplemental financial assurance; (B) The operations for which the supplemental financial assurance was provided were cancelled before accrual of any decommissioning obligation; or (C) Cancellation of the supplemental financial assurance is appropriate because, under the regulations, BOEM determines such financial assurance never should have been required.

(b) BOEM may require reinstatement of your financial assurance as if no cancellation had occurred if:

(1) A person makes a payment under the lease or grant, and the payment is rescinded or must be repaid by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) The responsible party represents to BOEM that it has discharged its obligations under the lease or grant, and the representation was materially false when the financial assurance was cancelled.

■ 84. Amend § 585.535 by revising the section heading, paragraph (a) introductory text, and paragraph (a)(2) to read as follows:

§ 585.535 Why might BOEM call for forfeiture of my financial assurance?

(a) BOEM may call for forfeiture of all or part of your financial assurance if:

* * * * *

(2) You default on one of the conditions under which we accepted your financial assurance.

* * * * *

§ 585.541 [Amended]

■ 85. Amend § 585.541 by removing the word ''nautical'' from the first sentence.

§ 585.542 [Amended]

■ 86. Amend § 585.542 by removing the word ''nautical'' from the third sentence.

Subpart G—Plans and Information Requirements

■ 87. Revise § 585.600 to read as follows:

§ 585.600 What plans and information must I submit to BOEM before I conduct activities on my lease or grant?

(a) You must submit a SAP, COP, or GAP and receive BOEM approval as set forth in the following table:

Before you:	you must:
(1) Conduct any site assessment activities on your commercial lease involving an engineered foundation, such as meteorological towers or other facilities that are installed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic condition.	Submit, and obtain approval of, your SAP under §§ 585.605 through 585.613.
(2) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease.	Submit, and obtain approval of, your COP under §§ 585.620 through 585.629.
(3) Conduct any activities on your limited lease or grant in any OCS area	Submit, and obtain approval of, your GAP under §§ 585.640 through 585.648.

(b) BOEM may waive certain types of information or analyses that you otherwise must provide in your proposed plan when you demonstrate that:

(1) Sufficient applicable information or analysis is readily available to BOEM.

(2) The coastal or marine resources that are the subject of the information requirement are not present or affected.

(3) Other factors affect your ability to obtain or BOEM's need for the required information.

(4) Information is neither necessary nor required for a State to determine consistency with its coastal management program.

■ 88. Revise § 585.601 to read as follows:

§ 585.601 When must I submit my plans to BOEM?

(a) You may submit your SAP anytime; however, your SAP must be submitted to and approved by BOEM before you conduct activities requiring a SAP under § 585.600(a)(1).

(b) You must submit your COP within 5 years of your lease effective date as determined by § 585.237.

(1) Your COP must contain sufficient data and information for BOEM to complete its reviews and NEPA analysis.

(2) BOEM may need to conduct additional reviews of your COP, including environmental analysis under NEPA, if significant, new information becomes available from your site assessment and characterization activities or if you substantially revise your COP. As a result of the additional reviews, BOEM may require that you modify your COP.

(c) You must submit your GAP within 12 months of your lease effective date as determined by § 585.237 or your grant effective date as determined by § 585.303(a), as applicable.

■ 89. Revise § 585.602 to read as follows:

§ 585.602 What records must I maintain?

Until BOEM releases your financial assurance under § 585.534, you must maintain and provide to BOEM upon request all data and information related to compliance with the required terms and conditions of your lease, grant, and approved plans.

■ 90. Revise § 585.605 to read as follows:

§ 585.605 What is a Site Assessment Plan (SAP)?

(a) A SAP describes the site assessment activities meeting the criteria in § 585.600(a)(1) that you plan to perform on your commercial lease.

(b) You must receive BOEM approval of your SAP, as provided in § 585.613, before you can begin any proposed site assessment activities requiring such approval.

(c) If BOEM determines that your proposed site assessment facility or combination of facilities is complex or significant under § 585.613(a)(1), you must comply with the requirements in subpart H of this part regarding facility design and construction and submit your SMS as required by § 585.810.

■ 91. Revise § 585.606 to read as follows:

§ 585.606 What must I demonstrate in my SAP?

Your SAP must demonstrate that you have planned and are prepared to conduct the proposed site assessment activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

(b) Conforms to all applicable laws, regulations, and provisions of your commercial lease;

(c) Is safe;

(d) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

■ 92. Revise § 585.607 to read as follows:

§ 585.607 How do I submit my SAP?

You must submit your SAP to BOEM pursuant to § 585.110.

■ 93. Revise § 585.610 to read as follows:

§ 585.610 What must I include in my SAP?

(a) Project information may be provided using a PDE. When you provide information using a PDE, BOEM reserves the right to determine what range of values for any given parameter are acceptable. Your SAP must include the following project-specific information, as applicable:

Project information	Including
(1) Contact information	The name, address, e-mail address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(3) Designation of operator, if applicable	As provided in § 585.405.
(4) Commercial lease stipulations and compliance.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat, or indicative layout	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data; and the location and associated water depths of all existing structures.
(6) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your site assessment activity.
(7) Deployment activities	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart I of this part.
(9) Project verification strategy	An analysis supporting your recommendation as to whether your site assessment activities should be determined complex or significant. If your recommendation supports a complex or significant determination, describe your strategy for compliance with §§ 585.705 through 585.714.
(10) References	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(11) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(12) Air quality information	Information as described in § 585.659.
(13) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers.
(14) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(15) Financial assurance information	Statements attesting that the activities and facilities proposed in your SAP are or will be covered by an appropriate bond or other approved financial assurance instrument as required in § 585.516 and §§ 585.525 through 585.529.
(16) Information you incorporate by reference	A list of the documents you have incorporated by reference and their public availability.
(17) Other information	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and investigations that characterize and model the site of your proposed assessment activities. Your reports must address the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for your assessment facility.	(i) Desktop studies to collect available data from published sources and nearby sites. (ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the seabed at the site that could impact, or be impacted by, your proposed site assessment activities. (iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed site assessment activities; and provide geotechnical data for design of the site assessment facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your site assessment facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.
(2) Biological	To determine the presence of biological features and marine resources.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations such as fish, marine mammals, sea turtles, and coastal and marine birds.
(3) Archaeological resources and other historic properties.	To provide BOEM with required information to conduct review of your SAP under NHPA.	Archaeological resource and other historic property identification surveys with supporting data.
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of your proposed facility, and to identify conditions that may pose a significant risk to your facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support design of your facility and support the analysis of wake effects, sediment mobility and scour, and navigation risks.

■ 94. Revise § 585.611 to read as follows:

§ 585.611 What information and certifications must I submit with my SAP to assist BOEM in complying with NEPA and other applicable laws?

(a) Your SAP must contain detailed information and analysis to assist BOEM in complying with NEPA and other applicable laws.

(b) When proposing site assessment activities in an area where BOEM has no previous experience, your SAP must contain information about resources, conditions, and activities listed in the following table that could be affected by or that could affect your proposed activities:

Type of information:	Including:
(1) Hazard information	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality	Turbidity and total suspended solids from construction; impact from vessel discharges.
(3) Biological resources	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, sea grasses, and other plant life.
(4) Threatened or endangered species	As needed for ESA consultation.
(5) Sensitive biological resources or habitats	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, nearby marine protected areas, including State and Federal coastal and marine protected areas, as well as nearby national marine sanctuaries, and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	To provide BOEM with required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.
(7) Social and economic conditions	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize adverse impacts. This document must also be submitted to the U.S. Coast Guard to assist with its analysis if your proposal identifies potential impediments to safe navigation.
(9) Consistency Certification	If required by CZMA, under: (i) 15 CFR part 930, subpart D, if the SAP is submitted before lease issuance; (ii) 15 CFR part 930, subpart E, if the SAP is submitted after lease issuance.

Type of information:	Including:
(10) Other resources, conditions, and activities	As identified by BOEM.

(c) When proposing site assessment activities in an area BOEM previously considered, BOEM will review your SAP to determine if its impacts are consistent with those previously considered. If the anticipated effects of your proposed SAP activities are significantly different than those previously anticipated, we may determine that additional NEPA and other relevant Federal reviews are required. In that case, BOEM will notify you of such determination, and you must submit information required in paragraph (b) of this section as appropriate.

■ 95. Amend § 585.612 by revising paragraphs (a) and (b) to read as follows:

§ 585.612 How will my SAP be processed for Federal consistency under the Coastal Zone Management Act?

* * * * *

If your SAP is submitted:	Consistency review of your SAP will be handled as follows:
(a) Before lease issuance	You will furnish a copy of your SAP, consistency certification, and necessary data and information, to the applicable State CZMA agencies if required by 15 CFR part 930, subpart D. Submit a copy to BOEM in accordance with § 585.110.
(b) After lease issuance	You must submit a copy of your SAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart E, to BOEM only if BOEM did not consider the proposed site assessment activities for your lease area under its previously submitted consistency determination under 15 CFR part 930, subpart C, and if required by 15 CFR part 930, subpart E. BOEM will forward to the applicable State CZMA agency or agencies one copy of your SAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the SAP are met.

■ 96. Amend § 585.613 by revising paragraph (e)(2) to read as follows:

§ 585.613 How will BOEM process my SAP?

* * * * *

(e) * * *

(2) If we disapprove your SAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend your lease, as appropriate, to give you a reasonable amount of time to resubmit the SAP.

■ 97. Amend § 585.614 by revising paragraph (b) to read as follows:

§ 585.614 When may I begin conducting activities under my approved SAP?

* * * * *

(b) If you are installing a facility or a combination of facilities deemed by BOEM to be complex or significant, as provided in § 585.613(a)(1), you must comply with the requirements of subpart H of this part and submit your Safety Management System description required by § 585.810 before construction may begin.

■ 98. Revise § 585.617 to read as follows:

§ 585.617 What activities require a revision to my SAP, and when will BOEM approve the revision?

(a) You must notify BOEM in writing before conducting any site assessment activities not described in your approved SAP. Your notice must describe in detail the type of activities you propose to conduct. We will determine whether the activities you propose require a revision to your SAP. We may request additional information from you, if necessary, to make this determination.

(b) If a revised SAP is required, BOEM will reassess, upon its receipt, whether the facility or combination of facilities described in it is complex or significant.

(1) If BOEM determines that the facilities described in your revised SAP are not complex or significant, you may conduct your approved activities under § 585.614(a).

(2) If BOEM determines that the facilities described in your revised SAP are complex or significant, you must comply with § 585.614(b).

(c) BOEM will periodically review the activities conducted under an approved SAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting or affected by the activities conducted under your SAP. If the review indicates that the SAP should be revised to meet the requirements of this part, we will require you to submit the needed revisions.

(d) Activities for which a proposed revision to your SAP likely will be necessary include:

(1) Activities not described in your approved SAP;

(2) Modifications to the number, size, or type of facilities or equipment you will use;

(3) Changes in the geographical location or layout of your bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved SAP;

(4) Structural failure of any facility; or

(5) Changes to any other activity specified by BOEM.

(e) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(f) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of section 8(p) of the OCS Lands Act.

■ 99. Amend § 585.618 by revising paragraphs (a) and (e) to read as follows:

§ 585.618 What must I do upon completion of approved site assessment activities?

(a) If your COP or FERC license application describes the continued use of existing facilities approved in your SAP, you may keep such facilities in place on your lease during the time that BOEM reviews your COP or FERC reviews your license application.

* * * * *

(e) You must decommission your site assessment facilities as set forth in

subpart J of this part upon the termination of your lease. You must submit your decommissioning application as required in §§ 585.905 and 585.906.

■ 100. Revise § 585.621 to read as follows:

§ 585.621 What must I demonstrate in my COP?

Your COP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

(b) Conforms to all applicable laws, regulations, and provisions of your commercial lease;

(c) Is safe;

(d) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

■ 101. Amend § 585.622 by revising paragraph (a) to read as follows:

§ 585.622 How do I submit my COP?

(a) You must submit your COP to BOEM pursuant to § 585.110.

* * * * *

■ 102. Revise § 585.626 to read as follows:

§ 585.626 What must I include in my COP?

(a) Project information may be provided using a PDE. When you provide information using a PDE, BOEM reserves the right to determine what range of values for any given parameter are acceptable. Your COP must include the following project-specific information, as applicable:

Project information:	Including:
(1) Contact information	The name, address, e-mail address, and phone number of an authorized representative.
(2) Designation of operator, if applicable.	As provided in § 585.405.
(3) Commercial lease stipulations and compliance.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(4) A location plat, or indicative layout.	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data, and the location and associated water depths of all existing structures.
(5) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your project.
(6) Deployment activities	A description of safety, prevention, and environmental protection features or measures that you will use.
(7) A list of solid and liquid wastes generated.	Disposal methods and locations.
(8) A listing of chemical products used (if stored volume exceeds Environmental Protection Agency (EPA) reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(9) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel, vehicle, or aircraft traffic.
(10) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(11) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(12) A listing of all Federal, State, and local authorizations or approvals required to conduct the proposed activities, including commercial operations.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers pertaining to energy gathering, transmission or distribution (e.g., interconnection authorizations).
(13) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart I of this part.
(14) Information you incorporate by reference.	A list of the documents you have incorporated by reference and their public availability.
(15) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.

Project information:	Including:
(16) References	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(17) Financial assurance	Statements attesting that the activities and facilities proposed in your COP are or will be covered by an appropriate bond or other approved financial assurance instrument as required in § 585.516 and §§ 585.525 through 585.529.
(18) Project verification strategy.	A list of all facilities or combination of facilities on your approved COP that are considered complex or significant. You must describe your strategy for compliance with §§ 585.705 through 585.714.
(19) Construction schedule	A reasonable schedule of construction activity showing significant milestones leading to the commencement of commercial operations consistent with the requirements of subpart H of this part.
(20) Air quality information	Information as described in § 585.659.
(21) Other information	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and investigations that characterize and model the site of your proposed project. Your reports must address the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for your proposed facility.	(i) Desktop studies to collect available data from published sources and nearby sites. (ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the site's seabed that could impact, or be impacted by, the proposed project. (iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed project; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.
(2) Biological	To determine the presence of biological features and marine resources.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations such as fish, marine mammals, sea turtles, and sea birds.
(3) Archaeological resources other historic properties.	To provide BOEM with required information to conduct review of the COP under NHPA.	Archaeological resource and other historic property. On a case-by-case basis and subject to terms and conditions of COP approval per § 585.628(f), BOEM may permit you to submit certain surveys of the subsea portions of the area of potential effects with your FDR per § 585.701(a)(11).
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of the proposed facility, and to identify conditions that may pose a significant risk to the facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigational risks.

■ 103. Amend § 585.627 by revising the section heading and paragraphs (a) through (c) to read as follows:

§ 585.627 What information and certifications must I submit with my COP to assist BOEM in complying with NEPA and other applicable laws?

(a) Your COP must contain detailed information and analysis to assist BOEM in complying with NEPA and other applicable laws. Your COP must contain information about those resources, conditions, and activities listed in the following table that could be affected by, or that could affect, your proposed activities:

Type of information:	Including:
(1) Hazard information	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality	Turbidity and total suspended solids from construction; impact from vessel discharges.
(3) Biological resources	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(4) Threatened or endangered species.	As required by ESA.
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, nearby marine protected areas, including State and Federal coastal and nearby marine protected areas, as well as national marine sanctuaries and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	To provide BOEM with required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.

Type of information:	Including:
(7) Social and economic resources	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize such adverse impacts. This document also must be submitted to the U.S. Coast Guard to assist with its analysis.
(9) Consistency Certification	If required by the CZMA regulations: (i) 15 CFR part 930 subpart D, if your COP is submitted before lease issuance. (ii) 15 CFR part 930 subpart E, if your COP is submitted after lease issuance.
(10) Other resources, conditions, and activities.	As identified by BOEM.

(b) You must submit one copy of your consistency certification. Your consistency certification must include:

(1) One copy of your consistency certification under either subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 or subsection 307(c)(3)(A) of the CZMA (16 U.S.C. 1456(c)(3)(A)) and 15 CFR 930.57, stating that the proposed activities described in detail in your plans comply with the enforceable policies of the applicable States' approved coastal management programs and will be conducted in a manner that is consistent with such programs; and

(2) ''Necessary data and information,'' as required by 15 CFR 930.58.

(c) You must submit an oil spill response plan in compliance with 33 U.S.C. 1321, including information identified in 30 CFR part 254 that is applicable to your activities.

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■ 104. Amend § 585.628 by revising the first sentence of paragraph (a) and paragraphs (c), (f)(2), and (g) to read as follows:

§ 585.628 How will BOEM process my COP?

(a) BOEM will review your submitted COP, including the information provided under § 585.627, to determine if it contains the information necessary to conduct our technical and environmental reviews. * * *

* * * * *

(c) If your COP is submitted after lease issuance, and if your COP is subject to Federal consistency review under the CZMA regulations at 15 CFR part 930, subpart E, you must submit your COP, consistency certification, and associated data and information under CZMA to BOEM after all information requirements for the COP are met, and the appropriate environmental assessment or draft environmental impact statement, if required, has been published. BOEM will forward the COP, consistency certification, and associated data and information to the applicable State CZMA agencies.

* * * * *

(f) * * *

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend the COP review period of your lease, as appropriate, to give you a reasonable amount of time to submit the revised plan.

(g) If BOEM approves your project easement, BOEM will issue an addendum to your lease specifying the terms of the project easement.

(1) The project easement will provide sufficient off-lease area to accommodate potential changes at the design and installation phases of the project for locating cables, pipelines, and other appurtenances necessary for your project.

(2) Unused portions of the project easement may be relinquished after construction is complete.

(3) A project easement is subject to the following conditions:

(i) The rights granted will not prevent the granting of other rights by the United States, either before or after the granting of the project easement, provided that any subsequent authorization issued by BOEM in the area of a previously issued project easement may not unreasonably interfere with activities approved or impede existing operations under the project easement; and

(ii) If the project easement is granted in an area where a lease or ROW or RUE grant has previously been issued, the project easement holder must agree that its activities will not interfere with or impede existing operations under the lease or ROW or RUE grant.

■ 105. Amend § 585.634 by revising paragraphs (a) and (c) to read as follows:

§ 585.634 What activities require a revision to my COP, and when will BOEM approve the revision?

(a) You must notify BOEM in writing before conducting any activities not described in your approved COP. Your notice must describe in detail the type of activities you propose to conduct. We will determine whether the activities you propose require a revision to your COP. We may request additional information from you, if necessary, to make this determination.

* * * * *

(c) Activities for which a proposed revision to your COP likely will be necessary include:

(1) Activities not described in your approved COP;

(2) Modifications to the number, size, or type of facilities or equipment you will use;

(3) Material changes in the geographical location or layout of bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved COP;

(4) Structural failure of any facility;

(5) Submission of an FDR or FIR that contains new information or that is inconsistent with the COP that has been previously submitted; or

(6) Change in any other activity specified by BOEM.

* * * * *

■ 106. Amend § 585.637 by revising paragraph (a) to read as follows:

§ 585.637 When may I commence commercial operations on my commercial lease?

(a) If you are conducting activities on your lease that do not require a FERC license (*i.e.,* wind power projects), then you may commence commercial operations 30 calendar days after:

(1) Your project verification report, described in §§ 585.704 and 585.708(a)(5), is deemed submitted by BOEM;

(2) BOEM has confirmed receipt of critical safety systems commissioning

records, as described in § 585.708(a)(6); and

(3) BOEM has not notified you within that timeframe of any objections to the verification report or the commissioning records.

(b) If you are conducting activities on your lease that do require a FERC license or exemption, then you may commence commercial operations when permitted by the terms of your license or exemption.

(c) You must notify BOEM within 10 business days after you commence commercial operations.

■ 107. Amend § 585.638 by revising the first sentence of paragraph (a) to read as follows:

§ 585.638 What must I do upon completion of my commercial operations as approved in my COP or FERC license?

(a) Upon completion of your approved activities under your COP, you must decommission your project as set forth in subpart J of this part. * * *

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■ 108. Amend § 585.640 by revising paragraph (b) to read as follows:

§ 585.640 What is a General Activities Plan (GAP)?

* * * * *

(b) You must receive BOEM approval of your GAP before you can begin any of the proposed activities on your lease or grant.

■ 109. Revise § 585.641 to read as follows:

§ 585.641 What must I demonstrate in my GAP?

Your GAP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

(b) Conforms to all applicable laws, regulations, and provisions of your limited lease or grant;

(c) Is safe;

(d) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

■ 110. Amend § 585.642 by revising paragraph (a) to read as follows:

§ 585.642 How do I submit my GAP?

(a) You must submit your GAP to BOEM pursuant to § 585.110.

* * * * *

■ 111. Amend § 585.645 by revising paragraphs (a) through (c) to read as follows:

§ 585.645 What must I include in my GAP?

(a) Project information may be provided using a PDE. When you provide a range of parameters using a PDE, BOEM reserves the right to determine what range of values for any given parameter are acceptable. Your GAP must include the following project-specific information, as applicable:

Project information:	Including:
(1) Contact information	The name, address, e-mail address, and phone number of an authorized representative.
(2) Designation of operator, if applicable.	As provided in § 585.405.
(3) The site assessment or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(4) ROW or RUE grant, or limited lease stipulations, if known.	A description of the measures you took, or will take, to satisfy the conditions of any grant or lease stipulations related to your proposed activities.
(5) A location plat, or indicative layout.	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data; and the location and associated water depths of all existing structures.
(6) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your project.
(7) Deployment activities	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart I of this part.
(9) A list of solid and liquid wastes generated.	Disposal methods and locations.
(10) A listing of chemical products used (if stored volume exceeds EPA reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(11) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(12) Reference information	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(13) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(14) Air quality information	As described in § 585.659.
(15) A listing of all Federal, State, and local authorizations or approvals required to conduct activities on your grant or limited lease.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State or local authorizers pertaining to your activities.

Project information:	Including:
(16) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(17) Financial assurance information.	Statements attesting that the activities and facilities proposed in your GAP are, or an explanation of how they will be, covered by an appropriate bond or other approved security, as required in §§ 585.520 and 585.521.
(18) Project verification strategy	An analysis supporting your recommendation as to whether your activities should be determined complex or significant. If your recommendation supports a complex or significant determination, describe your strategy for compliance with §§ 585.705 through 585.714.
(19) Information you incorporate by reference.	A list of the documents you have incorporated by reference and where they may be publicly accessed; for confidential information, you may reference information and data discussed in other plans previously submitted or that are otherwise readily available to BOEM.
(20) Other information	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and investigations that characterize and model the site of your proposed activities. Your reports must cover the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed facility.	(i) Desktop studies to collect available data from published sources and nearby sites. (ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the seabed at the site that could impact, or be impacted by, the proposed project. (iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed development; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.
(2) Biological	To determine the presence of biological features and marine resources.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations, such as fish, marine mammals, sea turtles, and sea birds.
(3) Archaeological resources and other historic properties.	To provide BOEM with required information to conduct review of the GAP under NHPA.	Archaeological resource and other historic property identification surveys with supporting data.
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of the proposed facility, and to identify conditions that may pose a significant risk to the facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigation risks.

(c) If you are applying for a project easement, or constructing a facility or a combination of facilities deemed by BOEM to be complex or significant, you must provide the following additional information and comply with the requirements of subpart H of this part:

Project information:	Including:
(1) The construction and operation concept.	A discussion of the objectives, description of the proposed activities, and tentative schedule from start to completion.
(2) All cables and pipelines, including cables on project easements.	The location, design, installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(3) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(4) Construction schedule	A reasonable schedule of construction activity showing significant milestones leading to the commencement of activities consistent with the requirements of subpart H of this part.
(5) Other information	Additional information as requested by BOEM.

* * * * *

■ 112. Amend § 585.646 by revising the section heading, introductory text, and paragraphs (b)(2), (5), and (6) through (9) to read as follows:

§ 585.646 What information and certifications must I submit with my GAP to assist BOEM in complying with NEPA and other applicable laws?

You must submit, with your GAP, detailed information and analysis to assist BOEM in complying with NEPA and other applicable laws.

* * * * *

(b) * * *

* *	* * * * * * *
(2) Water quality	Turbidity and total suspended solids from construction; impact from vessel discharges.
* *	* * * * * * *
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, marine protected areas, including State and Federal coastal and marine protected areas, as well as nearby national marine sanctuaries and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	To provide BOEM with required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.
(7) Social and economic conditions	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize such adverse impacts. This document also must be submitted to the U.S. Coast Guard to assist with its analysis if your proposal identifies potential impediments to safe navigation.
(9) Consistency Certification	If required by CZMA, under: (i) 15 CFR part 930, subpart D, if the GAP is submitted before lease or grant issuance; (ii) 15 CFR part 930, subpart E, if the GAP is submitted after lease or grant issuance.
* *	* * * * * * *

■ 113. Amend § 585.647 by revising paragraphs (a) and (b) to read as follows:

§ 585.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?

* * * * *

* *	* * * * * * *
(a) Before lease or grant issuance	You will furnish a copy of your GAP, consistency certification, and necessary data and information to the applicable State CZMA agencies if required by 15 CFR part 930, subpart D. Submit a copy to BOEM pursuant to § 585.110.
(b) After lease or grant issuance	You will submit a copy of your GAP, consistency certification, and necessary data and information to BOEM if required by 15 CFR part 930, subpart E. BOEM will forward to the applicable State CZMA agency or agencies one copy of your GAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the GAP are met.

■ 114. Amend § 585.648 by revising paragraphs (a) introductory text and (e)(2) to read as follows:

§ 585.648 How will BOEM process my GAP?

(a) BOEM will review your submitted GAP, along with the information and certifications you submitted in compliance with § 585.646, to determine if it contains the information necessary to conduct our technical and environmental reviews.

* * * * *

(e) * * *

(2) If we disapprove your GAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend your lease or grant, as appropriate, to give you a reasonable amount of time to resubmit the GAP.

■ 115. Amend § 585.652 by revising paragraph (a) to read as follows:

§ 585.652 How long do I have to conduct activities under an approved GAP?

* * * * *

(a) For a limited lease, the time period established under § 585.236(a)(2), unless we renew the term under §§ 585.425 through 585.429.

* * * * *

■ 116. Amend § 585.655 by revising paragraphs (a) and (c) to read as follows:

§ 585.655 What activities require a revision to my GAP, and when will BOEM approve the revision?

(a) You must notify BOEM in writing before conducting any activities not described in your approved GAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing

GAP or require a revision to your GAP. We may request additional information from you, if necessary, to make this determination. Upon receipt of your revised GAP, BOEM will make a determination as to whether it deems the facility or combination of facilities described in your revised GAP to be complex or significant.

(1) If BOEM determines that your revised GAP is not complex or significant, you may conduct your approved activities in accordance with § 585.650.

(2) If BOEM determines that your revised GAP is complex or significant, then you must comply with the requirements of § 585.651.

* * * * *

(c) Activities for which a proposed revision to your GAP will likely be necessary include:

(1) Activities not described in your approved GAP;

(2) Modifications to the number, size, or type of facilities or equipment you will use;

(3) Changes in the geographical location or layout of bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved GAP;

(4) Structural failure of any facility; or

(5) Change to any other activity specified by BOEM.

* * * * *

■ 117. Amend § 585.657 by revising the first sentence to read as follows:

§ 585.657 What must I do upon completion of approved activities under my GAP?

Upon completion of your approved activities under your GAP, you must decommission your project as set forth in subpart J of this part. * * *

■ 118. Amend § 585.659 by revising paragraphs (a) introductory text and (a)(1) and the second sentence of paragraph (b) to read as follows:

§ 585.659 What requirements must I include in my SAP, COP, or GAP regarding air quality?

(a) Your SAP, COP, or GAP must address air quality as follows:

* * * * * * *

(1) In the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico) or offshore of the North Slope Borough of Alaska.

include in your plan any information required for BOEM to make the appropriate air quality determinations for your project.

* * * * * * *

(b) * * * In the western Gulf of Mexico (west of 87.5° west longitude) and offshore of the North Slope Borough of Alaska, you must submit to BOEM three copies of the modeling report and three sets of digital files as supporting information. * * *

Subpart H—Facility Design, Fabrication, and Installation

■ 119. Revise § 585.700 to read as follows:

§ 585.700 What reports must I submit to BOEM before installing facilities described in my approved SAP, COP, or GAP?

(a) You must submit the following reports to BOEM before installing facilities described in your approved COP (§ 585.632(a)) and, when required by this part, your SAP (§ 585.614(b)) or GAP (§ 585.651):

(1) A Facility Design Report (FDR); and

(2) A Fabrication and Installation Report (FIR).

(b) You may submit separate FDRs and FIRs for the major components of your project as agreed to by BOEM on a case-by-case basis. If you submit separate FDRs and FIRs by major components, you must explain to BOEM how all major components detailed in the reports will function together effectively in an integrated manner in accordance with your project design, and you must demonstrate that such integration has been verified by your CVA.

(c) You may submit your FDRs and FIRs before or after SAP, COP, or GAP approval.

(d) Subject to the requirements in paragraph (b) of this section, you may commence fabrication and installation of the facilities on the OCS as described in each report:

(1) If BOEM deems your report submitted before SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR or does not respond with objections within 60 calendar days of SAP, COP, or GAP approval; or

(2) If BOEM deems your report submitted after SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR or does not respond with objections within 60 calendar days of the report being deemed submitted.

(e) You may commence procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS (*e.g.,* manufacturing), prior to the submittal of the reports required under paragraph (a) of this section or any plans required under this part. The procurement and fabrication of facility components allowed under this subsection are subject to verification by your CVA, and BOEM may object to the installation of said components on the OCS if it considers that the components or their fabrication is inconsistent with accepted industry or engineering standards, the approved SAP, COP, or GAP, the FDR or FIR, or BOEM's regulations.

(f) If BOEM requires additional information or has objections, we will notify you in writing within 60 calendar days of the report being deemed submitted. Following initial notification of any objections, BOEM may follow up with written correspondence detailing its objections to the report and requesting that certain actions be undertaken. You cannot commence fabrication or installation activities on the OCS that are addressed in such reports until you resolve all objections to BOEM's satisfaction.

■ 120. Amend § 585.701 by:

■ a. Revising paragraphs (a)(1) through (10);

■ b. Adding paragraphs (a)(11) through (14);

■ d. Revising paragraphs (b) and (d); and

■ e. Removing paragraph (e).

The revisions read as follows:

§ 585.701 What must I include in my Facility Design Report?

(a) * * *

Required documents	Required contents
(1) Cover letter	(i) Proposed facility designations: (ii) Lease, ROW grant or RUE grant number; (iii) Area; name and block numbers; and (iv) The type of facility.
(2) Location plat	(i) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System; ii) Distances in feet from the nearest block lines. These coordinates must be based on the NAD (North American Datum) 83 datum plane coordinate system; and (iii) The location of any project easements.
(3) Front, Side, and Plan View drawings	(i) Facility dimensions and orientation; (ii) Elevations relative to Mean Lower Low Water; and (iii) Pile sizes and penetration.
(4) Complete set of structural drawings	The approved for construction fabrication drawings should be submitted including, *e.g.,* (i) Cathodic protections systems; (ii) Jacket design; (iii) Pile founations; (iv) Mooring and tethering systems; (v) Foundations and anchoring systems; and (vi) Associated cable and pipeline designs.
(5) Summary of environmental data used for design.	A summary of the environmental data used in the design or analysis of the facility. Examples of relevant data include information on: (i) Extreme weather (ii) Seafloor conditions, and (iii) Waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth.
(6) Summary of the engineering design data	(i) Loading information (*e.g.,* live, dead, environmental); (ii) Structural information (*e.g.,* design-life; material types; cathodic protection systems; design criteria; fatigue life; jacket design; deck design; production component design; foundation pilings and templates, and mooring or tethering systems; fabrication and installation guidelines); (iii) Location of foundation boreholes and foundation piles; (iv) Foundation information (*e.g.,* soil stability, design criteria); and (v) For a floating facility, structural integrity, stability, and ballast information.
(7) A complete set of design calculations	Self-explanatory.
(8) Project-specific studiesused in the facility design or installation.	All studies pertinent to facility design or installation e,g., oceanographic and soil reports including the results of the survey required in §§ 585.610(b), 585.627(a), 585.645(a).
(9) Description of the loads imposed on the facility.	(i) Loads imposed by the jacket; (ii) Decks; (iii) Production components; (iv) Foundations, foundation pilings and templates, and anchoring systems; and (v) Mooring or tethering systems.
(10) Geotechnical and geophysical reports	All data from geotechnical and geophysical surveys, *in situ* explorations, laboratory tests, analyses, burial or drivability assessments, and recommended design parameters.
(11) Archaeological resources reports	All archaeological resource and historic property identification surveys with supporting data that BOEM has authorized you to submit with your FDR under § 585.626(b)(3).
(12) Design Standards	The industry standards you will apply to ensure the facilities are designed to meet § 585.105.
(13) Critical Safety System	A risk assessment that identifies the critical safety systems and description of the identified critical safety systems.
(14) Other information	Additional information required by BOEM.

(b) You must submit your Facility Design Report to BOEM pursuant to § 585.110.

* * * * *

(d) If you are required to use a CVA, the FDR must include the following verification statement: ''The design of this structure has been verified by a BOEM-approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP, as applicable, and has been designed to provide for safety. The verified design and as-built plans and specifications will be on file at [provide location].''

■ 121. Amend § 585.702 by:

■ a. Revising paragraphs (a)(1) through (7);

■ b. Adding paragraphs (a)(8) through (10);

■ d. Removing paragraph (d);

■ e. Redesignating paragraphs (b) and (c) as paragraphs (d) and (e), respectively;

■ f. Adding new paragraphs (b) and (c); and

■ g. Revising newly redesignated paragraph (e).

The revisions and additions read as follows:

§ 585.702 What must I include in my Fabrication and Installation Report?

(a) * * *

Required documents	Required contents
(1) Cover letter	(i) Proposed facility designation, lease, ROW grant, or RUE grant number; (ii) Area, name, and block number; and (iii) The type of facility.
(2) Schedule	Fabrication and installation.
(3) Fabrication information	The industry standards you will use to ensure the facilities are fabricated to the design criteria identified in your Facility Design Report.

Required documents	Required contents
(4) Installation process information	Details associated with the deployment activities, equipment, and materials, including onshore and offshore equipment and support, and anchoring and mooring patterns.
(5) Federal, State, and local permits (*e.g.,* EPA, Army Corps of Engineers).	Either 1 copy of the permit or information on the status of the application.
(6) Quality assurance	Certificates ensuring adherence to a recognized quality assurance standard. Alternate means of compliance must be approved on a case-by-case basis.
(7) Environmental information	(i) Water discharge; (ii) Waste disposal; (iii) Vessel information; (iv) Onshore waste receiving treatment or disposal facilities; and (v) If you submitted this data as part of your SAP, COP, or GAP, you may incorporate by reference.
(8) Commissioning procedures for critical safety systems.	Original equipment manufacturer procedures or other BOEM approved procedures for commissioning of critical safety systems as identified in § 585.701(a)(13).
(9) Project easement	Design of any cables, pipelines, or facilities. Information on burial methods and vessels.
(10) Other information	Additional information required by BOEM.

(b) You must submit your FIR to BOEM pursuant to § 585.110.

(c) You may submit a request for any project easement and supporting information as part of your original FIR submission or as a revision to it.

* * * * *

(e) If you are required to use a CVA, the FIR must include the following verification statement: ''The fabrication and installation of this structure has been verified by a BOEM-approved CVA to be in accordance with accepted engineering practices, the FDR, and the approved SAP, GAP, or COP, as applicable. The verified design and as-built plans and specifications will be on file at [provide location].''

■ 122. Amend § 585.703 by revising paragraphs (a) and (c) to read as follows:

§ 585.703 What reports must I submit for project modifications and repairs?

(a) You must demonstrate in a report to us that major repairs and major modifications to a completed project conform to accepted engineering practices.

(1) A ''major repair'' is a corrective action involving structural members affecting the structural integrity of all or a portion of the facility or substantial repair of a critical safety system(s), including those identified in your FDR.

(2) A ''major modification'' is an alteration involving structural members affecting the structural integrity of all or a portion of the facility or substantial alteration of a critical safety system(s), including those as identified in your FDR.

* * * * *

(c) If you are required to use a CVA, the report described in paragraph (a) of this section must include the following verification statement: ''The [modification or repair] of this [structure or critical safety system] has been verified by a BOEM-approved CVA to be in accordance with accepted engineering practices, the FDR, and the approved SAP, GAP, or COP as applicable.''

■ 123. Add § 585.704 to read as follows:

§ 585.704 After receiving the FDR, FIR, or project verification reports, what will BOEM do?

(a) *Determine whether the report is deemed submitted.* Within 20 calendar days after receiving your proposed FDR, FIR, or project verification report, BOEM will review your submission and deem your FDR, FIR, or project verification report submitted provided that your submission is sufficiently complete and accurate to fulfill the applicable requirements of § 585.701, § 585.702, or § 585.712.

(b) *Identify problems and deficiencies.* If BOEM determines that you have not met the conditions in paragraph (a) of this section, BOEM will notify you of the problem or deficiency within 20 calendar days after BOEM receives your FDR, FIR, or project verification report. BOEM will not deem your FDR, FIR, or project verification report submitted until you have corrected all problems or deficiencies identified in the notice.

(c) *Notify you when the report is deemed submitted.* BOEM will notify you when the FDR, FIR, or project verification report is deemed submitted. If BOEM has not notified you within 20 calendar days that your report has problems or deficiencies, you may consider it deemed submitted.

■ 124. Revise § 585.705 to read as follows:

§ 585.705 When must I use a Certified Verification Agent (CVA)?

(a) Unless BOEM waives this requirement under paragraph (c) of this section, you must use one or more CVAs to review and verify your FDRs, FIRs, and the Project Modification and Repair Reports.

(b) The purpose of a CVA is to:

(1) Ensure that your facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report;

(2) Ensure critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8);

(3) Ensure that major repairs and major modifications are completed in conformance with accepted engineering practices; and

(4) Provide BOEM and you with immediate reports of all incidents that affect the facility design, fabrication, and installation, including commissioning of critical safety systems, for the project and its components.

(c) BOEM may waive in whole or in part the requirement that you use a CVA if you can demonstrate the following:

If you demonstrate that . . .	Then BOEM may waive the requirement for a CVA for the following:
(1) The facility design conforms to a standard design that has been used successfully in a similar environment, and the installation design conforms to accepted engineering practices.	The design of your structure(s).

If you demonstrate that . . .	Then BOEM may waive the requirement for a CVA for the following:
(2) The relevant fabricator has successfully fabricated similar facilities, and the facility will be fabricated in conformance with accepted engineering practices and to a recognized quality assurance standard. Alternate means of quality assurance compliance must be approved on a case-by-case basis.	The fabrication of your structure(s).
(3) The relevant installation companies have successfully installed similar facilities in a similar offshore environment, and your structures will be installed in conformance with accepted engineering practices.	The installation of your structure(s).
(4) Major repairs or major modifications will be completed in conformance with accepted engineering practices and to a recognized quality assurance standard. Alternate means of quality assurance compliance must be approved on a case-by-case basis.	The major repair or major modification of your structure(s).

(d) You must submit a request to waive, in whole or in part, the requirement to use a CVA to BOEM in writing.

(1) BOEM will review your request to waive, in whole or in part, the use of the CVA and notify you of its decision.

(2) If BOEM does not waive, in whole or in part, the requirement for a CVA, you may file an appeal under § 585.118.

(3) If BOEM waives, in whole or in part, the requirement that you use a CVA, your project engineer must perform the same duties and responsibilities as would have the CVA, except as otherwise provided.

■ 125. Amend § 585.706 by revising paragraphs (a), (b)(2) and (7), and (c) through (e) to read as follows:

§ 585.706 How do I nominate a CVA for BOEM approval?

(a) A CVA must be nominated and approved by BOEM before conducting any verification activities for which it has been nominated. If you intend to use multiple CVAs, you must nominate a general project CVA who will manage the project verification strategy and who will ensure consistency and oversight among the CVAs, especially in transition areas between different CVAs. The general project CVA must be nominated no later than COP submission.

(b) * * *

(2) Technical capabilities of the individual or the primary staff for the specific project, including relevant professional licenses, certifications, and accreditations;

* * * * *

(7) The scope and level of work to be performed by the CVA, including all relevant reports and facilities that the CVA will verify.

(c) Individuals or organizations acting as CVAs must not function in any capacity that will create a conflict of interest or the appearance of a conflict of interest. The CVA must not have prepared, or been directly involved in, any original work related to the preparation of design, fabrication, installation, modification, or repair plans for which it will provide verification services.

(d) The verification must be conducted by or under the direct supervision of a registered professional engineer.

(e) BOEM will approve or disapprove your CVA.

* * * * *

■ 126. Amend § 585.707 by:

■ a. Revising the second sentence of paragraph (a);

■ b. Removing ''and'' from paragraph (b)(8);

■ c. Redesignating paragraph (b)(9) as paragraph (b)(11);

■ d. Adding new paragraph (b)(9) and paragraph (b)(10); and

■ e. Removing paragraph (c).

The revisions and additions read as follows:

§ 585.707 What are the CVA's primary duties for facility design review?

(a) * * * The CVA must verify to BOEM that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location and has been designed to provide for safety.

(b) * * *

(9) Design for human safety and accident prevention;

(10) For a floating facility, structural integrity, stability, and ballast; and

* * * * *

■ 127. Amend § 585.708 by revising paragraphs (a)(1), (2), and (5), adding paragraphs (a)(6) and (7), and revising paragraph (b) to read as follows:

§ 585.708 What are the CVA's or project engineer's primary duties for fabrication and installation review?

(a) * * *

(1) Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities and of the commissioning of critical safety systems;

(2) Monitor the fabrication and installation of the facility and the commissioning of critical safety systems as required by paragraph (b) of this section;

* * * * *

(5) Verify in a report that project components are fabricated and installed in accordance with accepted engineering practices and to a recognized quality assurance standard or to an equivalent alternate means of quality assurance considered on a case-by-case basis, your approved SAP, COP, or GAP (as applicable), and your FIR. If multiple CVAs are involved in your project, the general project CVA must submit the final report containing such verification for the project.

(i) The report must identify the location of all records pertaining to facility fabrication and installation as required in § 585.714(c); and

(ii) You may commence commercial operations or other approved activities 30 days after BOEM receives that verification report, unless BOEM notifies you within that time period of its objections to the verification report.

(6) Provide records documenting that critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8); and

(7) Identify the location of all records pertaining to commissioning of critical safety systems, as required in § 585.714(c).

(b) To comply with paragraph (a)(5) of this section, the CVA or project engineer must monitor the fabrication and installation of the facility and the commissioning of critical safety systems to verify that it has been built and installed according to your FDRs and FIRs.

(1) If the CVA or project engineer finds that either fabrication and installation procedures or safety system commissioning procedures, or both, have been changed or design specifications have been modified, the CVA or project engineer must inform you; and

(2) If you accept the modifications, you must also inform BOEM.

■ 128. Revise § 585.709 to read as follows:

§ 585.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?

(a) To comply with § 585.708(a)(3), the CVA or project engineer must make periodic onsite inspections while fabrication is in progress and must verify the following fabrication items, as appropriate:

(1) Quality control by lessee (or grant holder) and builder;

(2) Fabrication site facilities;

(3) Material quality and identification methods;

(4) Fabrication procedures specified in your FIRs and adherence to such procedures;

(5) Welder and welding procedure qualification and identification;

(6) Structural tolerances specified, and adherence to those tolerances;

(7) Nondestructive examination requirements and evaluation results of the specified examinations;

(8) Destructive testing requirements and results;

(9) Repair procedures;

(10) Installation of corrosion-protection systems and splash-zone protection;

(11) Erection procedures to ensure that overstressing of structural members does not occur;

(12) Alignment procedures;

(13) Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and

(14) Status of quality-control records at various stages of fabrication.

(b) For a floating facility, the CVA or project engineer must verify the structural integrity, stability, and ballast.

■ 129. Revise § 585.710 to read as follows:

§ 585.710 When conducting onsite installation inspections, what must the CVA or project engineer do?

To comply with § 585.708(a)(4), the CVA or project engineer must make periodic onsite inspections while installation is in progress and must, as appropriate, verify, witness, survey, or check the installation items required by this section.

(a) To comply with § 585.708(a)(4), the CVA or project engineer must make periodic onsite inspections while installation is in progress and must verify the installation and commissioning items required by this section.

(b) The CVA or project engineer must verify, as appropriate, all of the following:

(1) Loadout and initial flotation procedures;

(2) Towing operation procedures to the specified location, including a review of the towing records;

(3) Launching and uprighting activities;

(4) Submergence activities;

(5) Pile or anchor installations;

(6) Installation of mooring and tethering systems;

(7) Final deck and component installations;

(8) Installation at the locations set forth in your FDR(s) and FIR(s); and

(9) Commissioning of critical safety systems.

(c) For a fixed or floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the jacket, decks, piles, or structures from each fabrication site;

(2) The actual installation of the facility or major modification and the related installation activities; and

(3) Commissioning of critical safety systems.

(d) For a floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the facility;

(2) The installation of foundation pilings and templates, and anchoring systems; and

(3) The installation of the mooring and tethering systems.

(e) The CVA or project engineer must conduct an onsite inspection of the installed facility.

(f) The CVA or project engineer must make periodic onsite inspections to witness the commissioning of critical safety systems in order to verify that:

(1) The systems and equipment function as designed; and

(2) The final commissioning records are complete.

(g) The CVA or project engineer must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

■ 130. Amend § 585.712 by:

■ a. Revising paragraph (a) and the first sentence of paragraph (b) introductory text;

■ c. Removing ''and'' at the end of paragraph (b)(3);

■ d. Removing the period at the end of paragraph (b)(4) and adding in its place ''; and''; and

■ e. Adding paragraph (b)(5).

The revisions and addition read as follows:

§ 585.712 What are the CVA's or project engineer's reporting requirements?

(a) The CVA or project engineer must prepare and submit to you and BOEM all reports and records required by this subpart. The CVA or project engineer must also submit interim reports to you and BOEM, as requested by BOEM.

(b) For each report required by this subpart, the CVA or project engineer must submit the final report to BOEM pursuant to § 585.110. * * *

* * * * *

(5) Summarize any issues with the design and any incidents during facility fabrication and installation, or critical safety system commissioning, and how those issues were resolved.

§ 585.713 [Reserved and Reserved]

■ 131. Remove and reserve § 585.713.

■ 132. Amend § 585.714 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a)(4) and (5) as paragraphs (a)(5) and (6), respectively;

■ c. Adding new paragraph (a)(4); and

■ d. Revising paragraph (c).

The revisions and addition read as follows:

§ 585.714 What records relating to FDRs, FIRs, and Project Modification and Repair Reports must I keep?

(a) * * *

(4) The records of the commissioning of critical safety systems;

* * * * *

(c) You must provide BOEM with the location of these records in the certification statement, as required in §§ 585.701(c), 585.703(b), and 585.708(a)(5)(i) and (a)(6).

Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs

§ 585.803 [Amended]

■ 133. Amend § 585.803 in the first sentence of paragraph (b) by removing the word ''affects'' and adding in its place the word ''effects''.

■ 134. Revise § 585.810 to read as follows:

§ 585.810 When must I submit a Safety Management System (SMS) and what must I include in my SMS?

You are required to use a Safety Management System (SMS) for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide your SMS to BOEM upon request. You must also submit a detailed description of the SMS with your COP (as provided under § 585.627(d)) and,

when required by this part, your SAP (as provided in § 585.614(b)) or GAP (as provided in § 585.651). Your SMS must address:

(a) How you will ensure the safety of your personnel or anyone else on or near your facilities, such as:

(1) Health and safety risks that anyone on or near your facilities are likely to face during activities covered by the SMS;

(2) Policies and strategies that will be used to control such risks;

(3) Procedures and published standards that will be followed to ensure the safety of the activities covered by the SMS;

(4) Tools that will be used to monitor the implementation of the SMS and maintain the safety of activities covered by the SMS, including management of change and stop work practices; and

(5) Procedures for personnel to report unsafe work conditions both to the lessee or its designated operator and to BOEM.

(b) Remote monitoring, control, and shut down capabilities, such as:

(1) Aspects of operations and mechanical and structural integrity that will be monitored remotely;

(2) Circumstances under which remote monitoring will be activated and how it will be maintained;

(3) Maintenance of the security of the remote sensing and control capabilities;

(4) Monitoring of conditions if remote sensing equipment fails; and

(5) Conditions that will result in the shut-down of one or more facilities.

(c) Emergency response procedures, such as:

(1) Types of incidents to be addressed (*e.g.,* serious injury to workers during maintenance, unexploded ordnance encountered during construction, damage due to hurricane or allision by vessels or aircraft, unauthorized access into remote monitoring capabilities);

(2) Potential response activities, including contractor support, for each category of incident;

(3) Management controls, authorities, and reporting to be employed for each response;

(4) Locations from which emergency response will be controlled; and

(5) Resources available to assist in the response.

(d) Fire suppression equipment, such as a description of how and when it will be used, if needed;

(e) How and when you will test your SMS, such as:

(1) Plans, processes, and schedules for:

(i) Self or third-party auditing of the SMS; and

(ii) Regular testing of certain SMS components, including remote shut-down capabilities and emergency response readiness; and

(2) Corrective action processes to improve the effectiveness of your SMS based on the results of audits, tests, investigations of incidents (including near-misses), feedback from the field, and other information sources.

(f) How you will ensure personnel who conduct activities on your facilities are properly trained and have the capability to safely perform duties, such as:

(1) Required training for personnel who conduct activities on your facilities; and

(2) Mechanisms to ensure that personnel have the required knowledge and skills to perform duties safely for the duration of activities.

■ 135. Revise § 585.811 to read as follows:

§ 585.811 Am I required to obtain a certification of my SMS?

You are not required to obtain a certification that your SMS meets acceptable health and safety standards (*e.g.,* ANSI Z10, ISO/IEC 45001) from a recognized accreditation organization. However, BOEM will consider such certification in determining the frequency and scope of SMS-related inspections that it conducts under this subpart, as well as the scope and nature of its oversight over any audit-induced corrective actions.

■ 136. Add § 585.812 to read as follows:

§ 585.812 How must I implement my SMS?

(a) Your SMS must be functional before you begin, and must remain functional while you perform, any activity on the OCS pursuant to a lease, including met buoy placement and site assessment work, or for any activities described in your approved SAP, COP, or GAP. You must conduct all activities described in your approved SAP, COP, or GAP in accordance with the SMS you described under § 585.810.

(b) You must regularly demonstrate to BOEM that your SMS is being implemented effectively by submitting the following to BOEM in accordance with § 585.110:

(1) By March 31 of each year, summarize safety, work hour, and electric generation performance data for the prior calendar year in which you conducted site assessment, construction, operations, or decommissioning activities in accordance with your lease terms, using a form available on the BOEM website; and

(2) Once every 3 years or upon BOEM's request, provide a report to BOEM summarizing the results of your most recent SMS audit, corrective actions implemented or being implemented as a result of that audit, and an updated description of your SMS highlighting changes that were made since the last such submission to BOEM.

■ 137. Amend § 585.815 by revising the second sentence of paragraph (a) to read as follows:

§ 585.815 What must I do if I have facility damage or an equipment failure?

(a) * * * If you have a major repair, you must submit a report to BOEM under § 585.703.

* * * * *

■ 138. Revise § 585.820 to read as follows:

§ 585.820 Will BOEM conduct inspections?

BOEM may inspect OCS facilities and any vessels engaged in activities authorized under this part. When we conduct these inspections, we will:

(a) Verify that you are conducting activities in compliance with subsection 8(p) of the OCS Lands Act; the regulations in this part; the terms, conditions, and stipulations of your lease or grant; approved plans; and other applicable laws and regulations.

(b) Determine whether proper safety equipment has been installed and is operating properly according to your SMS, as required in § 585.810.

■ 139. Revise § 585.821 to read as follows:

§ 585.821 Will BOEM conduct scheduled and unscheduled inspections?

BOEM may conduct both scheduled and unscheduled inspections.

■ 140. Amend § 585.822 by revising paragraphs (a)(1) and (b) to read as follows:

§ 585.822 What must I do when BOEM conducts an inspection?

(a) * * *

(1) Provide access to all facilities on your lease (including your project easement) or grant and any vessels engaged in activities authorized under this part; and

* * * * *

(b) You must retain the records referenced in paragraph (a)(2)(iii) of this section until BOEM releases your financial assurance under § 585.534, and provide them to BOEM upon request within the time period specified by BOEM.

* * * * *

■ 143. Revise § 585.824 as follows:

§ 585.824 How must I conduct self-inspections?

(a) You must develop a comprehensive self-inspection plan

covering all of your facilities. You must keep this self-inspection plan wherever you keep your records and make it available to BOEM upon request. Your self-inspection plan must specify:

(1) The type, extent, and frequency of inspections that you will conduct for both the above-water and the below-water structures of all facilities and pertinent components of the mooring systems for any floating facilities;

(2) How you will monitor the corrosion protections for both above-water and below-water structures; and

(3) How you will fulfill the requirement for annual on-site inspection of all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents under paragraph (b) of this section.

(b) You must conduct an onsite inspection of each of your facilities at least once a year. This inspection must include, but is not limited to, all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents.

(1) You must develop and retain summary reports for all such inspections for each calendar year. The summary report must note any failures of operability, required maintenance of critical safety equipment, or required replacement of the critical safety equipment identified during inspection.

(2) You must retain records of inspections and summary reports for the previous 2 calendar years and make them available to BOEM on request.

(c) You must submit a report annually to us no later than November 1 that must include:

(1) A list of facilities inspected for structural condition and corrosion protection in the preceding 12 months;

(2) The type of inspection employed, (*i.e.,* visual, magnetic particle, ultrasonic testing); and

(3) A summary of the inspection indicating what repairs, if any, were needed and the overall structural condition of the facility.

§ 585.830 [Amended]

■ 142. Amend § 585.830 in paragraph (d) by removing ''30 CFR 254.46'' and adding in its place ''30 CFR 250.187(d)''.

Subpart J—Decommissioning

■ 143. Amend § 585.900 by adding paragraph (c) to read as follows:

§ 585.900 Who must meet the decommissioning obligations in this subpart?

* * * * *

(c) If a lessee or grant holder has installed a facility on a lease or grant that was authorized by an authority other than BOEM and that approving authority has imposed a decommissioning obligation, such obligation will substitute for the requirements of this subpart. The decommissioning requirements in this subpart will apply to such a facility if the authorizing agency has not imposed or enforced a decommissioning obligation.

■ 144. Amend § 585.902 by revising paragraph (a) introductory text to read as follows:

§ 585.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?

(a) Except as otherwise authorized by BOEM under § 585.909, within 2 years following termination of a lease or grant, or earlier if BOEM determines a facility is no longer useful for operations, you must:

* * * * *

■ 145. Amend § 585.905 by adding paragraph (e) to read as follows:

§ 585.905 When must I submit my decommissioning application?

* * * * *

(e) Ninety (90) days after BOEM determines a facility is no longer useful for operations.

Subpart K—Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities

■ 146. Revise the heading of newly redesignated subpart K to read as set forth above.

■ 147. Amend § 585.1005 by revising paragraphs (a) and (b)(2) and (3) to read as follows:

§ 585.1005 How do I request an Alternate Use RUE?

* * * * *

(a) The name, address, email address, and phone number of each owner and an authorized representative, if applicable.

(b) * * *

(2) A description of the existing OCS facility, including a map providing its location on the OCS and the relevant lease block or lease area, as applicable;

(3) If the facility is an oil, gas, or sulfur facility, provide the name of each operator, lessee, and any owner of operating rights, as defined in 30 CFR 550.105; for any other type of facility, provide the name of any operators, a description of the facility, and its use;

* * * * *

§ 585.1018 [Amended]

■ 148. Amend § 585.1018 in paragraph (b) by removing ''30 CFR part 250'' and adding in its place ''30 CFR part 556''.

[FR Doc. 2023–00668 Filed 1–27–23; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 2023–24 Frameworks for Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2022–0090; FF09M31000–234–FXMB1231099BPP0]

RIN 1018–BF64

Migratory Bird Hunting; Proposed 2023–24 Frameworks for Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is proposing to establish the 2023–24 hunting regulations for certain migratory game birds. We annually prescribe outside limits (which we call frameworks) within which States may select hunting seasons. Frameworks specify the outside dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. These frameworks are necessary to allow State selections of seasons and limits and to allow harvest at levels compatible with migratory game bird population status and habitat conditions. Migratory game bird hunting seasons provide opportunities for recreation and sustenance, and aid Federal, State, and Tribal governments in the management of migratory game birds.

DATES: You must submit comments on the proposed migratory bird hunting frameworks by March 1, 2023.

ADDRESSES:

Comment submission: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* In the Search box, enter FWS–HQ–MB–2022–0090, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''
- *U.S. Mail:* Public Comments Processing, Attn: FWS–HQ–MB–2022–0090; U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept emailed or faxed comments. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Document availability: Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, Virginia.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2606.

SUPPLEMENTARY INFORMATION:

Process for Establishing Annual Migratory Game Bird Hunting Regulations

As part of the Department of the Interior's retrospective regulatory review, in 2015 we developed a schedule for migratory game bird hunting regulations that is more efficient and establishes hunting season dates earlier than was possible under the previous process. Under the current process, we develop proposed hunting season frameworks for a given year in the fall of the prior year. We then attempt to finalize those frameworks a few months later, thereby to enable the State agencies to select and publish their season dates in early summer. We provided a detailed overview of the current process in the August 3, 2017, **Federal Register** (82 FR 36308). This proposed rule is the second in a series of proposed and final rules that establish regulations for the 2023–24 migratory game bird-hunting season.

Regulations Schedule

The process for promulgating annual regulations for the hunting of migratory game birds involves the publication of a series of proposed and final rulemaking documents. On November 3, 2022, we published in the **Federal Register** (87 FR 66247) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed and final rules for promulgating annual migratory game bird hunting regulations. Major steps in the regulations development process for the 2023–24 hunting season relating to open public meetings and **Federal Register** notifications were illustrated in the diagram at the end of the November 3, 2022, proposed rule. For this regulatory cycle, we have combined elements of the document that is described in the diagram as Supplemental Proposals with the document that is described as Proposed Season Frameworks.

Further, in the November 3, 2022, proposed rule we explained that sections of subsequent documents outlining hunting frameworks and guidelines would be organized under numbered headings, which were set forth at 87 FR 66248. The issues discussed in the preamble to this and subsequent rulemaking documents will refer only to numbered items requiring attention. Because we will omit those items not requiring attention, the remaining numbered items may be discontinuous, and the list will appear incomplete.

We provided the meeting dates and locations for the Service Regulations Committee (SRC) and Flyway Council meetings on Flyway calendars posted on our website at *https://www.fws.gov/partner/migratory-bird-program-administrative-flyways*. We announced the April SRC meeting on our website. The November 3, 2022, proposed rule provided detailed information on the proposed 2023–24 regulatory schedule, and we announced the October SRC meeting on our website. The SRC conducted an open meeting with the Flyway Council Consultants on April 19, 2022, to discuss preliminary issues for the 2023–24 regulations, and on October 12–13, 2022, to review information on the current status of migratory game birds and develop recommendations for the 2023–24 regulations for these species.

This supplemental proposed rule provides the regulatory alternatives for the 2023–24 duck hunting season and provides proposed frameworks for the 2023–24 migratory bird hunting season. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits. We have considered all pertinent comments received through December 6, 2022, which includes comments submitted in response to our November 3, 2022, proposed rulemaking document and comments from the October SRC meeting. In addition, new proposals for certain regulations are provided for public comment. The comment period is specified above under **DATES**. Our goal is to publish final regulatory frameworks for migratory game bird hunting in the **Federal Register** in May 2023.

Population Status and Harvest

Each year we publish reports that provide detailed information on the status and harvest of certain migratory game bird species. These reports are available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our website at *https://www.fws.gov/media/eastern-mallard-adaptive-harvest-management-strategy-2022* and *https://www.fws.gov/project/adaptive-harvest-management.*

We used the following annual reports published in August 2022 in the development of proposed frameworks for the migratory bird hunting regulations: Adaptive Harvest Management, 2023 Hunting Season; American Woodcock Population Status, 2022; Band-tailed Pigeon Population Status, 2022; Migratory Bird Hunting Activity and Harvest During the 2020–21 and 2021–22 Hunting Seasons; Mourning Dove Population Status, 2022; Status and Harvests of Sandhill Cranes, Mid-continent, Rocky Mountain, Lower Colorado River Valley and Eastern Populations, 2022; and Waterfowl Population Status, 2022.

Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Migratory game bird hunting seasons provide opportunities for recreation and sustenance, and aid Federal, State, and Tribal governments in the management of migratory game birds. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we conclude that the proposed hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received during the public comment period.

Review of Public Comments and Flyway Council Recommendations

The (preliminary) proposed rulemaking, which appeared in the November 3, 2022, **Federal Register**, opened the public comment period for migratory game bird hunting regulations and described the proposed regulatory alternatives for the 2023–24 duck hunting season. Comments and recommendations are summarized below and numbered in the order used in the November 3, 2022, proposed rule (see 87 FR 66248).

We received recommendations from all four Flyway Councils at the April and October SRC meetings; all recommendations are from the October meeting unless otherwise noted. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. As explained earlier in this document, we have included only the numbered items pertaining to issues for which we received recommendations. Consequently, the issues do not follow in successive numerical order.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, proposals are discussed under headings corresponding to the numbered items in the November 3, 2022, proposed rule.

General

Written Comments: Several commenters protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and questioned the status and habitat data on which the migratory bird hunting regulations are based.

Service Response: As we indicated above under Population Status and Harvest, our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Sustaining migratory bird populations and ensuring a variety of sustainable uses, including harvest, is consistent with the guiding principles by which migratory birds are to be managed under the conventions between the United States and several foreign nations for the protection and management of these birds. We have taken into account available information and considered public comments and continue to conclude that the hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. In regard to the regulations process, the Flyway Council system of migratory bird management has been a longstanding example of State–Federal cooperative management since its establishment in 1952 in the regulation development process and bird population and habitat monitoring. However, as always, we continue to seek new ways to streamline and improve the process and ensure adequate conservation of the resource.

1. Ducks

A. General Harvest Strategy

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended adoption of the liberal regulatory alternative for their respective flyways.

Service Response: As we stated in the November 3, 2022, proposed rule, we intend to continue use of Adaptive Harvest Management (AHM) to help determine appropriate duck-hunting regulations for the 2023–24 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use an AHM protocol (decision framework) to evaluate four regulatory alternatives, each with a different expected harvest level, and choose the optimal regulation for duck hunting based on the status and demographics of mallards for the Mississippi, Central, and Pacific Flyways, and based on the status and demographics of a suite of four species (eastern waterfowl) in the Atlantic Flyway (see below, and the earlier referenced report ''Adaptive Harvest Management, 2023 Hunting Season'' for more details). We have specific AHM protocols that guide appropriate bag limits and season lengths for species of special concern, including black ducks, scaup, pintails, and eastern mallards, within the general duck season. These protocols use the same outside season dates and lengths as those regulatory alternatives for the 2023–24 general duck season.

For the 2023–24 hunting season, we will continue to use independent optimizations to determine the appropriate regulatory alternative for mallard stocks in the Mississippi, Central, and Pacific Flyways and for eastern waterfowl in the Atlantic Flyway. This means that we will develop regulations for mid-continent mallards, western mallards, and eastern waterfowl independently based on the breeding stock(s) that contribute primarily to each Flyway. We detailed implementation of AHM protocols for mid-continent and western mallards in the July 24, 2008, **Federal Register** (73 FR 43290), and for eastern waterfowl in

the September 21, 2018, **Federal Register** (83 FR 47868).

Population Status and Harvest

Atlantic Flyway

For the Atlantic Flyway, we set duck-hunting regulations based on the status and demographics of a suite of four duck species (eastern waterfowl) in eastern Canada and the Atlantic Flyway States: green-winged teal, common goldeneye, ring-necked duck, and wood duck. For purposes of the assessment, eastern waterfowl stocks are those breeding in eastern Canada and Maine (Federal Waterfowl Breeding Population and Habitat Survey (WBPHS) fixed-wing surveys in strata 51–53, 56, and 62–70, and helicopter plot surveys in strata 51–52, 63–64, 66–68, and 70–72) and in Atlantic Flyway States from New Hampshire south to Virginia (Atlantic Flyway Breeding Waterfowl Survey (AFBWS)). Abundance estimates for green-winged teal, ring-necked ducks, and goldeneyes are derived annually by integrating fixed-wing and helicopter survey data from eastern Canada and Maine (WBPHS strata 51–53, 56, and 62–72). Counts of green-winged teal, ring-necked ducks, and goldeneyes in the AFBWS are negligible and therefore excluded from population estimates for those species. Abundance estimates for wood ducks in the Atlantic Flyway (Maine south to Florida) are estimated by integrating data from the AFBWS and the North American Breeding Bird Survey. Counts of wood ducks from the WBPHS are negligible and therefore excluded from population estimates.

For the 2023–24 hunting season, we evaluated alternative harvest regulations for eastern waterfowl using: (1) A management objective of 98 percent of maximum long-term sustainable harvest for eastern waterfowl; (2) the 2023–24 regulatory alternatives; and (3) current stock-specific population models and associated weights. Based on the liberal regulatory alternative selected for the 2022–23 duck hunting season, the 2022 survey estimates of 0.32 million American green-winged teal, 1.00 million wood ducks, 0.64 million ring-necked ducks, and 0.71 million goldeneyes in the eastern survey area and Atlantic Flyway, the optimal regulation for the Atlantic Flyway is the liberal alternative. Therefore, we concur with the recommendation of the Atlantic Flyway Council regarding selection of the liberal regulatory alternative as described in the November 3, 2022, proposed rule for the 2023–24 season.

Mississippi and Central Flyways

For the Mississippi and Central Flyways, we set duck-hunting regulations based on the status and demographics of mid-continent mallards and habitat conditions (pond numbers in Prairie Canada and the United States). For purposes of the assessment, mid-continent mallards are those breeding in central North America (Federal WBPHS strata 13–18, 20–50, and 75–77) and in Michigan, Minnesota, and Wisconsin (State surveys).

For the 2023–24 hunting season, we evaluated alternative harvest regulations for mid-continent mallards using: (1) A management objective of maximum long-term sustainable harvest; (2) the 2023–24 regulatory alternatives; and (3) an Integrated Population Model (IPM) for mid-continent mallards. Based on a liberal regulatory alternative selected for the 2022–23 hunting season, an estimated breeding population size of 7.16 million mid-continent mallards and 5.45 million total ponds observed in Prairie Canada and the United States, the optimal choice for the 2023–24 hunting season in the Mississippi and Central Flyways is the liberal regulatory alternative. Therefore, we concur with the recommendations of the Mississippi and Central Flyway Councils regarding selection of the liberal regulatory alternative as described in the November 3, 2022, proposed rule for the 2023–24 season.

Pacific Flyway

For the Pacific Flyway, we set duck-hunting regulations based on the status and demographics of western mallards. For purposes of the assessment, western mallards consist of two substocks and are those breeding in Alaska and Yukon Territory (Federal WBPHS strata 1–12) and those breeding in the southern Pacific Flyway including California, Oregon, Washington, and British Columbia (State and Provincial surveys) combined.

For the 2023–24 hunting season, we evaluated alternative harvest regulations for western mallards using: (1) A management objective of maximum long-term sustainable harvest; (2) the 2023–24 regulatory alternatives; and (3) the current population model. Based on a liberal regulatory alternative selected for the 2022–23 hunting season, and 2022 abundances of 1.04 million western mallards observed in Alaska (0.61 million) and predicted for the southern Pacific Flyway (0.43 million), the optimal regulation for the Pacific Flyway is the liberal alternative. Therefore, we concur with the recommendation of the Pacific Flyway Council regarding selection of the liberal regulatory alternative as described in the November 3, 2002, proposed rule for the 2023–24 season.

B. Regulatory Alternatives

Council Recommendations: At the April SRC meeting, the Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended that AHM regulatory alternatives for duck hunting during the 2023–24 season remain the same as those used in the previous season.

Service Response: Consistent with Flyway Council recommendations, the AHM regulatory alternatives proposed for the Atlantic, Mississippi, Central, and Pacific Flyways in the November 3, 2022, proposed rule (87 FR 66247) will be used for the 2023–24 hunting season (see accompanying table at the end of that document for specific information). The AHM regulatory alternatives consist only of the maximum season lengths, framework dates, and bag limits for total ducks and mallards. Restrictions for certain species within these frameworks that are not covered by existing harvest strategies will be addressed elsewhere in these proposed frameworks. For those species with specific harvest strategies (pintails, black ducks, scaup, and eastern mallards), those strategies will again be used for the 2023–24 hunting season.

D. Special Seasons/Species Management

i. Early Teal Seasons

The special early teal season guidelines (see 79 FR 51402, August 28, 2014; p. 51403) indicate that a 16-day special early (September) teal season with a 6-teal daily bag limit is appropriate for States in the Atlantic, Mississippi, and Central flyways if the observed breeding abundance is greater than 4.7 million breeding birds. The 2022 observed abundance of breeding blue-winged teal was 6.485 million birds, indicating a 16-day special early season with a 6-teal daily bag limit is warranted.

ii. Early Teal–Wood Duck Seasons

In Florida, Kentucky, and Tennessee, in lieu of a special early teal season, a 5-consecutive-day teal–wood duck season may be selected in September. The daily bag limit may not exceed six teal and wood ducks in the aggregate, of which no more than two may be wood ducks. In addition, a 4-consecutive-day special early teal-only season may be selected in September either immediately before or immediately after

the 5-consecutive-day teal–wood duck season. The daily bag limit is six teal.

iii. Black Ducks

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended continued use of the AHM protocol for black ducks, and adoption of the moderate regulatory alternative for their respective flyways. The Flyway-specific regulations consist of a daily bag limit of two black ducks and a season length of 60 days.

Service Response: The Service, Atlantic and Mississippi Flyway Councils, and Canada adopted an international AHM protocol for black ducks in 2012 (77 FR 49868, August 17, 2012) whereby we set black duck hunting regulations for the Atlantic and Mississippi Flyways (and Canada) based on the status and demographics of these birds. The AHM protocol clarifies country-specific target harvest levels and reduces conflicts over regulatory policies.

For the 2023–24 hunting season, we evaluated country-specific alternative harvest regulations using: (1) A management objective of 98 percent of maximum long-term sustainable harvest; (2) country-specific regulatory alternatives; and (3) current population models and associated weights. Based on the moderate regulatory alternative selected for the 2022–23 hunting season and the 2022 survey estimates of 0.57 million breeding black ducks and 0.52 million breeding mallards (Federal WBPHS strata 51, 52, 63, 64, 66, 67, 68, 70, 71, and 72; core survey area), the optimal regulation for the Atlantic and Mississippi Flyways is the moderate alternative (and the liberal alternative in Canada). Therefore, we concur with the recommendations of the Atlantic and Mississippi Flyway Councils.

iv. Canvasbacks

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended adoption of the liberal regulatory alternative for their respective flyways. The Flyway-specific regulations consist of a daily bag limit of two canvasbacks and a season length of 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

Service Response: As we discussed in the March 28, 2016, **Federal Register** (81 FR 17302), the canvasback harvest strategy that we had relied on until 2015 was not viable under our new regulatory process because it required biological information that was not yet available at the time a decision on season structure needed to be made. We do not yet have a new harvest strategy to propose for use in guiding canvasback harvest management in the future. However, we have worked with technical staff of the four Flyway Councils to develop a decision framework (hereafter, decision support tool) that relies on the best biological information available to develop recommendations for annual canvasback harvest regulations. The decision support tool uses available information (1994–2014) on canvasback breeding population size in Alaska and north-central North America (Federal WBPHS traditional survey area, strata 1–18, 20–50, and 75–77), growth rate, survival, and harvest, and a population model to evaluate alternative harvest regulations based on a management objective of maximum long-term sustainable harvest. The decision support tool calls for a closed season when the population is below 460,000, a 1-bird daily bag limit when the population is between 460,000 and 480,000, and a 2-bird daily bag limit when the population is greater than 480,000. Based on the 2022 survey estimate of 585,000 canvasbacks, we concur with the recommendations of the four Flyway Councils regarding selection of the liberal regulatory alternative for the 2023–24 season.

v. Pintails

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended adoption of the liberal regulatory alternative with a 1-pintail daily bag limit for their respective flyways. The Flyway-specific regulations consist of a season length of 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

Service Response: The Service and four Flyway Councils adopted an AHM protocol for pintail in 2010 (75 FR 44856, July 29, 2010) whereby we set pintail hunting regulations in all four Flyways based on the status and demographics of these birds.

For the 2023–24 hunting season, we evaluated alternative harvest regulations for pintails using: (1) A management objective of maximum long-term sustainable harvest, including a closed-season constraint of 1.75 million birds; (2) the regulatory alternatives; and (3) current population models and associated weights. Based on a liberal regulatory alternative with a 1-bird daily bag limit for the 2022–23 season, and the 2022 survey estimates of 1.78 million pintails at a mean latitude of 57.31 degrees (Federal WBPHS traditional survey area, strata 1–18, 20–50, and 75–77), the optimal regulation for all four Flyways is the liberal alternative with a 1-pintail daily bag limit. Therefore, we concur with the recommendations of the four Flyway Councils.

vi. Scaup

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended adoption of the restrictive regulatory alternative for the 2023–24 season. The Flyway-specific regulations consist of a 60-day season with a 1-bird daily bag limit during 40 consecutive days and a 2-bird daily bag limit during 20 consecutive days in the Atlantic Flyway, a 60-day season with a 2-bird daily bag limit during 45 consecutive days and a 1-bird daily bag limit during 15 consecutive days in the Mississippi Flyway, a 1-bird daily bag limit for 74 days in the Central Flyway (which may have separate segments of 39 days and 35 days), and an 86-day season with a 2-bird daily bag limit in the Pacific Flyway.

Service Response: The Service and four Flyway Councils adopted an AHM protocol for scaup in 2008 (73 FR 43290, July 24, 2008; and 73 FR 51124, August 29, 2008) whereby we set scaup hunting regulations in all four Flyways based on the status and demographics of these birds.

For the 2023–24 hunting season, we evaluated alternative harvest regulations for scaup using: (1) A management objective of 95 percent of maximum sustainable harvest; (2) the regulatory alternatives; and (3) the current population model. Based on a restrictive regulatory alternative for the 2022–23 season, and the 2022 survey estimate of 3.60 million scaup (Federal WBPHS traditional survey area, strata 1–18, 20–50, and 75–77), the optimal regulation for all four Flyways is the restrictive alternative. Therefore, we concur with the recommendations of the four Flyway Councils regarding selection of the restrictive alternative for the 2023–24 season.

vii. Mottled Ducks

Council Recommendations: The Mississippi Flyway Council recommended that high-harvest States in the flyway reduce harvest of mottled ducks by 50 percent by setting a bag limit of zero (0) for the first 15 days of duck season in each zone for a minimum of 3 years (2023–24 through 2025–26 seasons). High-harvest States were defined as those that exceeded 20 percent of the flyway total harvest of mottled ducks.

Service Response: The Service and other agencies have been concerned

about the status of mottled ducks since the late 1990s. In 2009, the Service strongly encouraged the Central and Mississippi Flyway Councils to examine the status of mottled ducks and assess the potential need for any regulatory actions for the 2009–10 season (74 FR 16339, April 10, 2009). Subsequently, the States of Texas and Louisiana took steps to reduce harvest of mottled ducks within the West Gulf Coast (WGC) population. Despite these steps to reduce harvest of mottled ducks, the average population decline from multiple surveys in Louisiana since 2009 was 64 percent. Thus, we concur and appreciate the proactive nature of this recommendation to further reduce harvest of mottled ducks in the Mississippi Flyway while continuing efforts to monitor population numbers and vital rates in concert with ongoing research and habitat conservation efforts. Finally, we encourage the Central Flyway and Mississippi Flyway to cooperatively engage in long-term management of the WGC population of mottled ducks by reviewing all relevant research and population information at the conclusion of this 3-year period of reduced harvest so that future regulatory recommendations, if warranted, will address mottled duck conservation throughout the WGC.

xii. Other

Council Recommendations: The Atlantic Flyway Council recommended the Service follow the eastern mallard harvest strategy and adopt a mallard daily bag limit of four birds, no more than two of which may be hens, for the 2023–24 duck hunting season.

Service Response: We agree with the Atlantic Flyway Council's recommendation to establish the liberal regulatory alternative, consisting of a four-bird bag limit (no more of which two may be hens) for mallards for the 2023–24 season with a 60-day season length as prescribed by the Multi-stock Adaptive Harvest Management strategy. The Service discontinued the use of the Eastern Mallard Adaptive Harvest Management framework in 2018 due to concerns about: (1) the appropriateness of eastern mallards as a surrogate for all duck harvest in the Atlantic Flyway; (2) concerns about the abundance and trend in the eastern mallard population; and (3) concerns about data and models to adequately describe the dynamics of the eastern mallard population. The Eastern Mallard Adaptive Harvest Management strategy was replaced by the Multi-stock Adaptive Harvest Management strategy for setting the general duck season in the Atlantic Flyway in 2019. Concurrently, the daily bag limit for eastern mallards was set at two birds per day based on a Potential Take Level (PTL) assessment. The PTL assessment allowed the Service to determine a sustainable daily bag limit assuming a 60-day season, but does not account for annual variation in abundance, productivity, or habitat condition and so can only be used to set a static daily bag limit. The Service and Atlantic Flyway Council agreed to review available data, monitoring programs, and hypotheses regarding the status of eastern mallards. Following the review, the Service and Atlantic Flyway Council agreed to develop a State-dependent eastern mallard harvest strategy that would be used to set the daily bag limit based on the annual estimates of abundance, productivity, and habitat conditions. The Service and Atlantic Flyway Council also agreed that the eastern mallard season length would be set by the Multi-stock Adaptive Harvest Management framework.

The Atlantic Flyway Council and Service's Division of Migratory Bird Management developed a new Eastern Mallard Adaptive Harvest strategy in 2022. This strategy was developed through an intensive, collaborative, structured decision-making process. The fundamental objectives of the strategy are: (1) to sustain the eastern mallard population that meets legal mandates, and (2) provide consumptive and nonconsumptive uses indefinitely. The strategy is predicated on an IPM that uses spring breeding-ground abundance as estimated by the Integrated Eastern Waterfowl Survey and Atlantic Flyway Breeding Waterfowl Survey. Fall age ratios are estimated using harvest age ratios derived from the Service and Canadian Wildlife Service parts collection surveys, adjusted for differential vulnerability. Age- and sex-specific harvest rates are based on recoveries of mallards banded after the breeding season (July–September) in Canada and the Atlantic Flyway adjusted by reporting rates. Band recoveries of mallards banded in Canada and the Atlantic Flyway, both after the breeding season and after the hunting season (January 15–March 31), are used to estimate age- and sex-specific seasonal survival rates using a two-season banding model. The eastern mallard IPM is structured to include multiple features of population dynamics deemed to be important to mallard abundance and trends. In particular, the model incorporates hypotheses describing the effects of harvest on annual survival on a continuum from fully additive to fully compensatory.

The new strategy incorporates four regulatory alternatives: closed season, restrictive season (one mallard per day), moderate season (two mallards per day, of which only one may be a female), and liberal season (four mallards per day, of which only two may be female). Expected harvest rates under each regulatory alternative are updated annually using the most recent banding and hunter recovery data. The new strategy allows the Service and Atlantic Flyway Council to adjust annual regulations based on the health of the mallard population.

The estimated eastern mallard population in 2022 was 1.2 million birds. This amount represented a 15 percent increase compared to 2019 when the breeding waterfowl survey was last completed. It is the highest abundance of eastern mallards since 2012. The increased breeding abundance observed in 2022 may be in part due to the implementation of reduced bag limits in 2019–20, 2020–21, and 2021–22 hunting seasons and indicates management of annual hunting regulations can provide sustainable harvest indefinitely. Given the development of a new adaptive harvest management strategy for eastern mallards and the increase in abundance observed in 2022, the Service agrees a liberal regulatory alternative with a four-bird daily bag limit (two hens) for the 2023–24 is sustainable and provides increased recreational opportunity for Atlantic Flyway hunters.

4. Canada and Cackling Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended the liberal regulatory option for Atlantic Population (AP) Canada Geese for the 2023–24 hunting season and eliminating the Southern James Bay Population (SJBP) Zone in Virginia. The Pacific Flyway Council recommended eliminating the Tillamook Special Management Area in Oregon's Northwest Permit Zone.

Service Response: We agree with the Atlantic Flyway Council's recommendation to implement the liberal regulatory option for AP Canada geese for the 2023–24 hunting season. The Atlantic Flyway Council and Service set AP Canada goose harvest regulations following the 2022 AP Canada goose harvest strategy. This strategy is predicated on an IPM that predicts the breeding population 1 year in advance, as well as other metrics of the population's health.

The AP Canada goose population is one of three populations of Canada

geese managed in the Atlantic Flyway and has a long history of intensive management due to its importance to subsistence and sport hunters in Canada and the United States. The population experienced a drastic decline from 118,000 to 34,000 breeding pairs between 1988 and 1995, resulting in very restrictive harvest opportunities, including closed seasons in some regions of the Atlantic Flyway. Sport harvest was not fully reopened for AP Canada geese until 2005. The AP Canada goose population recovered to an estimated abundance of 182,000 in 2002 due to a combination of harvest restrictions and favorable nesting conditions. The AP Canada goose population ranged from 161,000 to 216,000 breeding pairs between 2002 and 2017 but experienced another decline in abundance between 2018 and 2020 due largely to poor breeding conditions and limited reproduction. In response to this most recent decline and poor reproduction, the Atlantic Flyway Council and Service implemented restrictive regulations (30-day season with a one-bird daily bag limit) for the 2019–20, 2020–21, 2021–22, and 2022–23 seasons. Canada also implemented restrictive regulations in Ontario and Quebec for the 2020–21 to 2023–24 hunting seasons. Importantly, the Atlantic Flyway Council recommended, and the Service agreed to implement, restrictive regulations for the 2022–23 season despite an estimated breeding population (153,000) exceeding the threshold for the moderate harvest package (125,000). The recommendation to continue with restrictive regulations in 2022–23 was based on the lack of a breeding survey in 2020 and 2021, average breeding conditions in 2022, and the fact that Canada was committed to harvest restrictions through the 2023–24 season.

The 2022 AP Canada goose breeding index was 164,000. This was the highest estimated index since 2016 and was 37 percent higher than the 2019 estimate and 6 percent higher than the long-term average. The results of the 2022 breeding survey suggest AP Canada geese have increased in response to harvest restrictions and improved breeding conditions similar to the pattern observed in the late 1990s and early 2000s. An analysis of the pre-season banding data and hunter harvest indicated adult and juvenile harvest rates declined in response to restrictive regulations whereas survival rates exhibited a slight increase. The predicted 2023 breeding population, based on the IPM, is 180,500 with a predicted 2022 age ratio of 1.36 (similar to the 1997–2018 average). The recovery of the AP Canada goose population since 2018 and predictions of the 2023 breeding population are in accordance with a liberal regulatory alternative as defined in the 2022 Harvest Strategy. The Service concludes the liberal alternative will provide maximum hunting opportunity while achieving long-term conservation objectives for the AP Canada goose population.

In regard to the SJBP, we agree with the Atlantic Flyway Council's recommendation to eliminate the SJBP Zone in Virginia. The SJBP of Canada geese is no longer recognized as a separate population by the Service or the Atlantic and Mississippi Flyway Councils. The SJBP is now considered part of the larger Southern Hudson Bay Population (SHBP), which is monitored and managed according to the Mississippi Flyway Council's management plan. Elimination of the SJBP Canada geese zone in Virginia and incorporation into the Resident Population and Atlantic Population zones will simplify regulations, provide greater harvest opportunity and management control over the Resident Population, and afford sufficient protection to the AP of Canada geese.

We also agree with the Pacific Flyway Council's recommendation to eliminate the Tillamook Special Management Area in Oregon's Northwest Permit Zone. The special management area is near Tillamook, Oregon, and was established in 1982 as a goose hunting closure to minimize harvest of Aleutian cackling geese, particularly the Semidi Islands breeding population segment.

Aleutian geese were listed as endangered in 1967, downgraded to threatened status in 1990, and removed from protection under the Endangered Species Act in 2001. Aleutian geese have increased from 790 geese in 1975. The most recent 3-year (2020–2022) average population estimate for Aleutian cackling geese is 172,000 and is well above the Council's population objective of 60,000 geese. The population has grown 8.2 percent annually since 1996. The goose hunting closure zone in Oregon has been reduced in size five times (in 2002, 2005, 2007, 2011, and 2018) in accordance with the recovery of Aleutian geese.

Prior to delisting, two population segments of Aleutian geese were recognized based on breeding distribution: A western Aleutian Islands segment comprises birds from the central and western Aleutian Islands, and a Semidi Islands segment comprises birds from the Semidi Islands of the eastern Aleutian Islands. The western Aleutian Islands segment winters primarily in the San Joaquin Valley and Sacramento River Delta areas of central California, and stages in the Eureka and Crescent City areas on the northern California coast and Bandon and Langlois areas in southern Oregon in spring. The Semidi Islands segment winters primarily on the northern Oregon coast near Pacific City and Tillamook, Oregon. Aleutian geese on the Semidi Islands (and Chagulak Island) are considered to be remnants of the previously more continuously distributed population of Aleutian geese. As part of the delisting, we rejected the notion of retaining threatened species status for the smaller Semidi Islands subpopulation of Aleutian Canada geese while delisting the remainder of the subspecies as the listing entity in question is the entire Aleutian cackling goose subspecies.

Seven subspecies of white-cheeked geese, including Aleutian geese, winter in the Pacific Flyway and are managed as separate populations. All populations of white-cheeked geese are at or above population objectives in the Pacific Flyway. There is substantial mixing of white-cheeked geese populations during winter in the Pacific Flyway. Complaints of goose depredation on private lands in the Tillamook special management area have increased in association with increasing abundance of multiple populations of geese.

Elimination of the special management area would allow goose hunting on about 2,470 acres; however, only about 200 acres are considered to be goose habitat and would be potentially impacted as the rest of the area is forested or part of Nestucca Bay National Wildlife Refuge that is closed to goose hunting. Removal of the goose hunting closure will help address depredation issues on privately owned lands caused by wintering geese and remove constraints imposed on some private landowners and not others where Aleutian geese may occur. Geese wintering in the Tillamook area continue to have access to areas closed to hunting on Nestucca Bay National Wildlife Refuge and privately owned lands voluntarily closed to hunting. Elimination of the special management area will simplify goose hunting regulations in the Pacific Flyway, and impacts to the population of Aleutian geese are expected to be negligible.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended the Service follow the approved Atlantic Brant hunt plan for the 2023–24 season and adopt the restrictive regulatory

alternative consisting of a 30-day season with a one-bird daily bag limit. The Pacific Flyway Council recommended that the 2023–24 brant season frameworks be determined based on the harvest strategy in the Council's management plan for the Pacific population of brant pending results of the 2023 Winter Brant Survey (WBS). If results of the 2023 WBS are not available, results of the most recent WBS should be used.

Service Response: We agree with the Atlantic Flyway Council's recommendation for the restrictive regulatory alternative for the 2023–24 season. The Atlantic Flyway Council and the Service adopted the revised Atlantic Brant Harvest Strategy in October 2020. This revised strategy has been used to guide annual regulations for Atlantic brant since the 2021–22 hunting season. The goal of the 2020 Atlantic Brant Harvest Strategy is to provide for sport hunting opportunity and subsistence harvest of the Atlantic brant population that are consistent with maintenance of a viable population throughout its range. This goal is achieved by: (1) attaining the population objective of 150,000 birds; (2) maximizing hunting opportunity commensurate with population abundance; (3) providing simple regulations; and (4) learning about the effects of harvest on the Atlantic brant population.

The harvest strategy uses an IPM to predict the brant population 1 year in advance. It is based on data from the Mid-Winter Survey (MWS), fall productivity survey, pre-season banding and recovery data, and weather data. The predicted breeding population size is used to inform harvest regulations for the hunting season 1 year in advance. The strategy uses four regulatory alternatives including: closed (predicted population <100,000); restrictive (predicted population ≥100,000 and ≤115,000); standard (predicted population >115,000 and ≤150,000); and liberal (predicted population >150,000). The predicted population abundance for spring 2023 is 107,000 brant, which corresponds to the restrictive regulatory option.

The 2022 MWS count of 109,194 was 12 percent lower than the 2020 count and 15 percent below the long-term average. Further, the population has exhibited a slow decline in abundance since 2018. The estimated adult Atlantic brant survival has ranged from 75 percent to 85 percent since 2001 with a near high estimate of 81 percent in 2021. Adult brant harvest rates have ranged from 1 percent to 10 percent since 2001 and was 5 percent during the 2021–22 season. Previous experience suggests that Atlantic brant can exhibit positive growth rates when the population is <150,000 and exposed to a 50-day and 2-bird bag limit regulations. Therefore, the Service expects the restrictive regulatory alternative (30-day season with one-bird bag limit) will provide sport and subsistence harvest opportunity while maintaining a stable to slightly increasing population.

We also agree with the Pacific Flyway Council's recommendation that the 2023–24 Pacific brant season framework be determined by the harvest strategy in the Council's management plan for the Pacific population of brant pending results of the 2023 WBS. As we discussed in the August 21, 2020, **Federal Register** (85 FR 51854), the harvest strategy used to determine the Pacific brant season frameworks does not fit well within the current regulatory process. In developing the annual proposed frameworks for Pacific brant, the Pacific Flyway Council and the Service use the 3-year average number of brant counted during the WBS in the Pacific Flyway to determine annual allowable season length and daily bag limits. The WBS is conducted each January, which is after the date that proposed frameworks are formulated in the regulatory process. However, the data are typically available by the expected publication of final frameworks. When we acquire the survey data, we will determine the appropriate allowable harvest for the Pacific brant season according to the harvest strategy in the Pacific Flyway Council's management plan for the Pacific population of brant published in the August 21, 2020, **Federal Register** (85 FR 51854) and publish the results in the final frameworks rule.

8. Swans

Council Recommendations: The Atlantic Flyway Council recommended Delaware be granted operational status for the tundra swan hunting season, beginning with the 2023–24 season.

Service Response: The Service supports making the Delaware tundra swan season operational. The four Flyway Councils adopted the Eastern Population (EP) Tundra Swan Management Plan in 2007. The primary goal of the EP management plan is to maintain the population at levels that will provide optimum resource benefits for society consistent with habitat availability and international treaties. The specific objective is to maintain at least 80,000 EP tundra swans based on the 3-year average MWS population index for the Mississippi and Atlantic Flyways. The population objective provides desired social uses of the population, maintains distribution throughout their range, minimizes human–wildlife conflicts, and provides sustainable levels of subsistence and sport harvest. The targeted maximum harvest rate for EP tundra swans (including subsistence and sport) is 10 percent, with recreational harvest less than or equal to 5 percent. Tundra swan harvest is managed using a permit system that provides opportunity across States corresponding to tundra swan distribution. The harvest strategy provides a process for redistributing permits among participating States, recognizing total harvest is limited by the number of permits available to all participating States. State agencies are required to monitor total harvest and provide annual reports to the Service.

The EP tundra swan strategy provides a process for allowing additional States to offer a tundra swan season. Each ''new'' State wanting to provide an EP tundra swan season must initiate the process 1 year prior to the season and will be allowed if the permit request (expected harvest in the new State) does not result in total swan harvest exceeding the 5 percent sport harvest limit. The allocation of permits to the new State are drawn from other States in the same Flyway. All States requesting a new tundra swan season must conduct a 3-year experiment to evaluate the effects of the season on the swan population and hunter participation. States conducting an experimental season must submit annual and final reports detailing how the hunts were administered, number of applications and permits issued, hunter participation rate, reporting rate, harvest (including retrieved and un-retrieved birds) and age ratio of harvest birds. All experimental seasons require a memorandum of agreement (MOA) between the requesting State and the Service.

The Delaware Division of Fish and Wildlife (DDFW) requested a new tundra swan hunt in 2018 starting with the 2019–2020 season and entered into an MOA with the Service in July 2019. The experimental season was approved by the Atlantic Flyway Council and the Service and was conducted in accordance with the EP Tundra Swan Management Plan and MOA. The DDFW issued 80, 63, and 63 permits via lottery for the 2019–20, 2020–21, and 2021–22 hunting seasons. Total applicants were 286, 222, and 234 for the 2019–20, 2020–21, and 2021–22 seasons. An additional four permits were issued to hunters via auctions held by conservation organizations for each

season. Tundra swan harvest ranged from 22–40 birds, and hunter success rate ranged from 44 percent to 64 percent across the 3 hunting seasons. Participation rate, among permittees, ranged from 75 percent to 83 percent. Hunters spent an average of 4.2 days hunting across all 3 years. Hunters reported 97 harvested tundra swans. All harvested birds were confirmed to be tundra swans by State personnel. Hunter success for immature to mature tundra swan ratio ranged from 10 percent to 14 percent. During the 3-year experimental season, the number of swans counted in Delaware was 4,728, 1,602, and 3,830 in 2020, 2021, and 2022. The number of swans counted in the Atlantic Flyway was 61,354, 76,701, and 89,142. The DDFW submitted annual reports and a final report detailing how the tundra swan hunting season was administered. The DDFW provided data on total harvest, age ratios, and hunter participation metrics as specified in the MOA.

The DDFW met all requirements under the MOA and in accordance with the EP Tundra Swan Management Plan. The realized harvest experienced during the 3-year experiment was within desired thresholds (*i.e.,* <5 percent), and no trumpeter swans or other nontarget species were harvested. During the 3-year experiment, the tundra swan population increased from 61,354 to 89,1420 birds in the Atlantic Flyway and from 70,595 to 90,859 birds in the Atlantic and Mississippi Flyways based on the MWS. The DDFW is prepared to implement an operational season in accordance with the EP Tundra Swan Management Plan, including continued monitoring of the population, harvest, and hunter participation. An operational hunting season in Delaware will contribute to meeting the goals of the Atlantic/Mississippi Flyway EP Tundra Swan Management Plan.

9. Sandhill Cranes

Council Recommendations: The Mississippi Flyway Council recommended that Alabama be granted operational status for their sandhill crane hunting season, beginning in 2023–2024, after successfully completing a 4-year, experimental hunting season evaluation based on criteria outlined in the Management Plan for the Eastern Population of Sandhill Cranes (EP Plan). The Central and Pacific Flyway Councils recommended that allowable harvest of the Rocky Mountain Population (RMP) of sandhill cranes be determined based on the formula described in the Pacific and Central Flyway Councils' Management Plan for RMP cranes.

Service Response: We concur with the Mississippi Flyway Council's recommendation concerning granting operational status to Alabama for sandhill crane hunting beginning with the 2023–2024 season. Alabama met all criteria set forth in the EP Plan and will join Kentucky and Tennessee as the third State in the Mississippi Flyway to successfully complete an evaluation of sandhill crane harvest under criteria outlined in the EP Plan. This management plan was approved by the Atlantic and Mississippi Flyway Councils in 2010. All applicable criteria (*e.g.,* population monitoring, permit numbers, hunter training, post-season harvest survey) in the EP Plan will continue to apply to sandhill crane hunting in Alabama.

We also agree with the Central and Pacific Flyway Councils' recommendations to determine allowable harvest of RMP cranes using the formula in the Pacific and Central Flyway Councils' management plan for RMP cranes pending results of the fall 2022 abundance and recruitment surveys. As we discussed in the March 28, 2016, **Federal Register** (81 FR 17302), the harvest strategy used to calculate the allowable harvest of RMP cranes does not fit well within the current regulatory process. In developing the annual proposed frameworks for RMP cranes, the Flyway Councils and the Service use the fall abundance and recruitment surveys of RMP cranes to determine annual allowable harvest. Results of the fall abundance and recruitment surveys of RMP cranes are released between December 1 and January 31 each year, which is after the date proposed frameworks are developed. However, the data are typically available by the expected publication of final frameworks. When we acquire the survey data, we will determine the appropriate allowable harvest for the RMP crane season according to the harvest strategy in the Central and Pacific Flyway Councils' management plan for RMP cranes published in the March 28, 2016, **Federal Register** (81 FR 17302) and publish the results in the final frameworks rule.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We may post all comments in their entirety—including your personal identifying information—on *https://www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the November 3, 2022, proposed rule; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our November 3, 2022, proposed rule (87 FR 66247):

- National Environmental Policy Act (NEPA) Consideration;
- Endangered Species Act Consideration;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act of 1995;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

Authority

The rules that eventually will be promulgated for the 2023–24 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulations Frameworks for 2023–24 Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior is proposing the following frameworks for outside dates, season lengths, shooting hours, bag and possession limits, and areas within which States may select seasons for hunting migratory game birds between the dates of September 1, 2023, and March 10, 2024. These frameworks are summarized below.

Table of Contents

I. General

Outside Dates: Outside dates are the earliest and latest dates within which States may establish hunting seasons. All outside dates specified below are inclusive.

Season Lengths: Season lengths are the maximum number of days hunting may occur within the outside dates for hunting seasons. Days are consecutive and concurrent for all species included in each season framework unless otherwise specified.

Season Segments: Season segments are the maximum number of consecutive-day segments into which the season lengths may be divided. The sum of the hunting days for all season segments may not exceed the season lengths allowed.

Zones: Unless otherwise specified, States may select hunting seasons by zones. Zones for duck seasons (and associated youth and veterans–active military waterfowl hunting days, gallinule seasons, and snipe seasons) and dove seasons may be selected only in years we declare such changes can be made (*i.e.,* open seasons for zones and splits) and according to federally established guidelines for duck and dove zones and split seasons.

Area, Zone, and Unit Descriptions: Areas open to hunting must be described, delineated, and designated as such in each State's hunting regulations, and, except for early teal seasons, these areas must also be published in the **Federal Register** as a Federal migratory bird hunting frameworks final rule. Geographic descriptions related to regulations are contained in a later portion of this document.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are three times the daily bag limits.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by hunters, or both. In such cases, the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

A. Flyways and Management Units

We generally set migratory bird hunting frameworks for the conterminous United States by Flyway or Management Unit/Region. Frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands are contained in separate sections near the end of the frameworks portion of this document. The States included in the Flyways and Management Units/Regions are described below.

1. Waterfowl Flyways

Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway: Includes Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

2. Mallard Management Units

High Plains Management Unit: Roughly defined as that portion of the Central Flyway that lies west of the 100th meridian. See III. Area, Unit, and Zone Descriptions, *Ducks (Including Mergansers) and Coots,* below, for specific boundaries in each State.

Columbia Basin Management Unit: In Washington, all areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County; and in Oregon, the counties of Gilliam, Morrow, and Umatilla.

3. Mourning Dove Management Units

Eastern Management Unit: All States east of the Mississippi River, and Louisiana.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

4. Woodcock Management Regions

Eastern Management Region: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

B. Definitions

For the purpose of the proposed hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, cackling geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

C. Migratory Game Bird Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, and Pennsylvania, where Sunday hunting of migratory birds is prohibited statewide by State law or regulation, all Sundays are closed to the take of all migratory game birds.

II. Season Frameworks

A. Special Youth and Veterans–Active Military Personnel Waterfowl Hunting Days

Outside Dates and Season Lengths: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' and 2 days per duck-hunting zone, designated as ''Veterans and Active Military Personnel Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days may be held concurrently or may be nonconsecutive. The Youth Waterfowl Hunting Days must be held outside any regular duck season on weekends, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. Both sets of days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, swans, mergansers, coots, and gallinules. Bag limits are the same as those allowed in the regular season except in States that implement a hybrid season for scaup (*i.e.,* different bag limits during different portions of the season), in which case the bag limit will be 2 scaup per day. Flyway species and area restrictions would remain in effect.

Participation Restrictions for Youth Waterfowl Hunting Days: States may use their established definition of age for youth hunters. However, youth hunters must be under the age of 18. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Swans may be taken only by participants possessing applicable swan permits.

Participation Restrictions for Veterans and Active Military Personnel Waterfowl Hunting Days: Veterans (as defined in section 101 of title 38, United States Code) and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty (other than for training), may participate. Swans may be taken only by participants possessing applicable swan permits.

B. Special Early Teal Seasons

Areas:

Atlantic Flyway: Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin. The season in Minnesota is experimental.

Central Flyway: Colorado (part), Kansas, Nebraska, New Mexico (part), Oklahoma, and Texas.

Outside Dates: September 1–30.

Season Lengths: 16 days.

Daily Bag Limits: 6 teal.

Shooting Hours: One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, South Carolina, and Wisconsin, where the hours are from sunrise to sunset.

C. Special Early Teal–Wood Duck Seasons

Areas: Florida, Kentucky, and Tennessee.

Seasons: In lieu of a special early teal season, a 5-consecutive-day teal–wood duck season may be selected in September. The daily bag limit may not exceed 6 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks. In addition, a 4-consecutive-day teal-only season may be selected in September either immediately before or immediately after the 5-day teal–wood duck season. The daily bag limit is 6 teal.

D. Duck, Merganser, Coot, and Goose Seasons

1. Atlantic Flyway

a. Duck, Merganser, and Coot Seasons

Outside Dates: Saturday nearest September 24 (September 23)–January 31.

Season Lengths and Daily Bag Limits: 60 days. The daily bag limit is 6 ducks, including no more than 2 mallards (no more than 1 of which can be female), 2 black ducks, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 2 canvasbacks, and 4 sea ducks (including no more than 3 scoters, 3 long-tailed ducks, or 3 eiders and no more than 1 female eider). The season for scaup may be split into 2 segments, with one segment consisting of 40 consecutive days with a 1-scaup daily bag limit, and the second segment consisting of 20 consecutive days with a 2-scaup daily bag limit. The daily bag limit of mergansers is 5. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit. The daily bag limit of coots is 15.

Closed Seasons: There is no open season on the harlequin duck.

Zones and Split Seasons: Delaware, Florida, Georgia, Rhode Island, South Carolina, and West Virginia may split their seasons into 3 segments. Maine, Massachusetts, New Hampshire, New Jersey, and Vermont may select seasons in each of 3 zones; Pennsylvania may select seasons in each of 4 zones; New York may select seasons in each of 5 zones; and all these States may split their season in each zone into 2 segments. Connecticut, Maryland, North Carolina, and Virginia may select seasons in each of 2 zones; and all these States may split their season in each zone into 3 segments. Connecticut, Maryland, North Carolina, and Virginia must conduct an evaluation of the impacts of zones and splits on hunter dynamics (*e.g.,* hunter numbers, satisfaction) and harvest during the 2021–25 seasons.

Special Provisions: The seasons, limits, and shooting hours should be the same between New York's Lake Champlain Zone and Vermont's Lake Champlain Zone, and between Vermont's Connecticut River Zone and New Hampshire's Inland Zone.

A craft under power may be used to shoot and retrieve dead or crippled birds in the Sea Duck Area in the Atlantic Flyway. The Sea Duck Area includes all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in New Jersey, all coastal waters seaward from the International Regulations for Preventing Collisions at Sea (COLREGS) Demarcation Lines shown on National Oceanic and Atmospheric Administration (NOAA) Nautical Charts and further described in 33 CFR 80.165, 80.501, 80.502, and 80.503; in any waters of the Atlantic Ocean and in any tidal waters of any bay that are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in South Carolina and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay that are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

b. Special Early Canada and Cackling Goose Seasons

Outside Dates and Season Lengths: 15 days during September 1–15 in the Eastern Unit of Maryland; 30 days during September 1–30 in Connecticut, Florida, Georgia, New Jersey, Long Island Zone of New York, North Carolina, Rhode Island, and South Carolina; and 25 days during September 1–25 in the remainder of the Atlantic Flyway.

Daily Bag Limits: 15 geese in the aggregate.

Shooting Hours: One-half hour before sunrise to sunset, except that during any special early Canada and cackling goose season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

c. Dark Goose Seasons

Outside Dates, Season Lengths, and Daily Bag Limits: Regulations are State and zone specific as provided below.

Area	Outside dates	Season length	Season segments	Daily bag limit
Connecticut:				
Atlantic Population (AP) Zone	Oct 10–Feb 5	45	2	3
AP Zone Late Season Area (Special season)	Dec 15–Feb 15	54	1	5
North Atlantic Population (NAP) Zone	Oct 1–Jan 31	60	2	2
NAP Late Season Area (Special season)	Jan 15–Feb 15	27	1	5
Resident Population (RP) Zone	Oct 1–Feb 15	80	3	5
Delaware	Nov 15–Feb 5	45	2	3
Florida	Oct 1–Mar 10	80	3	5
Georgia	Oct 1–Mar 10	80	3	5
Maine:				
North NAP–H Zone	Oct 1–Jan 31	60	2	2
South NAP–H Zone	Oct 1–Jan 31	60	2	2
Coastal NAP–L Zone	Oct 1–Feb 15	70	2	3
Maryland:				
AP Zone	Nov 15–Feb 5	45	2	2
RP Zone	Nov 15–Mar 10	80	3	5
Massachusetts:				
AP Zone	Oct 10–Feb 5	45	2	3
AP Zone Late Season Area (Special season)	Dec 15–Feb 15	54	1	5
NAP Zone	Oct 1–Jan 31	60	2	2
NAP Late Season Area (Special season)	Jan 15–Feb 15	27	1	5
New Hampshire	Oct 1–Jan 31	60	2	2
New Jersey:				
AP Zone	Fourth Saturday in Oct (28)–Feb 5	45	2	3
NAP Zone	Oct 1–Jan 31	60	2	2
Special Late Season Area (Special season)	Jan 15–Feb 15	27	1	5
New York:				
AP Zone	Fourth Saturday in Oct (28)–Feb 5	45	2	3
AP (Lake Champlain) Zone	Oct 10–Feb 5	45	2	3
NAP High Harvest Zone	Oct 1–Jan 31	60	2	2
NAP Low Harvest Zone	Oct 1–Feb 15	70	2	3
Western Long Island RP Zone	Saturday nearest Sep 24 (23)–last day of Feb (28).	107	3	8
Remainder of RP Zone	Fourth Saturday in Oct (28)–last day of Feb (29).	80	3	5
AP (Lake Champlain) Zone Late Season (Special season).	Dec 1–Feb 15	77	1	5
North Carolina:				

Area	Outside dates	Season length	Season segments	Daily bag limit
Northeast Zone	Saturday prior to Dec 25 (23)–Jan 31	30	1	2
RP Zone	Oct 1–Mar 10	80	3	5
Pennsylvania:				
AP Zone	Fourth Saturday in Oct (28)–Feb 5	45	2	3
RP Zone	Fourth Saturday in Oct (28)–Mar 10	80	3	5
Rhode Island:				
Statewide	Oct 1–Jan 31	60	2	2
Late Season Area (Special season)	Jan 15–Feb 15	32	2	5
South Carolina	Oct 1–Mar 10	80	3	5
Vermont:				
Connecticut River Zone	Oct 1–Jan 31	60	2	2
Interior Zone	Oct 10–Feb 5	45	2	3
Lake Champlain Zone	Oct 10–Feb 5	45	2	3
Interior, and Lake Champlain Zones Late Season (Special Season).	Dec 1–Feb 15	77	1	5
Virginia:				
AP Zone	Nov 15–Feb 5	45	2	3
RP Zone	Nov 15–Mar 10	80	3	5
West Virginia	Oct 1–Mar 10	80	3	5

d. Light Goose Seasons

Outside Dates: October 1–March 10.

Season Lengths: 107 days. Seasons may be split into 3 segments.

Daily Bag limits: 25 light geese. There is no possession limit.

e. Brant Seasons

Outside Dates: Saturday nearest September 24 (September 23)–January 31.

Season Lengths: 30 days. Seasons may be split into 2 segments.

Daily Bag Limits: 1 brant.

2. Mississippi Flyway

a. Duck, Merganser, and Coot Seasons

Outside Dates: Saturday nearest September 24 (September 23)–January 31.

Season Lengths and Daily Bag Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 2 black ducks, 1 pintail, 3 wood ducks, 2 canvasbacks, and 2 redheads. In Louisiana (the only high-harvest State in the Mississippi Flyway for mottled ducks), the daily bag limit for mottled ducks is zero for the first 15 days in each zone. The season for scaup may be split into 2 segments, with one segment consisting of 45 days with a 2-scaup daily bag limit, and the second segment consisting of 15 days with a 1-scaup daily bag limit. The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers. The daily bag limit of coots is 15.

Zones and Split Seasons: Alabama, Arkansas, and Mississippi may split their seasons into 3 segments. Kentucky and Tennessee may select seasons in each of 2 zones; Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin may select seasons in each of 3 zones; and all these States may split their season in each zone into 2 segments. Illinois may select seasons in each of 4 zones. Louisiana may select seasons in each of 2 zones and may split their season in each zone into 3 segments. Louisiana must conduct an evaluation of the impacts of zones and splits on hunter dynamics (*e.g.,* hunter numbers, satisfaction) and harvest during the 2021–25 seasons.

b. Canada and Cackling Goose Seasons

Outside Dates: September 1–February 15.

Season Lengths: 107 days, which may be split into 4 segments.

Daily Bag Limits: 5 geese in the aggregate.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset for Canada and cackling geese if all other waterfowl and crane seasons are closed in the specific applicable area.

c. White-fronted Goose Seasons

Outside Dates: September 1–February 15.

Season Lengths and Daily Bag Limits: 74 days with a daily bag limit of 3 geese, 88 days with a daily bag limit of 2 geese, or 107 days with a daily bag limit of 1 goose. Seasons may be split into 4 segments.

d. Brant Seasons

Outside Dates: September 1–February 15.

Season Lengths and Daily Bag Limits: 70 days with a daily bag limit of 2 brant or 107 days with a daily bag limit of 1 brant. Seasons may be split into 4 segments.

Special Provisions: In lieu of a separate brant season, brant may be included in the season for Canada and cackling geese with a daily bag limit of 5 geese in the aggregate.

e. Dark Goose Seasons

Areas: Alabama, Iowa, Indiana, Michigan, Minnesota, Ohio, and Wisconsin in lieu of separate seasons for Canada and cackling geese, white-fronted geese, and brant.

Outside Dates: September 1–February 15.

Season Lengths: 107 days, which may be split into 4 segments.

Daily Bag Limits: 5 geese in the aggregate.

f. Light Goose Seasons

Outside Dates: September 1–February 15.

Season Lengths: 107 days, which may be split into 4 segments.

Daily Bag and Possession Limits: The daily bag limit is 20 geese. There is no possession limit for light geese.

3. Central Flyway

a. Ducks, Merganser, and Coot Seasons

Outside Dates: Saturday nearest September 24 (September 23)–January 31.

Season Lengths and Duck Daily Bag Limits: 74 days, except in the High Plains Mallard Management Unit where the season length is 97 days and the last 23 days must be consecutive and may start no earlier than the Saturday nearest December 10 (December 9). The daily bag limit is 6 ducks and mergansers in the aggregate, including no more than 5 mallards (no more than 2 of which may be females), 2 redheads, 3 wood ducks,

1 pintail, and 2 canvasbacks. The daily bag limit for scaup is 1, and the season for scaup may be split into 2 segments, with one segment consisting of 39 consecutive days and another segment consisting of 35 consecutive days. In Texas, the daily bag limit on mottled ducks is 1, except that no mottled ducks may be taken during the first 5 days of the season. In addition to the daily limits listed above, the States of Montana, North Dakota, South Dakota, and Wyoming, in lieu of selecting an experimental September teal season, may include an additional daily bag and possession limit of 2 and 6 blue-winged teal, respectively, during the first 16 days of the regular duck season in each respective duck hunting zone. These extra limits are in addition to the regular duck bag and possession limits.

Coot Daily Bag Limits: 15 coots.

Zones and Split Seasons: Colorado, Kansas (Low Plains portion), Montana, Nebraska, New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

North Dakota may split their season into 3 segments. Montana, New Mexico, Oklahoma, and Texas may select seasons in each of 2 zones; and Colorado, Kansas, South Dakota, and Wyoming may select seasons in each of 3 zones; and all these States may split their season in each zone into 2 segments. Nebraska may select seasons in each of 4 zones.

b. Special Early Canada and Cackling Goose Seasons

Outside Dates and Seasons Lengths: In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, 30 days between September 1–30; in Colorado, New Mexico, Montana, and Wyoming, Canada and cackling goose seasons of not more than 15 days between September 1–15; and in North Dakota, 22 days between September 1–22.

Daily Bag Limits: 5 geese in the aggregate in Colorado, New Mexico, Montana, Wyoming, and Texas; 8 geese in the aggregate in Kansas, Nebraska, and Oklahoma; and 15 geese in the aggregate in North Dakota and South Dakota.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl and crane seasons are closed in the specific applicable area.

c. Canada Goose, Cackling Goose, and Brant Seasons

Outside Dates: Saturday nearest September 24 (September 23)–the Sunday nearest February 15 (February 18).

Seasons and Daily Bag Limits: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, 107 days with a daily bag limit of 8 geese; in Colorado, Montana, New Mexico, and Wyoming, 107 days with a daily bag limit of 5 geese; and in Texas (Western Goose Zone), 95 days with a daily bag limit of 5 geese.

Split Seasons: Seasons may be split into 3 segments. Three-segment seasons require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

d. White-fronted Goose Seasons

Outside Dates: Saturday nearest September 24 (September 23)–the Sunday nearest February 15 (February 18).

Season Length and Daily Bag Limits: Except as subsequently provided, either 74 days with a daily bag limit of 3 geese, or 88 days with a daily bag limit of 2 geese, or 107 days with a daily bag limit of 1 goose. In Texas (Western Goose Zone), 95 days with a daily bag limit of 2 geese. Seasons may be split into 3 segments.

e. Light Goose Seasons

Outside Dates: Saturday nearest September 24 (September 23)–March 10.

Season Lengths: 107 days. Seasons may be split into 3 segments.

Daily Bag and Possession Limits: The daily bag limit is 50 with no possession limit.

Special Provisions: In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

4. Pacific Flyway

a. Duck, Merganser, Coot, and Gallinule Seasons

Outside Dates: Saturday nearest September 24 (September 23)–January 31.

Season Lengths and Daily Bag Limits: 107 days. The daily bag limit is 7 ducks and mergansers in the aggregate, including no more than 2 female mallards, 1 pintail, 2 canvasbacks, 2 scaup, and 2 redheads. For scaup, the season length is 86 days, which may be split according to applicable zones and split duck hunting configurations approved for each State. The daily bag limit of coots and gallinules is 25 in the aggregate.

Zones and Split Seasons: Montana and New Mexico may split their seasons into 3 segments. Arizona, Colorado, Oregon, Utah, Washington, and Wyoming may select seasons in each of 2 zones; Nevada may select seasons in each of 3 zones; California may select seasons in each of 5 zones; and all these States may split their season in each zone into 2 segments. Idaho may select seasons in each of 4 zones.

Special Provisions: The seasons, limits, and shooting hours should be the same between the Colorado River Zone of California and the South Zone of Arizona.

b. Goose Seasons

i. Special Early Canada and Cackling Goose Seasons

Outside Dates: September 1–20.

Season Lengths: 15 days.

Daily Bag Limits: 5 geese in the aggregate, except in Pacific County, Washington, where the daily bag limit is 15 geese in the aggregate.

ii. Canada Goose, Cackling Goose, and Brant Seasons

Outside Dates: Except as subsequently provided, Saturday nearest September 24 (September 23)–January 31.

Season Lengths: Except as subsequently provided, 107 days.

Daily Bag Limits: Except as subsequently provided, in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming, the daily bag limit is 5 Canada and cackling geese and brant in the aggregate. In Oregon and Washington, the daily bag limit is 4 Canada and cackling geese in the aggregate. In California, the daily bag limit is 10 Canada and cackling geese in the aggregate.

Split Seasons: Seasons may be split into 3 segments. Three-segment seasons require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

iii. Brant Seasons

Areas: California, Oregon, and Washington.

Outside Dates: Saturday nearest September 24 (September 23)–January 31.

Season Lengths and Daily Bag Limits: 37 days and 2 brant.

Zones: Washington and California may select seasons in each of 2 zones.

Special Provisions: In Oregon and California, the brant season must end no later than December 15.

iv. White-fronted Goose Seasons

Outside Dates: Saturday nearest September 24 (September 23)–March 10.

Season Lengths: 107 days.

Daily Bag Limits: Except as subsequently provided, 10 geese.

Split Seasons: Seasons may be split into 3 segments. Three-segment seasons require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

v. Light Goose Seasons

Outside Dates: Saturday nearest September 24 (September 23)–March 10.

Season Lengths: 107 days. Seasons may be split into 3 segments.

Daily Bag Limits: 20 geese, except in Washington where the daily bag limit for light geese is 10 on or before the last Sunday in January (January 28).

California

Balance of State Zone: A Canada and cackling goose season may be selected with outside dates between the Saturday nearest September 24 (September 23) and March 10 and may be split into 3 segments. In the Sacramento Valley Special Management Area, the season on white-fronted geese must end on or before December 28, and the daily bag limit is 3 white-fronted geese. In the North Coast Special Management Area, hunting days that occur after January 31 should be concurrent with Oregon's South Coast Zone.

Northeastern Zone: The white-fronted goose season may be split into 3 segments.

Oregon

Eastern Zone: For Lake County only, the daily white-fronted goose bag limit is 1.

Northwest Permit Zone: A Canada and cackling goose season may be selected with outside dates between the Saturday nearest September 24 (September 23) and March 10 with a daily bag limit of 3 geese in the aggregate. Canada and cackling goose and white-fronted goose seasons may be split into 3 segments.

South Coast Zone: A Canada and cackling goose season may be selected with outside dates between the Saturday nearest September 24 (September 23) and March 10 with a daily bag limit of 6 geese in the aggregate. Canada and cackling goose and white-fronted goose seasons may be split into 3 segments. Hunting days that occur after January 31 should be concurrent with California's North Coast Special Management Area.

Utah

Wasatch Front Zone: A Canada and cackling goose and brant season may be selected with outside dates between the Saturday nearest September 24 (September 23) and February 15.

Washington

Areas 2 Inland and 2 Coastal (Southwest Permit Zone): A Canada and cackling goose season may be selected in each zone with outside dates between the Saturday nearest September 24 (September 23) and March 10 with a daily bag limit of 3 geese in the aggregate. Canada and cackling goose and white-fronted goose seasons may be split into 3 segments.

Area 4: Canada and cackling goose and white-fronted goose seasons may be split into 3 segments.

Permit Zones

In Oregon and Washington permit zones, the hunting season is closed on dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value 5 or less) with a bill length between 40 and 50 millimeters. Hunting of geese will only be by hunters possessing a State-issued permit authorizing them to do so. Shooting hours for geese may begin no earlier than sunrise. Regular Canada and cackling goose seasons in the permit zones of Oregon and Washington remain subject to the Memorandum of Understanding entered into with the Service regarding monitoring the impacts of take during the regular Canada and cackling goose season on the dusky Canada goose population.

5. Swan Seasons

Pacific Flyway

Areas: Idaho, Montana, Nevada, and Utah.

Outside Dates: Saturday nearest September 24 (September 23)–January 31.

Season Lengths: 107 days. Seasons may be split into 2 segments.

Permits: Hunting is by permit only. Permits will be issued by the State. The total number of permits issued may not exceed 50 in Idaho, 500 in Montana, 650 in Nevada, and 2,750 in Utah. Permits will authorize the take of no more than 1 swan per permit. Only 1 permit may be issued per hunter in Montana and Utah; 2 permits may be issued per hunter in Nevada.

Quotas: The swan season in the respective State must end upon attainment of the following reported harvest of trumpeter swans: 20 in Utah and 10 in Nevada. There is no quota in Idaho and Montana.

Monitoring: Each State must evaluate hunter participation, species-specific swan harvest, and hunter compliance in providing either species-determinant parts (at least the intact head) or bill measurements (bill length from tip to posterior edge of the nares opening, and presence or absence of yellow lore spots on the bill in front of the eyes) of harvested swans for species identification. Each State should use appropriate measures to maximize hunter compliance with the State's program for swan harvest reporting. Each State must achieve a hunter compliance of at least 80 percent in providing species-determinant parts or bill measurements of harvested swans for species identification, or subsequent permits will be reduced by 10 percent in the respective State. Each State must provide to the Service by June 30 following the swan season a report detailing hunter participation, species-specific swan harvest, and hunter compliance in reporting harvest. In Idaho and Montana, all hunters that harvest a swan must complete and submit a reporting card (bill card) with the bill measurement and color information from the harvested swan within 72 hours of harvest for species determination. In Utah and Nevada, all hunters that harvest a swan must have the swan or species-determinant parts examined by a State or Federal biologist within 72 hours of harvest for species determination.

Other Provisions: In Utah, the season is subject to the terms of the Memorandum of Agreement entered into with the Service in January 2019 regarding harvest monitoring, season closure procedures, and education requirements to minimize take of trumpeter swans during the swan season.

Atlantic and Central Flyways

Areas: Delaware, North Carolina, and Virginia in the Atlantic Flyway and North Dakota, South Dakota east of the Missouri River, and part of Montana in the Central Flyway.

Outside Dates: October 1–January 31 in the Atlantic Flyway and the Saturday nearest October 1 (September 30)–January 31 in the Central Flyway.

Season Lengths: 90 days in the Atlantic Flyway and 107 days in the Central Flyway.

Permits: Hunting is by permit only. Permits will be issued by the States. No more than 5,600 permits may be issued in the Atlantic Flyway including 347 in Delaware, 4,721 in North Carolina, and 532 in Virginia. No more than 4,000 permits may be issued in the Central Flyway including 500 in Montana, 2,200

in North Dakota, and 1,300 in South Dakota. Permits will authorize the take of no more than 1 swan per permit. A second permit may be issued to hunters from unissued permits remaining after the first drawing. Unissued permits may be reallocated to States within a Flyway.

Monitoring: Each State must evaluate hunter participation, species-specific swan harvest, and hunter compliance in providing measurements of harvested swans for species identification. Each State should use appropriate measures to maximize hunter compliance with the State's program for swan harvest reporting. Each State must achieve a hunter compliance of at least 80 percent in providing species-determinant measurements of harvested swans for species identification. Each State must provide to the Service by June 30 following the swan season a report detailing hunter participation, species-specific swan harvest, and hunter compliance in reporting harvest.

Other Provisions: In lieu of a general swan hunting season, States may select a season only for tundra swans. States selecting a season only for tundra swans must obtain harvest and hunter participation data.

6. Sandhill Crane Seasons

Mississippi Flyway

Areas: Alabama, Kentucky, Minnesota, and Tennessee.

Outside Dates: September 1–February 28 in Minnesota, and September 1–January 31 in Alabama, Kentucky, and Tennessee.

Season Lengths: 37 days in the designated portion of Minnesota's Northwest Goose Zone, and 60 days in Alabama, Kentucky, and Tennessee.

Daily Bag and Possession Limits: The daily bag limit is 1 crane in Minnesota, 2 cranes in Kentucky, and 3 cranes in Alabama and Tennessee. In Alabama, Kentucky, and Tennessee, the seasonal bag limit is 3 cranes.

Permits: Hunting is by permit only. Permits will be issued by the State.

Other Provisions: The number of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with Council management plans and approved by the Mississippi Flyway Council.

Central Flyway

Areas: Colorado, Kansas, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Outside Dates: September 1–February 28.

Season Lengths: 37 days in Texas (Zone C), 58 days in Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming, and 93 days in New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 cranes, except 2 cranes in North Dakota (Area 2) and Texas (Zone C).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Central and Pacific Flyways

Areas: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming within the range of the Rocky Mountain Population (RMP) of sandhill cranes.

Outside Dates: September 1–January 31.

Season Lengths: 60 days. The season may be split into 3 segments.

Daily Bag and Possession limits: The daily bag limit is 3 cranes, and the possession limit is 9 cranes per season.

Permits: Hunting is by permit only. Permits will be issued by the State.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with Councils' management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

1. In Utah, 100 percent of the harvest will be assigned to the RMP crane quota;

2. In Arizona, monitoring the species composition of the harvest must be conducted at 3-year intervals unless 100 percent of the harvest will be assigned to the RMP crane quota;

3. In Idaho, 100 percent of the harvest will be assigned to the RMP crane quota; and

4. In the Estancia Valley hunt area of New Mexico, the level and species composition of the harvest must be monitored; greater sandhill cranes in the harvest will be assigned to the RMP crane quota.

7. Gallinule Seasons

Atlantic, Mississippi, and Central Flyways

Outside Dates: September 1–January 31.

Season Lengths: 70 days.

Daily Bag Limits: 15 gallinules.

Zones and Split Seasons: Seasons may be selected by zones established for duck hunting. The season in each zone may be split into 2 segments.

Pacific Flyway

States in the Pacific Flyway may select their hunting seasons between the outside dates for the season on ducks, mergansers, and coots; therefore, Pacific Flyway frameworks for gallinules are included with the duck, merganser, and coot frameworks.

8. Rail Seasons

Areas: Atlantic, Mississippi, and Central Flyways and the Pacific Flyway Portions of Colorado, Montana, New Mexico, and Wyoming.

Outside Dates: September 1–January 31.

Season Lengths: 70 days. Seasons may be split into 2 segments.

Daily Bag Limits

Clapper and King Rails: In Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, 10 rails in the aggregate. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, 15 rails in the aggregate.

Sora and Virginia Rails: 25 rails in the aggregate.

9. Snipe Seasons

Outside Dates: September 1–February 28, except in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia, where the season must end no later than January 31.

Season Lengths: 107 days.

Daily Bag limits: 8 snipe.

Zones and Split Seasons: Seasons may be selected by zones established for duck seasons. The season in each zone may be split into 2 segments.

10. American Woodcock Seasons

Areas: Eastern and Central Management Regions

Outside Dates: September 13–January 31.

Season Lengths: Except as subsequently provided, 45 days.

Daily Bag Limits: 3 woodcock.

Zones and Split Seasons: Seasons may be split into 2 segments. New Jersey may select seasons in each of 2 zones. The season in each zone may not exceed 36 days.

11. Band-Tailed Pigeon Seasons

California, Oregon, Washington, and Nevada

Outside Dates: September 15–January 1.

Seasons Lengths: 9 days.

Daily Bag Limits: 2 pigeons.

Zones: California may select seasons in each of 2 zones. The season in each zone may not exceed 9 days. The season in the North Zone must close by October 3.

Arizona, Colorado, New Mexico, and Utah

Outside Dates: September 1–November 30.

Season Lengths: 14 days.

Daily Bag Limits: 2 pigeons.

Zones: New Mexico may select seasons in each of 2 zones. The season in each zone may not exceed 14 days. The season in the South Zone may not open until October 1.

12. Dove Seasons

Eastern Management Unit

Outside Dates: September 1–January 31.

Season Lengths: 90 days.

Daily Bag Limits: 15 mourning and white-winged doves in the aggregate.

Zones and Split Seasons: Seasons may be split into 3 segments; Alabama, Louisiana, and Mississippi may select seasons in each of 2 zones and may split their season in each zone into 3 segments.

Central Management Unit

Outside Dates: September 1–January 15.

Season Lengths: 90 days.

All States Except Texas

Daily Bag Limits: 15 mourning and white-winged doves in the aggregate.

Zones and Split Seasons: Seasons may be split into 3 segments; New Mexico may select seasons in each of 2 zones and may split their season in each zone into 3 segments.

Texas

Daily Bag Limits: 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves.

Zones and Split Seasons: Texas may select hunting seasons for each of 3 zones subject to the following conditions:

1. The season may be split into 2 segments, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited take of mourning and white-tipped doves may also occur during that special season (see Special White-winged Dove Area in Texas, below).

2. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 14 and January 25.

Special White-Winged Dove Season in Texas

In addition, Texas may select a hunting season of not more than 6 days, consisting of two 3-consecutive-day periods, for the Special White-winged Dove Area between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be mourning doves and no more than 2 may be white-tipped doves. Shooting hours are from noon to sunset.

Western Management Unit

Outside Dates: September 1–January 15.

Idaho, Nevada, Oregon, Utah, and Washington

Season Lengths: 60 days.

Daily Bag Limits: 15 mourning and white-winged doves in the aggregate.

Zones and Split Seasons: Idaho, Nevada, Utah, and Washington may split their seasons into 2 segments. Oregon may select hunting seasons in each of 2 zones and may split their season in each zone into 2 segments.

Arizona and California

Season Lengths: 60 days, which may be split between 2 segments, September 1–15 and November 1–January 15.

Daily Bag Limits: In Arizona, during the first segment of the season, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 may be white-winged doves. During the remainder of the season, the daily bag limit is 15 mourning doves. In California, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 may be white-winged doves.

13. Alaska

a. Duck, Goose, Sandhill Crane, and Snipe Seasons

Outside Dates: Except as subsequently provided, September 1–January 26.

Season Lengths: Except as subsequently provided, 107 days for ducks, geese (except brant), sandhill cranes, and snipe. The season length for brant will be determined based on the upcoming brant winter survey results and the Pacific brant harvest strategy.

Zones and Split Seasons: A season may be established in each of 5 zones. The season in the Southeast Zone may be split into 2 segments.

Closed Seasons: The hunting season is closed on the spectacled eider and Steller's eider.

Daily Bag and Possession Limits and Special Conditions

Ducks: The basic daily bag limit is 7 ducks. The basic daily bag limit in the North Zone is 10 ducks, and in the Gulf Coast Zone is 8 ducks. The basic daily bag limits may include 2 canvasbacks and may not include sea ducks.

In addition to the basic daily bag limits, the sea duck daily bag limit is 10, including 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common, hooded, and red-breasted mergansers.

Light Geese: The daily bag limit is 6 geese.

Canada and Cackling Geese: The daily bag limit is 4 Canada and cackling geese in the aggregate with the following exceptions, and subject to the following conditions:

1. In Game Management Units (Units) 5 and 6, in the Gulf Coast Zone, outside dates are September 28–December 16.

2. On Middleton Island in Unit 6, in the Gulf Coast Zone, all hunting is by permit only. Each hunter is required to complete a mandatory Canada and cackling goose identification class prior to being issued a permit. Hunters must check in and check out when hunting. The daily bag and possession limits are 1 goose. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value 5 or less) with a bill length between 40 and 50 millimeters.

3. In Unit 10, in the Pribilof and Aleutian Islands Zone, the daily bag limit is 6 geese in the aggregate.

White-fronted Geese: The daily bag limit is 4 geese with the following exceptions:

1. In Unit 9, in the Gulf Coast Zone, Unit 10, in the Pribilof and Aleutian Islands Zone, and Unit 17, in the North Zone, the daily bag limit is 6 geese.

2. In Unit 18, in the North Zone, the daily bag limit is 10 geese.

Emperor Geese: The emperor geese season is subject to the following conditions:

1. All hunting is by permit only.

2. One goose may be harvested per hunter per season.

3. Total harvest may not exceed 500 geese.

4. In Unit 8, in the Kodiak Zone, the Kodiak Island Road Area is closed to hunting. The Kodiak Island Road Area consists of all lands and water (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Marine waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest, for example: Woody, Long, Gull, and Puffin islands.

Brant: The daily bag limit is 4 brant.

Snipe: The daily bag limit is 8 snipe.

Sandhill Cranes: The daily bag limit is 2 cranes in the Southeast, Gulf Coast,

Kodiak, and Pribilof and Aleutian Islands Zones, and Unit 17 in the North Zone. In the remainder of the North Zone (outside Unit 17), the daily bag limit is 3 cranes.

b. Tundra Swan Seasons

Outside Dates: September 1–October 31.

Season Lengths: 31 days.

Daily Bag and Possession Limits and Special Conditions: All hunting is by permit only according to the following conditions.

1. In Unit 17, in the North Zone, 200 permits may be issued; 3 tundra swans may be authorized per permit, and 1 permit may be issued per hunter per season.

2. In Unit 18, in the North Zone, 500 permits may be issued; 3 tundra swans may be authorized per permit, and 1 permit may be issued per hunter per season.

3. In Unit 22, in the North Zone, 300 permits may be issued; 3 tundra swans may be authorized per permit, and 1 permit may be issued per hunter per season.

4. In Unit 23, in the North Zone, 300 permits may be issued; 3 tundra swans may be authorized per permit, and 1 permit may be issued per hunter per season.

14. Hawaii

a. Mourning Dove Seasons

Outside Dates: October 1–January 31.

Season Lengths and Daily Bag Limits: 65 days with a daily bag limit of 15 doves or 75 days with a daily bag of 12 doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

15. Puerto Rico

a. Dove and Pigeon Seasons

Outside Dates: September 1–January 15.

Season Lengths: 60 days.

Daily Bag Limits: 30 Zenaida, mourning, and white-winged doves in the aggregate, of which 10 may be Zenaida doves and 3 may be mourning doves, and 5 scaly-naped pigeons.

Closed Seasons: There is no open season on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

b. Duck, Coot, Gallinule, and Snipe Seasons

Outside Dates: October 1–January 31.

Season Lengths: 55 days. The season may be split into 2 segments.

Daily Bag Limits: 6 ducks, 6 common gallinules, and 8 snipe.

Closed Seasons: There is no open season on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. There is no open season on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, gallinules, and snipe in the Municipality of Culebra and on Desecheo Island.

16. Virgin Islands

a. Dove and Pigeon Seasons

Outside Dates: September 1–January 15.

Season Lengths: 60 days.

Daily Bag and Possession Limits: 10 Zenaida doves.

Closed Seasons: There is no open season for ground-doves, quail-doves, and pigeons.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

b. Duck Seasons

Outside Dates: December 1–January 31.

Season Lengths: 55 days.

Daily Bag Limits: 6 ducks.

Closed Seasons: There is no open season on the ruddy duck, white-cheeked pintail, West Indian whistling-duck, fulvous whistling-duck, and masked duck.

17. Special Falconry Regulations

In accordance with 50 CFR 21.82, falconry is a permitted means of taking migratory game birds in any State except for Hawaii. States may select an extended season for taking migratory game birds in accordance with the following:

Outside Dates: September 1–March 10.

Season Lengths: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be split into 3 segments.

Daily Bag Limits: Falconry daily bag limits for all permitted migratory game birds must not exceed 3 birds in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in each State, including those that do not select an extended falconry season.

Note: General hunting regulations, including seasons and hunting hours, apply to falconry. Regular season bag limits do not apply to falconry. The falconry bag limit is not in addition to shooting limits.

III. Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire–Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of I–95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the U.S. border.

Coastal Zone: That portion south of a line extending east from the Maine–New Brunswick border in Calais at the Route 1 Bridge; then south along Route 1 to the Maine–New Hampshire border in Kittery.

South Zone: Remainder of the State.

Maryland

Western Zone: Allegany, Carroll, Garrett, Frederick and Washington Counties; and those portions of Baltimore, Howard, Prince George's, and Montgomery Counties west of a line beginning at I–83 at the Pennsylvania State line, following I–83 south to the intersection of I–83 and I–695 (Outer Loop), south following I–695 (Outer Loop) to its intersection with I–95, south following I–95 to its intersection with I–495 (Outer Loop), and following I–495 (Outer Loop) to the Virginia shore of the Potomac River.

Eastern Zone: That portion of the State not included in the Western Zone.

Special Teal Season Area: Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center Street–Elm Street bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Northern Zone: That portion of the State east and north of the Inland Zone beginning at the Jct. of Route 10 and Route 25–A in Orford, east on Route 25–A to Route 25 in Wentworth, southeast on Route 25 to Exit 26 of Route I–93 in Plymouth, south on Route I–93 to Route 3 at Exit 24 of Route I–93 in Ashland, northeast on Route 3 to Route 113 in Holderness, north on Route 113 to Route 113–A in Sandwich, north on Route 113–A to Route 113 in Tamworth, east on Route 113 to Route 16 in Chocorua, north on Route 16 to Route 302 in Conway, east on Route 302 to the Maine–New Hampshire border.

Inland Zone: That portion of the State south and west of the Northern Zone, west of the Coastal Zone, and includes the area of Vermont and New Hampshire as described for hunting reciprocity. A person holding a New Hampshire hunting license that allows the taking of migratory waterfowl or a person holding a Vermont resident hunting license that allows the taking of migratory waterfowl may take migratory waterfowl and coots from the following designated area of the Inland Zone: the State of Vermont east of Route I–91 at the Massachusetts border, north on Route I–91 to Route 2, north on Route 2 to Route 102, north on Route 102 to Route 253, and north on Route 253 to the border with Canada and the area of New Hampshire west of Route 63 at the Massachusetts border, north on Route 63 to Route 12, north on Route 12 to Route 12–A, north on Route 12–A to Route 10, north on Route 10 to Route 135, north on Route 135 to Route 3, north on Route 3 to the intersection with the Connecticut River.

Coastal Zone: That portion of the State east of a line beginning at the Maine–New Hampshire border in Rollinsford, then extending to Route 4 west to the city of Dover, south to the intersection of Route 108, south along Route 108 through Madbury, Durham, and Newmarket to the junction of Route 85 in Newfields, south to Route 101 in Exeter, east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south to the Massachusetts border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to NJ 109; south on NJ 109 to Cape May County Route 633 (Lafayette Street); south on Lafayette Street to Jackson Street; south on Jackson Street to the shoreline at Cape May; west along the shoreline of Cape May beach to COLREGS Demarcation Line 80.503 at Cape May Point; south along COLREGS Demarcation Line 80.503 to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: That area east and north of a continuous line extending along U.S. 11 from the New York–Canada International boundary south to NY 9B, south along NY 9B to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to NY 22, north along NY 22 to Washington County Route 153, east along CR 153 to the New York–Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

North Carolina

Coastal Zone: All counties and portions of counties east of I–95.

Inland Zone: All counties and portions of counties west of I–95.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone: That portion of Vermont east of the Lake Champlain

Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Virginia

Western Zone: All counties and portions of counties west of I–95.

Eastern Zone: All counties and portions of counties east of I–95.

Mississippi Flyway

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone–Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington–Peotone Road, west along Wilmington–Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff–Lorenzo Road, west along Pine Bluff–Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Duck Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's Road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central Zone: The remainder of the State between the south border of the Central Zone and the North border of the South Zone.

Indiana

North Zone: That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone: That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone: That part of Indiana south of a line extending east from the Illinois border along I–70; east along National Ave.; east along U.S. 150; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone: That portion of Iowa north of a line beginning on the South Dakota–Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 20 to the Iowa–Illinois border. The south duck hunting zone is that part of Iowa west of Interstate 29 and south of State Highway 92 east to the Iowa–Illinois border. The central duck hunting zone is the remainder of the State.

Central Zone: The remainder of Iowa not included in the North and South zones.

South Zone: The south duck hunting zone is that part of Iowa west of Interstate 29 and south of State Highway 92 east to the Iowa–Illinois border.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

East Zone: That area of the State beginning at the Arkansas border, then south on U.S. Hwy 79 to State Hwy 9, then south on State Hwy 9 to State Hwy 147, then south on State Hwy 147 to U.S. Hwy 167, then south and east on U.S. Hwy 167 to U.S. Hwy 90, then south on U.S. Hwy 90 to the Mississippi State line.

West Zone: Remainder of the State.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Michigan–Wisconsin boundary line in Lake Michigan, directly due west of the mouth of Stoney Creek in section 31, T14N R18W, Oceana County, then proceed easterly and southerly along the centerline of Stoney Creek to its intersection with Scenic Drive, southerly on Scenic Drive to Stoney Lake Road in section 5, T13N R18W, Oceana County, easterly on Stoney Lake Road then both west and east Garfield Roads (name change only; not an intersection) then crossing highway U.S.–31 to State Highway M–20 (north of the town of New Era; also locally named Hayes Road) in section 33, T14N R17W, Oceana County, easterly on M–20 through Oceana, Newaygo, Mecosta, Isabella, and Midland Counties to highway U.S.–10 business route in the city of Midland, easterly on U.S.–10 Business Route (BR) to highway U.S.–10 at the Bay County line, easterly on U.S.–10 then crossing U.S.–75 to State Highway M–25 (west of the town of Bay City), easterly along M–25 into Tuscola County then northeasterly and easterly on M–25 through Tuscola County into Huron County, turning southeasterly on M–25 (near the town of Huron City; also locally named North Shore Road) to the centerline of Willow Creek in section 4, T18N R14E, Huron County, then northerly along the centerline of Willow Creek to the mouth of Willow Creek into Lake Huron, then directly due east along a line from the mouth of Willow Creek heading east into Lake Huron to a point due east and on the Michigan/U.S.–Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23 and east to State Highway 39 and east to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The portion of the State south of a line extending east from the South Dakota State line along U.S. Highway 212 to Interstate 494 and east

to Interstate 94 and east to the Wisconsin State line.

Central Duck Zone: The remainder of the State.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border at I–70; west on I–70 to Hwy 65; north on Hwy 65 to Hwy 41, north on Hwy 41 to Hwy 24; west on Hwy 24 to MO Hwy 10, west on Hwy 10 to Hwy 69, north on Hwy 69 to MO Hwy 116, west on MO Hwy 116 to Hwy 59, south on Hwy 59 to the Kansas border.

Middle Zone: The remainder of Missouri not included in other zones.

South Zone: That portion of Missouri south of a line running west from the Illinois border on MO Hwy 74 to MO Hwy 25; south on MO Hwy 25. to U.S. Hwy 62; west on U.S. Hwy 62 to MO Hwy 53; north on MO Hwy 53 to MO Hwy 51; north on MO Hwy 51 to U.S. Hwy 60; west on U.S. Hwy 60 to MO Hwy 21; north on MO Hwy 21 to MO Hwy 72; west on MO Hwy 72 to MO Hwy 32; west on MO Hwy 32 to U.S. Hwy 65; north on U.S. Hwy 65 to U.S. Hwy 54; west on U.S. Hwy 54 to the Kansas border.

Ohio

Lake Erie Marsh Zone: Includes all land and water within the boundaries of the area bordered by a line beginning at the intersection of Interstate 75 at the Ohio–Michigan State line and continuing south to Interstate 280, then south on I–280 to the Ohio Turnpike (I–80/I–90), then east on the Ohio Turnpike to the Erie–Lorain County line, then north to Lake Erie, then following the Lake Erie shoreline at a distance of 200 yards offshore, then following the shoreline west toward and around the northern tip of Cedar Point Amusement Park, then continuing from the westernmost point of Cedar Point toward the southernmost tip of the sand bar at the mouth of Sandusky Bay and out into Lake Erie at a distance of 200 yards offshore continuing parallel to the Lake Erie shoreline north and west toward the northernmost tip of Cedar Point National Wildlife Refuge, then following a direct line toward the southernmost tip of Wood Tick Peninsula in Michigan to a point that intersects the Ohio–Michigan State line, then following the State line back to the point of the beginning.

North Zone: That portion of the State, excluding the Lake Erie Marsh Zone, north of a line extending east from the Indiana State line along U.S. Highway (U.S.) 33 to State Route (SR) 127, then south along SR 127 to SR 703, then south along SR 703 and including all lands within the Mercer Wildlife Area to SR 219, then east along SR 219 to SR 364, then north along SR 364 and including all lands within the St. Mary's Fish Hatchery to SR 703, then east along SR 703 to SR 66, then north along SR 66 to U.S. 33, then east along U.S. 33 to SR 385, then east along SR 385 to SR 117, then south along SR 117 to SR 273, then east along SR 273 to SR 31, then south along SR 31 to SR 739, then east along SR 739 to SR 4, then north along SR 4 to SR 95, then east along SR 95 to SR 13, then southeast along SR 13 to SR 3, then northeast along SR 3 to SR 60, then north along SR 60 to U.S. 30, then east along U.S. 30 to SR 3, then south along SR 3 to SR 226, then south along SR 226 to SR 514, then southwest along SR 514 to SR 754, then south along SR 754 to SR 39/60, then east along SR 39/60 to SR 241, then north along SR 241 to U.S. 30, then east along U.S. 30 to SR 39, then east along SR 39 to the Pennsylvania State line.

South Zone: The remainder of Ohio not included in the Lake Erie Marsh Zone or the North Zone.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

Remainder of State: That portion of Tennessee outside of the Reelfoot Zone.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Open Water Zone: That portion of the State extending 500 feet or greater from the Lake Michigan shoreline bounded by the Michigan State line and the Illinois State line.

South Zone: The remainder of the State.

Central Flyway

Colorado (Central Flyway Portion)

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Northeast Zone: All areas east of Interstate 25 and north of Interstate 70.

Southeast Zone: All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano, and Las Animas Counties.

Mountain/Foothills Zone: All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano, and Las Animas Counties.

Kansas

High Plains: That portion of the State west of U.S. 283.

Low Plains Early Zone: That part of Kansas bounded by a line from the Federal Hwy U.S.–283 and State Hwy 96 junction, then east on State Hwy 96 to its junction with Federal Hwy U.S.–183, then north on Federal Hwy U.S.–183 to its junction with Federal Hwy U.S.–24, then east on Federal Hwy U.S.–24 to its junction with Federal Hwy U.S.–281, then north on Federal Hwy U.S.–281 to its junction with Federal Hwy U.S.–36, then east on Federal Hwy U.S.–36 to its junction with State Hwy K–199, then south on State Hwy K–199 to its junction with Republic County 30th Road, then south on Republic County 30th Road to its junction with State Hwy K–148, then east on State Hwy K–148 to its junction with Republic County 50th Road, then south on Republic County 50th Road to its junction with Cloud County 40th Road, then south on Cloud County 40th Road to its junction with State Hwy K–9, then west on State Hwy K–9 to its junction with Federal Hwy U.S.–24, then west on Federal Hwy U.S.–24 to its junction with Federal Hwy U.S.–181, then south on Federal Hwy U.S.–181 to its junction with State Hwy K–18, then west on State Hwy K–18 to its junction with Federal Hwy U.S.–281, then south on Federal Hwy U.S.–281 to its junction with State Hwy K–4, then east on State Hwy K–4 to its junction with interstate Hwy I–135, then south on interstate Hwy I–135 to its junction with State Hwy K–61, then southwest on State Hwy K–61 to its junction with McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with McPherson County Arapaho Road, then west on McPherson County Arapaho Road to its junction with State Hwy K–61, then southwest on State Hwy K–61 to its junction with State Hwy K–96, then northwest on State Hwy K–96 to its junction with Federal Hwy U.S.–56, then southwest on Federal Hwy U.S.–56 to its junction with State Hwy K–19, then east on State Hwy K–19 to its junction with Federal Hwy U.S.–281, then south on Federal Hwy U.S.–281 to its junction with Federal Hwy U.S.–54, then west on Federal Hwy U.S.–54 to its junction with Federal Hwy U.S.–183, then north on Federal Hwy U.S.–183 to its junction with Federal Hwy U.S.–56, then southwest on Federal Hwy U.S.–56 to its junction with North Main Street in Spearville, then south on North Main Street to Davis Street, then east on Davis Street to Ford County Road 126 (South Stafford Street), then south on Ford

County Road 126 to Garnett Road, then east on Garnett Road to Ford County Road 126, then south on Ford County Road 126 to Ford Spearville Road, then west on Ford Spearville Road to its junction with Federal Hwy U.S.–400, then northwest on Federal Hwy U.S.–400 to its junction with Federal Hwy U.S.–283, and then north on Federal Hwy U.S.–283 to its junction with Federal Hwy U.S.–96.

Low Plains Late Zone: That part of Kansas bounded by a line from the Federal Hwy U.S.–283 and State Hwy 96 junction, then north on Federal Hwy U.S.–283 to the Kansas–Nebraska State line, then east along the Kansas–Nebraska State line to its junction with the Kansas–Missouri State line, then southeast along the Kansas–Missouri State line to its junction with State Hwy K–68, then west on State Hwy K–68 to its junction with interstate Hwy I–35, then southwest on interstate Hwy I–35 to its junction with Butler County NE 150th Street, then west on Butler County NE 150th Street to its junction with Federal Hwy U.S.–77, then south on Federal Hwy U.S.–77 to its junction with the Kansas–Oklahoma State line, then west along the Kansas–Oklahoma State line to its junction with Federal Hwy U.S.–283, then north on Federal Hwy U.S.–283 to its junction with Federal Hwy U.S.–400, then east on Federal Hwy U.S.–400 to its junction with Ford Spearville Road, then east on Ford Spearville Road to Ford County Road 126 (South Stafford Street), then north on Ford County Road 126 to Garnett Road, then west on Garnett Road to Ford County Road 126, then north on Ford County Road 126 to Davis Street, then west on Davis Street to North Main Street, then north on North Main Street to its junction with Federal Hwy U.S.–56, then east on Federal Hwy U.S.–56 to its junction with Federal Hwy U.S.–183, then south on Federal Hwy U.S.–183 to its junction with Federal Hwy U.S.–54, then east on Federal Hwy U.S.–54 to its junction with Federal Hwy U.S.–281, then north on Federal Hwy U.S.–281 to its junction with State Hwy K–19, then west on State Hwy K–19 to its junction with Federal Hwy U.S.–56, then east on Federal Hwy U.S.–56 to its junction with State Hwy K–96, then southeast on State Hwy K–96 to its junction with State Hwy K–61, then northeast on State Hwy K–61 to its junction with McPherson County Arapaho Road, then east on McPherson County Arapaho Road to its junction with McPherson County 14th Avenue, then north on McPherson County 14th Avenue to its junction with State Hwy K–61, then east on State Hwy K–61 to its junction with interstate Hwy I–135, then north on interstate Hwy I–135 to its junction with State Hwy K–4, then west on State Hwy K–4 to its junction with Federal Hwy U.S.–281, then north on Federal Hwy U.S.–281 to its junction with State Hwy K–18, then east on State Hwy K–18 to its junction with Federal Hwy U.S.–181, then north on Federal Hwy U.S.–181 to its junction with Federal Hwy U.S.–24, then east on Federal Hwy U.S.–24 to its junction with State Hwy K–9, then east on State Hwy K–9 to its junction with Cloud County 40th Road, then north on Cloud County 40th Road to its junction with Republic County 50th Road, then north on Republic County 50th Road to its junction with State Hwy K–148, then west on State Hwy K–148 to its junction with Republic County 30th Road, then north on Republic County 30th Road to its junction with State Hwy K–199, then north on State Hwy K–199 to its junction with Federal Hwy U.S.–36, then west on Federal Hwy U.S.–36 to its junction with Federal Hwy U.S.–281, then south on Federal Hwy U.S.–281 to its junction with Federal Hwy U.S.–24, then west on Federal Hwy U.S.–24 to its junction with Federal Hwy U.S.–183, then south on Federal Hwy U.S.–183 to its junction with Federal Hwy U.S.–96, and then west on Federal Hwy U.S.–96 to its junction with Federal Hwy U.S.–283.

Low Plains Southeast Zone: That part of Kansas bounded by a line from the Missouri–Kansas State line west on K–68 to its junction with I–35, then southwest on I–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street to its junction with Federal Hwy U.S.–77, then south on Federal Hwy U.S.–77 to the Oklahoma–Kansas State line, then east along the Kansas–Oklahoma State line to its junction with the Kansas–Missouri State line, then north along the Kansas–Missouri State line to its junction with State Hwy K–68.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, and Wibaux.

Zone 2: The Counties of Big Horn, Carbon, Custer, Prairie, Rosebud, Treasure, and Yellowstone.

Nebraska

High Plains: That portion of Nebraska lying west of a line beginning at the South Dakota–Nebraska border on U.S. Hwy 183; south on U.S. Hwy 183 to U.S. Hwy 20; west on U.S. Hwy 20 to NE Hwy 7; south on NE Hwy 7 to NE Hwy 91; southwest on NE Hwy 91 to NE Hwy 2; southeast on NE Hwy 2 to NE Hwy 92; west on NE Hwy 92 to NE Hwy 40; south on NE Hwy 40 to NE Hwy 47; south on NE Hwy 47 to NE Hwy 23; east on NE Hwy 23 to U.S. Hwy 283; and south on U.S. Hwy 283 to the Kansas–Nebraska border.

Zone 1: Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota–Nebraska border at U.S. Hwy 183; south along Hwy 183 to NE Hwy 12; east to NE Hwy 137; south to U.S. Hwy 20; east to U.S. Hwy 281; north to the Niobrara River; east along the Niobrara River to the Boyd County Line; north along the Boyd County line to NE Hwy 12; east to NE 26E Spur; north along the NE 26E Spur to the Ponca State Park boat ramp; north and west along the Missouri River to the Nebraska–South Dakota border; west along the Nebraska–South Dakota border to U.S. Hwy 183. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy 183 shall be included in Zone 1.

Zone 2: Those areas of the State that are not contained in Zones 1, 3, or 4.

Zone 3: Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming–Nebraska border at its northernmost intersection with the Interstate Canal; southeast along the Interstate Canal to the northern border of Scotts Bluff County; east along northern borders of Scotts Bluff and Morrill Counties to Morrill County Road 125; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; east to County Rd 147; south to County Rd 88; southeast to County Rd 86; east to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to County Rd 167; south to U.S. Hwy 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; north along the Keith County line to the northern border of Keith County; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy 97; south to U.S. Hwy 83; south to E Hall School Rd; east to North Airport Road; south to U.S. Hwy 30; east to NE Hwy 47; south to NE Hwy 23; east on NE Hwy 23 to U.S. Hwy 283; south on U.S. Hwy 283 to the Kansas–Nebraska border; west along Kansas–Nebraska

border to the Nebraska–Colorado border; north and west to the Wyoming–Nebraska border; north along the Wyoming–Nebraska border to its northernmost-intersection with the Interstate Canal.

Zone 4: Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of U.S. Hwy 283 at the Kansas–Nebraska border; north to NE Hwy 23; west to NE Hwy 47; north to Dawson County Rd 769; east to County Rd 423; south to County Rd 766; east to County Rd 428; south to County Rd 763; east to NE Hwy 21; south to County Rd 761; east on County Rd 761 to County Road 437; south to the Dawson County Canal; southeast along Dawson County Canal; east to County Rd 444; south to U.S. Hwy 30; east to U.S. Hwy 183; north to Buffalo County Rd 100; east to 46th Ave.; north to NE Hwy 40; east to NE Hwy 10; north to County Rd 220 and Hall County Husker Highway; east to Hall County S 70th Rd; north to NE Hwy 2; east to U.S. Hwy 281; north to Chapman Rd; east to 7th Rd; south to U.S. Hwy 30; north and east to NE Hwy 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy 34; west to NE Hwy 2; south to U.S. Hwy I–80; west to Gunbarrel Rd (Hall/Hamilton County line); south to Giltner Rd; west to U.S. Hwy 281; south to W. 82nd St; west to Holstein Ave.; south to U.S. Hwy 34; west to NE Hwy 10; north to Kearney County Rd R and Phelps County Rd 742; west to Gosper County Rd 433; south to N. Railway Street; west to Commercial Ave.; south to NE Hwy 23; west to Gosper County Rd 427; south to Gosper County Rd 737; west to Gosper County Rd 426; south to Gosper County Rd 735; east to Gosper County Rd 427; south to Furnas County Rd 276; west to Furnas County Rd 425.5/425; south to U.S. Hwy 34; east to NE Hwy 4; east to NE Hwy 10; south to U.S. Hwy 136; east to NE Hwy 14; south to NE Hwy 8; east to U.S. Hwy 81; north to NE Hwy 4; east to NE Hwy 15; north to U.S. Hwy 6; east to NE Hwy 33; east to SW 142 Street; south to W. Hallam Rd; east to SW 100 Rd; south to W. Chestnut Rd; west to NE Hwy 103; south to NE Hwy 4; west to NE Hwy 15; south to U.S. Hwy 136; east to Jefferson County Rd 578 Ave.; south to PWF Rd; east to NE Hwy 103; south to NE Hwy 8; east to U.S. Hwy 75; north to U.S. Hwy 136; east to the intersection of U.S. Hwy 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with Nemaha County Rd 643A; south to the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy 2; west to NE Hwy 50; north to Otoe County Rd D; east to N. 32nd Rd; north to Otoe County Rd B; west to NE Hwy 50; north to U.S. Hwy 34; west to NE Hwy 63; north to NE Hwy 66; north and west to U.S. Hwy 77; north to NE Hwy 109; west along NE Hwy 109 and Saunders County Rd X to Saunders County 19; south to NE Hwy 92; west to NE Hwy Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy 15; north to County Rd 34; west to County Rd H; south to NE Hwy 92; west to U.S. Hwy 81; south to NE Hwy 66; west to Dark Island Trail, north to Merrick County Rd M; east to Merrick County Rd 18; north to NE Hwy 92; west to NE Hwy 14; north to NE Hwy 52; west and north to NE Hwy 91; west to U.S. Hwy 281; south to NE Hwy 58; west to NE Hwy 11; west and south to NE Hwy 2; west to NE Hwy 68; north to NE Hwy L82A; west to NE Hwy 10; north to NE Hwy 92; west to U.S. Hwy 183; north to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to NE Hwy S21A; west to NE Hwy 2; north to NE Hwy 91 to North Loup Spur Rd; north to North Loup River Rd; north and east along to Pleasant Valley/Worth Rd; east to Loup County Line; north along the Loup County Line to Loup–Brown County line; east along northern boundaries of Loup and Garfield Counties to NE Hwy 11; south to Cedar River Road; east and south to NE Hwy 70; east to U.S. Hwy 281; north to NE Hwy 70; east to NE Hwy 14; south to NE Hwy 39; southeast to NE Hwy 22; east to U.S. Hwy 81; southeast to U.S. Hwy 30; east to the Iowa–Nebraska border; south to the Missouri–Nebraska border; south to Kansas–Nebraska border; west along Kansas–Nebraska border to U.S. Hwy 283.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains: That portion of the State south and west of a line beginning at the junction of U.S. Hwy 83 and the South Dakota State line, then north along U.S. Hwy 83 and I–94 to ND Hwy 41, then north on ND Hwy 41 to ND Hwy 53, then west on ND Hwy 53 to U.S. Hwy 83, then north on U.S. Hwy 83 to U.S. Hwy 2, then west on U.S. Hwy 2 to the Williams County line, then north and west along the Williams and Divide County lines to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east on U.S. 14 to Blunt, south on the Blunt–Canning Road to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte–Winner bridge to SD 47, south on SD 47 to U.S. 18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

Low Plains North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

Low Plains South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Low Plains Middle Zone: The remainder of South Dakota.

Texas

High Plains: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway Portion)

Zone C1: Big Horn, Converse, Goshen, Hot Springs, Natrona, Park, Platte, and Washakie Counties; and Fremont County excluding the portions west or south of the Continental Divide.

Zone C2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone C3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management Units 7, 9, 11M, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–46B.

California

Northeastern Zone: That portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California–Nevada State line; north along the California–Nevada State line to the junction of the California–Nevada–Oregon State lines; west along the California–Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line from the intersection of Highway 95 with the California–Nevada State line; south on Highway 95 through the junction with Highway 40; south on Highway 95 to Vidal Junction; south through the town of Rice to the San Bernardino–Riverside County line on a road known as ''Aqueduct Road'' also known as Highway 62 in San Bernardino County; southwest on Highway 62 to Desert Center Rice Road; south on Desert Center Rice Road/Highway 177 to the town of Desert Center; east 31 miles on Interstate 10 to its intersection with Wiley Well Road; south on Wiley Well Road to Wiley Well; southeast on Milpitas Wash Road to the Blythe, Brawley, Davis Lake intersections; south on Blythe Ogilby Road also known as County Highway 34 to its intersection with Ogilby Road; south on Ogilby Road to its intersection with Interstate 8; east 7 miles on Interstate 8 to its intersection with the Andrade-Algodones Road/Highway 186; south on Highway 186 to its intersection with the U.S.–Mexico border at Los Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River zone) south and east of a line beginning at the mouth of the Santa Maria River at the Pacific Ocean; east along the Santa Maria River to where it crosses Highway 101–166 near the City of Santa Maria; north on Highway 101–166; east on Highway 166 to the junction with Highway 99; south on Highway 99 to the junction of Interstate 5; south on Interstate 5 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to where it intersects Highway 178 at Walker Pass; east on Highway 178 to the junction of Highway 395 at the town of Inyokern; south on Highway 395 to the junction of Highway 58; east on Highway 58 to the junction of Interstate 15; east on Interstate 15 to the junction with Highway 127; north on Highway 127 to the point of intersection with the California–Nevada State line.

Southern San Joaquin Valley Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance of State Zone: The remainder of California not included in the Northeastern, Colorado River, Southern, and the Southern San Joaquin Valley Zones.

Colorado (Pacific Flyway Portion)

Eastern Zone: Routt, Grand, Summit, Eagle, and Pitkin Counties, those portions of Saguache, San Juan, Hinsdale, and Mineral Counties west of the Continental Divide, those portions of Gunnison County except the North Fork of the Gunnison River Valley (Game Management Units 521, 53, and 63), and that portion of Moffat County east of the northern intersection of Moffat County Road 29 with the Moffat–Routt County line, south along Moffat County Road 29 to the intersection of Moffat County Road 29 with the Moffat–Routt County line (Elkhead Reservoir State Park).

Western Zone: All areas west of the Continental Divide not included in the Eastern Zone.

Idaho

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Power County east of State Highway 37 and State Highway 39; and Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Fremont, Jefferson, Madison, and Teton Counties.

Zone 2: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties.

Zone 3: Power County west of State Highway 37 and State Highway 39, and Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Clearwater, Custer, Elmore, Franklin, Gem, Gooding, Idaho, Jerome, Latah, Lemhi, Lewis, Lincoln, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 4: Valley County.

Nevada

Northeast Zone: Elko, Eureka, Lander, and White Pine Counties.

Northwest Zone: Carson City, Churchill, Douglas, Humboldt, Lyon, Mineral, Pershing, Storey, and Washoe Counties.

South Zone: Clark, Esmeralda, Lincoln, and Nye Counties.

Moapa Valley Special Management Area: That portion of Clark County including the Moapa Valley to the confluence of the Muddy and Virgin Rivers.

Oregon

Zone 1: Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Gilliam, Hood River, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, and Yamhill, Counties.

Zone 2: The remainder of Oregon not included in Zone 1.

Utah

Northern Zone: Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Uintah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Southern Zone: The remainder of Utah not included in the Northern Zone.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

West Zone: The remainder of Washington not included in the East Zone.

Wyoming (Pacific Flyway Portion)

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger–Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of State Zone: The remainder of the Pacific Flyway portion of Wyoming not included in the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

Early Canada and Cackling Goose Seasons

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Regular Seasons

AP Unit: Litchfield County and the portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with I–91 in Hartford, and then extending south along I–91 to its intersection with the Hartford–Middlesex County line.

NAP–H Unit: That part of the State east of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with I–91 in Hartford and then extending south along I–91 to State Street in New Haven; then south on State Street to Route 34, west on Route 34 to Route 8, south along Route 8 to Route 110, south along Route 110 to Route 15, north along Route 15 to the Milford Parkway, south along the Milford Parkway to I–95, north along I–95 to the intersection with the east shore of the Quinnipiac River, south to the mouth of the Quinnipiac River and then south along the eastern shore of New Haven Harbor to the Long Island Sound.

Atlantic Flyway Resident Population (AFRP) Unit: Remainder of the State not included in AP and NAP Units.

South Zone: Same as for ducks.

Maine

North NAP–H Zone: Same as North Zone for ducks.

Coastal NAP–L Zone: Same as Coastal Zone for ducks.

South NAP–H Zone: Same as South Zone for ducks.

Maryland

Early Canada and Cackling Goose Seasons

Eastern Unit: Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit: Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97, and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Regular Seasons

Resident Population (RP) Zone: Allegany, Frederick, Garrett, Montgomery, and Washington Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania State line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central and Coastal Zones (see duck zones).

AP Zone: The Western Zone (see duck zones).

Special Late Season Area: The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire State line.

New Hampshire

Same zones as for ducks.

New Jersey

AP Zone: North and South Zones (see duck zones).

NAP Zone: The Coastal Zone (see duck zones).

Special Late Season Area: In northern New Jersey, that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94; then west along Route 94 to the toll bridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point. In southern New Jersey, that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York–Canada international boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay,

southeast along Route 22 to Route 4, northeast along Route 4 to the New York–Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 22 at Greenwich Junction, north along Route 22 to Washington County Route 153, east along CR 153 to the New York–Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Route 88 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara–Orleans County boundary) meets the international boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden–Murrays Corners Road, south on Crittenden–Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the international boundary with Canada, south and west along the international boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York–Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York–Pennsylvania boundary, southeast along the New York–Pennsylvania boundary to the New York–New Jersey boundary, southeast along the New York–New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor–Cornwall town boundary, northeast along the New Windsor–Cornwall town boundary to the Orange–Dutchess County boundary (middle of

the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess–Putnam County boundary, east along the county boundary to the New York–Connecticut boundary, north along the New York–Connecticut boundary to the New York–Massachusetts boundary, north along the New York–Massachusetts boundary to the New York–Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a continuous line extending due south from the New York–Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area): That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York–Connecticut boundary to the northernmost end of Sound Road (just east of Wading River Marsh); then south on Sound Road to North Country Road; then west on North Country Road to Randall Road; then south on Randall Road to Route 25A, then west on Route 25A to the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area): That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

North Carolina

Northeast Zone: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford County line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

RP Zone: Remainder of the State.

Pennsylvania

Resident Canada and Cackling Goose Zone: All of Pennsylvania area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to the intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, and south of I–80 to the New Jersey State line.

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to the New Jersey State line.

Rhode Island

Special Area for Canada and Cackling Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada and Cackling Goose Area: Statewide except for the following area:

East of U.S. 301: That portion of Clarendon County bounded to the North by S–14–25, to the East by Hwy 260, and to the South by the markers delineating the channel of the Santee River.

West of U.S. 301: That portion of Clarendon County bounded on the North by S–14–26 extending southward to that portion of Orangeburg County bordered by Hwy 6.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area to the east of the following line: the ''Blue Ridge'' (Loudoun–Clarke Counties border) at the West Virginia–Virginia border, south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun, Fauquier, Rappahannock, Madison, Greene, Albermarle and into Nelson Counties), then east along Interstate 64 to Interstate 95 in Richmond, then south along Interstate 95 to Route 460 in Petersburg, then southeast along Route 460 to Route 32 in the City of Suffolk, then south to the North Carolina border.

RP Zone: The remainder of the State west of the AP Zone.

Mississippi Flyway

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Remainder of State: That portion of the State outside of the Northwest Zone.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's Road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: Same zone as for ducks.

South Central Zone: Same zone as for ducks.

Indiana

Same zones as for ducks.

Iowa

Same zones as for ducks.

Louisiana

North Zone: That portion of the State north of the line from the Texas border at State Hwy 190/12 east to State Hwy 49, then south on State Hwy 49 to Interstate 10, then east on Interstate 10 to Interstate 12, then east on Interstate 12 to Interstate 10, then east on Interstate 10 to the Mississippi State line.

South Zone: Remainder of the State.

Michigan

North Zone: Same as North duck zone.

Middle Zone: Same as Middle duck zone.

South Zone: Same as South duck zone.

Allegan County Game Management Unit (GMU): That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Minnesota

Same zones as for ducks.

Missouri

Same zones as for ducks.

Ohio

Same zones as for ducks.

Tennessee

Reelfoot Zone: The lands and waters within the boundaries of Reelfoot Lake WMA only.

Remainder of State: The remainder of the State.

Wisconsin

North and South Zones: Same zones as for ducks.

Mississippi River Zone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer, and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park Area: Chaffee, Custer, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Area: All of Alamosa, Conejos, Costilla, and Rio Grande Counties, and those portions of Saguache, Mineral, Hinsdale, Archuleta, and San Juan Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Montana (Central Flyway Portion)

Zone 1: Same as Zone 1 for ducks and coots.

Zone 2: Same as Zone 2 for ducks and coots.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the Nebraska–South Dakota border and U.S. Hwy 83, south to U.S. Hwy 20, east to NE Hwy 14, north along NE Hwy 14 to NE Hwy 59 and County Road 872, west along County Road 872 to the Knox County Line, north along the Knox County Line to the Nebraska–South Dakota border, west along the Nebraska–South Dakota border to U.S. Hwy 83. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

Platte River Unit: The area bounded starting at the northernmost intersection of the Interstate Canal at the Nebraska–Wyoming border, south along the Nebraska–Wyoming border to the Nebraska–Colorado border, east and south along the Nebraska–Colorado border to the Nebraska–Kansas border, east along the Nebraska–Kansas border to the Nebraska–Missouri border, north along the Nebraska–Missouri and Nebraska–Iowa borders to the Burt–Washington Counties line, west along the Burt–Washington Counties line to U.S. Hwy 75, south to Dodge County Road 4/Washington County Road 4, west to U.S. Hwy 77, south to U.S. Hwy 275, northwest to U.S. Hwy 91, west to NE Hwy 45, north to NE Hwy 32, west to NE Hwy 14, north to NE Hwy 70, west to U.S. Hwy 281, south to NE Hwy 70, west along NE Hwy 70/91 to NE Hwy 11, north to the Holt County Line, west along the northern border of Garfield, Loup, Blaine, and Thomas Counties to the Hooker County Line, south along the Thomas–Hooker Counties Lines to the McPherson County Line, east along the south border of Thomas County to the Custer County Line, south along the Custer–Logan Counties line to NE Hwy 92, west to U.S. Hwy 83, north to NE Hwy 92, west to NE Hwy 61, north to NE Hwy 2, west along NE Hwy 2 to the corner formed by Garden, Grant, and Sheridan Counties, west along the north borders of Garden, Morrill, and Scotts Bluff Counties to the intersection with the Interstate Canal, north and west along the Interstate Canal to the intersection with the Nebraska–Wyoming border.

North-Central Unit: Those portions of the State not in the Niobrara and Platte River zones.

Light Geese

Rainwater Basin Light Goose Area: The area bounded by the junction of NE Hwy 92 and NE Hwy 15, south along NE Hwy 15 to NE Hwy 4, west along NE Hwy 4 to U.S. Hwy 34, west along U.S. Hwy 34 to U.S. Hwy 283, north along U.S. Hwy 283 to U.S. Hwy 30, east along U.S. Hwy 30 to NE Hwy 92, east along NE Hwy 92 to the beginning.

Remainder of State: The remainder of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Missouri River Canada and Cackling Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then west on ND Hwy 200; then north on ND Hwy 8 to the Mercer–McLean Counties line; then east following the county line until it turns south toward Garrison Dam; then east along a line (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; then south on U.S. Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to U.S. Hwy 83; then south on U.S. Hwy 83 to I–94; then east on I–94 to U.S. Hwy 83; then south on U.S. Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Western North Dakota Canada and Cackling Goose Zone: Same as the High Plains Unit for ducks, mergansers, and coots, excluding the Missouri River Canada Goose Zone.

Rest of State: Remainder of North Dakota.

South Dakota

Early Canada and Cackling Goose Seasons

Special Early Canada and Cackling Goose Unit: The Counties of Campbell, Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, Roberts, Walworth; that portion of Perkins County west of State Highway 75 and south of State Highway 20; that portion of Dewey County north of Bureau of Indian Affairs Road 8, Bureau of Indian Affairs Road 9, and the section of U.S. Highway 212 east of the Bureau of Indian Affairs Road 8 junction; that portion of Potter County east of U.S. Highway 83; that portion of Sully County east of U.S. Highway 83; portions of Hyde, Buffalo, Brule, and Charles Mix Counties north and east of a line beginning at the Hughes–Hyde County line on State Highway 34, east to Lees Boulevard, southeast to State Highway 34, east 7 miles to 350th Avenue, south to Interstate 90 on 350th Avenue, south and east on State Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, and north on U.S. Highway 281 to the Charles Mix–Douglas Counties boundary; that portion of Bon Homme County north of State Highway 50; those portions of Yankton and Clay Counties north of a line beginning at the junction of State Highway 50 and 306th Street/County Highway 585 in Bon Homme County, east to U.S. Highway 81, then north on U.S. Highway 81 to 303rd Street, then east on 303rd Street to 444th Avenue, then south on 444th Avenue to 305th Street, then east on 305th Street/Bluff Road to State Highway 19, then south to State Highway 50 and east to the Clay/Union County Line; Aurora, Beadle, Brookings, Brown, Butte, Corson, Davison, Douglas, Edmunds, Faulk, Haakon, Hand, Hanson, Harding, Hutchinson, Jackson, Jerauld, Jones, Kingsbury, Lake, McCook, McPherson, Meade, Mellette, Miner, Moody, Oglala Lakota (formerly Shannon), Sanborn, Spink, Todd, Turner, and Ziebach Counties; and those portions of Minnehaha and Lincoln Counties outside of an area bounded by a line beginning at the junction of the South Dakota–Minnesota State line and Minnehaha County Highway 122 (254th Street) west to its junction with Minnehaha County Highway 149 (464th Avenue), south on Minnehaha County Highway 149 (464th Avenue) to Hartford, then south on Minnehaha County Highway 151 (463rd Avenue) to State Highway 42, east on State Highway 42 to State Highway 17, south on State Highway 17 to its junction with Lincoln County Highway 116 (Klondike Road), and east on Lincoln County Highway 116 (Klondike Road) to the South Dakota–Iowa State line, then north along the South Dakota–Iowa and South Dakota–Minnesota border to the junction of the South Dakota–Minnesota State line and Minnehaha County Highway 122 (254th Street).

Regular Seasons

Unit 1: Same as that for the Special Early Canada and Cackling Goose Unit.

Unit 2: All of South Dakota not included in Unit 1 and Unit 3.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas–Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas–Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas–Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Zone G1: Big Horn, Converse, Hot Springs, Natrona, Park, and Washakie Counties.

Zone G1A: Goshen and Platte Counties.

Zone G2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone G3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Zone G4: Fremont County excluding those portions south or west of the Continental Divide.

Pacific Flyway

Arizona

Same zones as for ducks.

California

Northeastern Zone: That portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California–Nevada State line; north along the California–Nevada State line to the junction of the California–Nevada–Oregon State lines west along the California–Oregon State line to the point of origin.

Klamath Basin Special Management Area: Beginning at the intersection of Highway 161 and Highway 97; east on Highway 161 to Hill Road; south on Hill Road to N Dike Road West Side; east on N Dike Road West Side until the junction of the Lost River; north on N Dike Road West Side until the Volcanic Legacy Scenic Byway; east on Volcanic Legacy Scenic Byway until N Dike Road East Side; south on the N Dike Road East Side; continue east on N Dike Road East Side to Highway 111; south on Highway 111/Great Northern Road to Highway 120/Highway 124; west on Highway 120/Highway 124 to Hill Road; south on Hill Road until Lairds Camp Road; west on Lairds Camp Road until Willow Creek; west and south on Willow Creek to Red Rock Road; west on Red Rock Road until Meiss Lake Road/Old State Highway; north on Meiss Lake Road/Old State Highway to Highway 97; north on Highway 97 to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line from the intersection of Highway 95 with the California–Nevada State line; south on Highway 95 through the junction with Highway 40; south on Highway 95 to Vidal Junction; south through the town of Rice to the San Bernardino–Riverside Counties line on a road known as ''Aqueduct Road'' also known as Highway 62 in San Bernardino County; southwest on Highway 62 to Desert Center Rice Road; south on Desert Center Rice Road/Highway 177 to the town of Desert Center; east 31 miles on Interstate 10 to its intersection with Wiley Well Road; south on Wiley Well Road to Wiley Well; southeast on Milpitas Wash Road to the Blythe, Brawley, Davis Lake intersections; south on Blythe Ogilby Road also known as

County Highway 34 to its intersection with Ogilby Road; south on Ogilby Road to its intersection with Interstate 8; east 7 miles on Interstate 8 to its intersection with the Andrade–Algodones Road/Highway 186; south on Highway 186 to its intersection with the U.S.–Mexico border at Los Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River zone) south and east of a line beginning at the mouth of the Santa Maria River at the Pacific Ocean; east along the Santa Maria River to where it crosses Highway 101–166 near the City of Santa Maria; north on Highway 101–166; east on Highway 166 to the junction with Highway 99; south on Highway 99 to the junction of Interstate 5; south on Interstate 5 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to where it intersects Highway 178 at Walker Pass; east on Highway 178 to the junction of Highway 395 at the town of Inyokern; south on Highway 395 to the junction of Highway 58; east on Highway 58 to the junction of Interstate 15; east on Interstate 15 to the junction with Highway 127; north on Highway 127 to the point of intersection with the California–Nevada State line.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Road; north on Weist Road to Flowing Wells Road; northeast on Flowing Wells Road to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Road; south on Frink Road to Highway 111; north on Highway 111 to Niland Marina Road; southwest on Niland Marina Road to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance of State Zone: The remainder of California not included in the Northeastern, Colorado River, and Southern Zones.

North Coast Special Management Area: Del Norte and Humboldt Counties.

Sacramento Valley Special Management Area: That area bounded by a line beginning at Willows south on I-5 to Hahn Road; easterly on Hahn Road and the Grimes–Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

Same zones as for ducks.

Idaho

Early Canada and Cackling Goose Seasons

Zone 1: Bannock, Butte, Clark, Fremont, Jefferson, Madison, and Teton Counties; Bingham County, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; Power County east of State Highway 37 and State Highway 39; and all lands and waters within the Fort Hall Indian Reservation, including private in-holdings.

Zone 2: Bonneville County.

Zone 3: Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Clearwater, Custer, Elmore, Franklin, Gem, Gooding, Idaho, Jerome, Latah, Lemhi, Lewis, Lincoln, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Twin Falls, and Washington Counties; and Power County west of State Highway 37 and State Highway 39.

Zone 4: Bear Lake County; Bingham County within the Blackfoot Reservoir drainage; and Caribou County, except that portion within the Fort Hall Indian Reservation.

Zone 5: Valley County.

Zone 6: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties.

Regular Seasons

Canada and Cackling Geese and Brant

Same as for early Canada and cackling goose seasons.

White-Fronted Geese

Zone 1: Bannock County; Bingham County except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; Power County east of State Highway 37 and State Highway 39; and all lands and waters within the Fort Hall Indian Reservation, including private in-holdings.

Zone 2: Bear Lake, Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton Counties; Bingham County within the Blackfoot Reservoir drainage; and Caribou County except within the Fort Hall Indian Reservation.

Zone 3: Adams, Blaine, Camas, Clearwater, Custer, Franklin, Idaho, Latah, Lemhi, Lewis, Nez Perce, and Oneida Counties; and Power County west of State Highway 37 and State Highway 39.

Zone 4: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 5: Valley County.

Zone 6: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties.

Light Geese

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County east of the west bank of the Snake River, west of the McTucker boat ramp access road, and east of the American Falls Reservoir bluff, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County below the American Falls Reservoir bluff, and within the Fort Hall Indian Reservation.

Zone 2: Franklin and Oneida Counties; Bingham County west of the west bank of the Snake River, east of the McTucker boat ramp access road, and west of the American Falls Reservoir bluff; Power County, except below the American Falls Reservoir bluff and those lands and waters within the Fort Hall Indian Reservation.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 4: Adams, Blaine, Camas, Clearwater, Custer, Idaho, Latah, Lemhi, Lewis, and Nez Perce Counties.

Zone 5: Bear Lake, Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton Counties; Bingham County within the Blackfoot Reservoir drainage; and Caribou County except within the Fort Hall Indian Reservation.

Zone 6: Valley County.

Zone 7: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties.

Nevada

Same zones as for ducks.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Northwest Permit Zone: Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

Tillamook County Management Area: That portion of Tillamook County beginning at the point where Old Woods Road crosses the south shores of Horn

Creek, north on Old Woods Road to Sand Lake Road at Woods, north on Sand Lake Road to the intersection with McPhillips Drive, due west (~200 yards) from the intersection to the Pacific coastline, south along the Pacific coastline to a point due west of the western end of Pacific Avenue in Pacific City, east from this point (~250 yards) to Pacific Avenue, east on Pacific Avenue to Brooten Road, south and then east on Brooten Road to Highway 101, north on Highway 101 to Resort Drive, north on Resort Drive to a point due west of the south shores of Horn Creek at its confluence with the Nestucca River, due east (~80 yards) across the Nestucca River to the south shores of Horn Creek, east along the south shores of Horn Creek to the point of beginning.

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Eastern Zone: Baker, Crook, Deschutes, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Union, Wallowa, and Wheeler Counties.

Mid-Columbia Zone: Gilliam, Hood River, Morrow, Sherman, Umatilla, and Wasco Counties.

Utah

East Box Elder County Zone: Boundary begins at the intersection of the eastern boundary of Public Shooting Grounds Waterfowl Management Area and SR–83 (Promontory Road); east along SR–83 to I–15; south on I–15 to the Perry access road; southwest along this road to the Bear River Bird Refuge boundary; west, north, and then east along the refuge boundary until it intersects the Public Shooting Grounds Waterfowl Management Area boundary; east and north along the Public Shooting Grounds Waterfowl Management Area boundary to SR–83.

Wasatch Front Zone: Boundary begins at the Weber–Box Elder Counties line at I–15; east along Weber County line to U.S.–89; south on U.S.–89 to I–84; east and south on I–84 to I–80; south on I–80 to U.S.–189; south and west on U.S.–189 to the Utah County line; southeast and then west along this line to the Tooele County line; north along the Tooele County line to I–80; east on I–80 to Exit 99; north from Exit 99 along a direct line to the southern tip of Promontory Point and Promontory Road; east and north along this road to the causeway separating Bear River Bay from Ogden Bay; east on this causeway to the southwest corner of Great Salt Lake Mineral Corporation's (GSLMC) west impoundment; north and east along GSLMC's west impoundment to the northwest corner of the impoundment; north from this point along a direct line to the southern boundary of Bear River Migratory Bird Refuge; east along this southern boundary to the Perry access road; northeast along this road to I–15; south along I–15 to the Weber–Box Elder Counties line.

Southern Zone: Boundary includes Beaver, Carbon, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, San Juan, Sanpete, Sevier, Washington, and Wayne Counties, and that part of Tooele County south of I–80.

Northern Zone: The remainder of Utah not included in the East Box Elder County, Wasatch Front, and Southern Zones.

Washington

Area 1: Skagit and Whatcom Counties, and that portion of Snohomish County west of Interstate 5.

Area 2 Inland (Southwest Permit Zone): Clark, Cowlitz, and Wahkiakum Counties, and that portion of Grays Harbor County east of Highway 101.

Area 2 Coastal (Southwest Permit Zone): Pacific County and that portion of Grays Harbor County west of Highway 101.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2 Coastal, and 2 Inland.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Early Canada and Cackling Goose Seasons

Teton County Zone: Teton County.

Balance of State Zone: Remainder of the State.

Brant

Pacific Flyway

California

Northern Zone: Del Norte, Humboldt, and Mendocino Counties.

Balance of State Zone: The remainder of the State not included in the Northern Zone.

Washington

Puget Sound Zone: Clallam, Skagit, and Whatcom Counties.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota

Open Area: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Day, Deuel, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Idaho

Open Area: Benewah, Bonner, Boundary, and Kootenai Counties.

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80, and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary; then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge; then west along a line to Promontory Road; then north on Promontory Road to the intersection of SR 83; then north on SR 83 to I–84; then north and west on I–84 to State Hwy 30; then west on State Hwy 30 to the Nevada–Utah State line; then south on the Nevada–Utah State line to I–80.

Doves

Alabama

South Zone: Baldwin, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone: Remainder of the State.

Florida

Northwest Zone: The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone: The remainder of the State.

Louisiana

North Zone: That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. Highway 190 to Interstate Highway 12, east along Interstate Highway 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone: The remainder of the State.

Mississippi

North Zone: That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone: The remainder of Mississippi.

New Mexico

North Zone: North of I–40 from the New Mexico–Arizona border to U.S. Hwy. 54 at Tucumcari; U.S. Hwy. 54 from Tucumcari to the New Mexico–Texas border.

South Zone: South of I–40 from the New Mexico–Arizona border to U.S. Hwy. 54 at Tucumcari; U.S. Hwy. 54 from Tucumcari to the New Mexico–Texas border.

Oregon

Zone 1: Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Gilliam, Hood River, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, and Yamhill, Counties.

Zone 2: The remainder of Oregon not included in Zone 1.

Texas

North Zone: That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas–Arkansas State line.

Central Zone: That portion of the State lying between the North and South Zones.

South Zone: That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to I–10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area: Same as the South Zone.

New Mexico

North Zone: That portion of the State north of a line following I–40 from the Arizona border east to U.S. Hwy 54 at Tucumcari and U.S. Hwy 54 at Tucumcari east to the Texas border.

South Zone: The remainder of the State not included in the North Zone.

Band-Tailed Pigeons

California

North Zone: Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone: The remainder of the State not included in the North Zone.

New Mexico

North Zone: North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone: The remainder of the State not included in the North Zone.

Washington

Western Washington: The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

American Woodcock

New Jersey

North Zone: That portion of the State north of NJ 70.

South Zone: The remainder of the State.

Sandhill Cranes

Mississippi Flyway

Alabama

Open Area: That area north of Interstate 20 from the Georgia State line to the interchange with Interstate 65, then east of Interstate 65 to the interchange with Interstate 22, then north of Interstate 22 to the Mississippi State line.

Minnesota

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Tennessee

Southeast Crane Zone: That portion of the State south of Interstate 40 and east of State Highway 56.

Remainder of State: That portion of Tennessee outside of the Southeast Crane Zone.

Central Flyway

Colorado

Open Area: The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Central Zone: That portion of the State within an area bounded by a line beginning where I–35 crosses the Kansas–Oklahoma border, then north on I–35 to Wichita, then north on I–135 to Salina, then north on U.S. 81 to the Nebraska border, then west along the Kansas–Nebraska border to its intersection with Hwy 283, then south on Hwy 283 to the intersection with Hwy 18/24, then east along Hwy 18 to Hwy 183, then south on Hwy 183 to Route 1, then south on Route 1 to the Oklahoma border, then east along the Kansas–Oklahoma border to where it crosses I–35.

West Zone: That portion of the State west of the western boundary of the Central Zone.

Montana

Regular Season Open Area: The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

Special Season Open Area: Carbon County.

New Mexico

Regular-Season Open Area: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Special Season Open Areas

Middle Rio Grande Valley Area: The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area: Those portions of Santa Fe, Torrance, and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM

337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone: Area bounded on the south by the New Mexico–Mexico border; on the west by the New Mexico–Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to NM 26, east to NM 27, north to NM 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna County line, and south to the New Mexico–Mexico border.

North Dakota

Area 1: That portion of the State west of U.S. 281.

Area 2: That portion of the State east of U.S. 281.

Oklahoma

Open Area: That portion of the State west of I–35.

South Dakota

Open Area: That portion of the State lying west of a line beginning at the South Dakota–North Dakota border and State Highway 25, south on State Highway 25 to its junction with State Highway 34, east on State Highway 34 to its junction with U.S. Highway 81, then south on U.S. Highway 81 to the South Dakota–Nebraska border.

Texas

Zone A: That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line.

Zone B: That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line, then south along the Texas–Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C: The remainder of the State, except for the closed areas.

Closed areas:

A. That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with I–35W in Fort Worth, then southwest along I–35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas–Louisiana State line.

B. That portion of the State lying within the boundaries of a line beginning at the Kleberg–Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg–Nueces Counties line.

Wyoming

Area 4: All lands within the Bureau of Reclamation's Riverton and Boysen Unit boundaries; those lands within Boysen State Park south of Cottonwood Creek, west of Boysen Reservoir, and south of U.S. Highway 20–26; and all non-Indian owned fee title lands within the exterior boundaries of the Wind River Reservation, excluding those lands within Hot Springs County.

Area 6: Big Horn, Hot Springs, Park, and Washakie Counties.

Area 7: Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Area 8: Johnson, Natrona, and Sheridan Counties.

Pacific Flyway

Arizona

Zone 1: Beginning at the junction of the New Mexico State line and U.S. Hwy 80; south along the State line to the U.S.–Mexico border; west along the border to the San Pedro River; north along the San Pedro River to the junction with Arizona Hwy 77; northerly along Arizona Hwy 77 to the Gila River; northeast along the Gila River to the San Carlos Indian Reservation boundary; south then east and north along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to the 352 exit on I–10; east on I–10 to Bowie–Apache Pass Road; southerly on the Bowie–Apache Pass Road to Arizona Hwy 186; southeasterly on Arizona Hwy 186 to Arizona Hwy 181; south on Arizona Hwy 181 to the West Turkey Creek–Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Road; easterly on Rucker Canyon Road to the Tex Canyon Road; southerly on Tex Canyon Road to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico State line.

Zone 2: Beginning at I–10 and the New Mexico State line; north along the State line to Arizona Hwy 78; southwest on Arizona Hwy 78 to U.S. Hwy 191; northwest on U.S. Hwy 191 to Clifton; westerly on the Lower Eagle Creek Road (Pump Station Road) to Eagle Creek; northerly along Eagle Creek to the San Carlos Indian Reservation boundary; southerly and west along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to I–10; easterly on I–10 to the New Mexico State line.

Zone 3: Beginning on I–10 at the New Mexico State line; westerly on I–10 to the Bowie–Apache Pass Road; southerly on the Bowie–Apache Pass Road to AZ Hwy 186; southeast on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek–Kuykendall cutoff road; southerly on the Kuykendall

cutoff road to Rucker Canyon Road; easterly on the Rucker Canyon Road to Tex Canyon Road; southerly on Tex Canyon Road to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico State line; north along the State line to I–10.

Idaho

Area 1: All of Bear Lake County and all of Caribou County except that portion lying within the Grays Lake Basin.

Area 2: All of Teton County except that portion lying west of State Highway 33 and south of Packsaddle Road (West 400 North) and north of the North Cedron Road (West 600 South) and east of the west bank of the Teton River.

Area 3: All of Fremont County except the Chester Wetlands Wildlife Management Area.

Area 4: All of Jefferson County.

Area 5: All of Bannock County east of Interstate 15 and south of U.S. Highway 30; and all of Franklin County.

Area 6: That portion of Oneida County within the boundary beginning at the intersection of the Idaho–Utah border and Old Highway 191, then north on Old Highway 191 to 1500 S, then west on 1500 S to Highway 38, then west on Highway 38 to 5400 W, then south on 5400 W to Pocatello Valley Road, then west and south on Pocatello Valley Road to 10000 W, then south on 10000 W to the Idaho–Utah border, then east along the Idaho–Utah border to the beginning point.

Montana

Zone 1: Those portions of Deer Lodge County lying within the following described boundary: beginning at the intersection of I–90 and Highway 273, then westerly along Highway 273 to the junction of Highway 1, then southeast along said highway to Highway 275 at Opportunity, then east along said highway to East Side County road, then north along said road to Perkins Lane, then west on said lane to I–90, then north on said interstate to the junction of Highway 273, the point of beginning. Except for sections 13 and 24, T5N, R10W; and Warm Springs Pond number 3.

Zone 2: That portion of the Pacific Flyway, located in Powell County lying within the following described boundary: beginning at the junction of State Routes 141 and 200, then west along Route 200 to its intersection with the Blackfoot River at Russell Gates Fishing Access Site (Powell–Missoula County line), then southeast along said river to its intersection with the Ovando–Helmville Road (County Road 104) at Cedar Meadows Fishing Access Site, then south and east along said road to its junction with State Route 141, then north along said route to its junction with State Route 200, the point of beginning.

Zone 3: Beaverhead, Gallatin, Jefferson, and Madison Counties.

Zone 4: Broadwater County.

Zone 5: Cascade and Teton Counties.

Utah

Cache County: Cache County.

East Box Elder County: That portion of Box Elder County beginning on the Utah–Idaho State line at the Box Elder–Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder–Weber Counties line; east on the Box Elder–Weber Counties line to the Box Elder–Cache Counties line; north on the Box Elder–Cache County line to the Utah–Idaho State line.

Rich County: Rich County.

Uintah County: Uintah and Duchesne Counties.

Wyoming

Area 1: All of the Bear River and Ham's Fork River drainages in Lincoln County.

Area 2: All of the Salt River drainage in Lincoln County south of the McCoy Creek Road.

Area 3: All lands within the Bureau of Reclamation's Eden Project in Sweetwater County.

Area 5: Uinta County.

All Migratory Game Birds in Alaska

North Zone: State Game Management Units 11–13 and 17–26.

Gulf Coast Zone: State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone: State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone: State Game Management Unit 10 (except Unimak Island).

Kodiak Zone: State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area: The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area: All of the municipality of Culebra.

Desecheo Island Closure Area: All of Desecheo Island.

Mona Island Closure Area: All of Mona Island.

El Verde Closure Area: Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas: All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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FEDERAL REGISTER

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Part IV

Bureau of Consumer Financial Protection

12 CFR Part 1092
Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders; Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1092

[Docket No. CFPB–2022–0080]

RIN 3170–AB13

Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: Pursuant to its authorities under the Consumer Financial Protection Act of 2010 (CFPA), the Consumer Financial Protection Bureau (Bureau or CFPB) is proposing to require certain nonbank covered person entities (with exclusions for insured depository institutions, insured credit unions, related persons, States, certain other entities, and natural persons) that are under certain final public orders obtained or issued by a Federal, State, or local agency in connection with the offering or provision of a consumer financial product or service to report the existence of such orders to a Bureau registry. The Bureau is proposing to include all final public written orders and judgments (including consent and stipulated orders and judgments) obtained or issued by the Bureau or any government agency (Federal, State, or local) for violation of certain consumer protection laws. Pursuant to its authority under the CFPA, the Bureau is also proposing to require certain supervised nonbanks to submit annual written statements regarding compliance with each underlying order, signed by an attesting executive who has knowledge of the entity's relevant systems and procedures for achieving compliance and control over the entity's compliance efforts.

DATES: Comments must be received on or before March 31, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2022–0080 or RIN 3170–AB13, by any of the following methods:

- *Electronic: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2022-NPRM-OrdersRegistry@cfpb.gov.* Include Docket No. CFPB–2022–0080 or RIN 3170–AB13 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Nonbank Registration of Certain Agency and Court Orders, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *https://www.regulations.gov.*

All comments, including attachments and other supporting materials, will become part of the public record and are subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Clay Coon, Office of Supervision Policy, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Bureau is proposing to establish and maintain a registry that would collect information about certain public agency and court orders and facilitate the Bureau's supervision of certain companies. In this way, the Bureau would more effectively be able to monitor and to reduce the risks to consumers posed by entities that violate consumer protection laws. The Bureau also proposes to publish the registry online for use by the public and other regulators.

The proposed rule would require certain nonbank covered person entities (with exclusions for insured depository institutions, insured credit unions, related persons, States, certain other entities, and natural persons) to register with the Bureau upon becoming subject to a public written order or judgment imposing obligations based on violations of certain consumer protection laws. Those entities would be required to register in a system established by the Bureau, provide basic identifying information about the company and the order (including a copy of the order), and periodically update the registry to ensure its continued accuracy and completeness. The Bureau would publish this information on its website and potentially in other forms.

The Bureau would also require certain nonbanks subject to the Bureau's supervisory authority under section 1024(a) of the Consumer Financial Protection Act of 2010 (CFPA) [1] annually to identify an executive (or executives) who is responsible for and knowledgeable of the firm's efforts to comply with the orders identified in the registry. The name and title of the executive would also be published in the registry. The supervised nonbank entity would also be required to submit on an annual basis a written statement signed by that executive (or executives) regarding the entity's compliance with each order in the registry.

Nonbank registrants would have to register in the Bureau system starting after both the effective date of the final rule and the launch of a registration system created by the Bureau. Details on how to register will be provided in the online system through filing instructions.

II. Background

A. The Bureau and Other Agencies Issue and Obtain Enforcement Actions Against Nonbanks To Protect Consumers

The Bureau administers and enforces Federal consumer financial laws against nonbanks in consumer financial markets. In addition to the Bureau, Congress authorized multiple other Federal and State agencies to enforce Federal consumer financial law, including the CFPA prohibition against unfair, deceptive, or abusive acts or practices (UDAAP) and enumerated statutes including the Truth in Lending Act, the Electronic Fund Transfer Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, and other statutes.[2] Several Federal agencies, most notably the Federal Trade Commission, also enforce section 5 of the Federal Trade Commission Act (FTC Act), which similarly prohibits unfair or deceptive acts or practices (UDAP).[3] The prohibitions against unfair and deceptive acts or practices in the CFPA were modeled after the same prohibitions in the FTC Act. Furthermore, States across the country began codifying State UDAP statutes modeled after the FTC Act starting in the 1960s and 1970s.[4] These laws differ

[1] 12 U.S.C. 5514(a).

[2] *See* 12 U.S.C. 5481(12), 5552; 12 CFR part 1082; Bureau Interpretive Rule, Authority of States to Enforce the Consumer Financial Protection Act of 2010, 87 FR 31940 (May 26, 2022).

[3] 15 U.S.C. 45.

[4] Dee Pridgen, *The Dynamic Duo of Consumer Protection: State and Private Enforcement of Unfair*

in many respects from each other, but generally they hail from a common consumer protection tradition originating with the FTC Act, similar to the CFPA's prohibition on UDAAP.

The Bureau was created in the wake of the 2008 financial crisis, which was caused by a variety of overlapping factors including systemic malfeasance in the mortgage industry.[5] Since passage of the CFPA, the Bureau has brought more than 250 enforcement actions against nonbanks. When the Bureau issues an order against a covered person (often, but not always, as a consent order), the Bureau often follows up with supervisory or enforcement action to ensure the company's compliance with the order. On numerous occasions, the Bureau has uncovered companies that failed to comply with consent orders that the companies entered into with the Bureau voluntarily.[6]

B. Congress Instructed the Bureau To Monitor Markets for Consumer Financial Products and Services

Congress established the Bureau to regulate (among other things) the offering and provision of consumer financial products and services under the Federal consumer financial laws, and it granted the Bureau authority to ensure that the Bureau could achieve that mission.[7] But it also understood that the Bureau could not fully and effectively achieve that mission unless it developed a clear window into the markets for and persons involved in offering and providing such products and services. To that end, Congress mandated that the Bureau ''shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.'' [8]

Notably, Congress directed the Bureau to engage in such monitoring ''to support its rulemaking *and other functions,*'' [9] instructing the Bureau to use monitoring to inform all of its work. Congress separately described the Bureau's ''primary functions'' as ''conducting financial education programs''; ''collecting, investigating, and responding to consumer complaints''; ''collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets''; ''supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law''; ''issuing rules, orders, and guidance implementing Federal consumer financial law''; and ''performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.'' [10] Put simply, Congress envisioned that the Bureau would use its market monitoring work to inform its activities, all with the express purpose of ''ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' [11]

To achieve these ends, Congress took care to ensure that the Bureau had the tools necessary to effectively monitor for risks in the markets for consumer financial products and services. It granted the Bureau authority ''to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.'' [12] In particular, Congress authorized the Bureau to ''require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions,'' that would furnish the Bureau with such information ''as necessary for the Bureau to fulfill the monitoring . . . responsibilities imposed by Congress.'' [13]

To assist the Bureau in allocating resources to perform its monitoring, Congress also identified a non-exhaustive list of factors that the Bureau may consider, including ''likely risks and costs to consumers associated with buying or using a type of consumer financial product or service''; [14] ''understanding by consumers of the risks of a type of consumer financial product or service''; [15] ''the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers''; [16] ''the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers''; [17] and ''the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.'' [18]

Congress also anticipated that the insights the Bureau would gain from such market monitoring should at times become available to a wider audience than just Bureau employees. Not only did Congress mandate that the Bureau ''publish not fewer than 1 report of significant findings of its monitoring . . . in each calendar year,'' but it also instructed that the Bureau may make non-confidential information available to the public ''as is in the public interest.'' [19] Congress gave the Bureau discretion to determine the format of publication, authorizing the Bureau to make the information available ''through aggregated reports or other appropriate formats designed to protect confidential information in accordance with [specified protections in this section].'' [20] These instructions regarding public release of market monitoring information align with one of the Bureau's ''primary functions'' mentioned above—to ''publish[ ] information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets.'' [21]

The Bureau takes its market monitoring obligations seriously, and it has incorporated valuable insights gained to date from such monitoring in conducting the multiple functions assigned to it under the CFPA, including its supervisory and enforcement efforts, as well as its rulemaking, consumer education, and other functions.[22] As discussed in

and Deceptive Trade Practices Laws, 81 Antitrust L.J. 911, 912 (2017).

[5] *See* U.S. Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report,* at 104–11, 113–18 (2011), *https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf*; *see also* S. Rep. No. 111–176, at 11 (2010) (''Th[e] financial crisis was precipitated by the proliferation of poorly underwritten mortgages with abusive terms, followed by a broad fall in housing prices as those mortgages went into default and led to increasing foreclosures.'').

[6] *See, e.g., Bureau of Consumer Fin. Prot.* v. *Encore Capital Grp.,* No. 3:20–cv–01750–GPC–KSC (S.D. Cal. Oct. 16, 2020); *Sec. Nat'l Automotive Acceptance Co.,* CFPB No. 2017–CFPB–0013 (Apr. 26, 2017); *Military Credit Servs., LLC.,* CFPB No. 2016–CFPB–0029 (Dec. 20, 2016).

[7] *See* 12 U.S.C. 5511.

[8] *See* 12 U.S.C. 5512(c)(1).

[9] *Id.* (emphasis added).

[10] 12 U.S.C. 5511(c).

[11] 12 U.S.C. 5511(a).

[12] 12 U.S.C. 5512(c)(4)(A).

[13] 12 U.S.C. 5512(c)(4)(B)(ii).

[14] 12 U.S.C. 5512(c)(2)(A).

[15] 12 U.S.C. 5512(c)(2)(B).

[16] 12 U.S.C. 5512(c)(2)(C).

[17] 12 U.S.C. 5512(c)(2)(E).

[18] 12 U.S.C. 5512(c)(2)(F).

[19] 12 U.S.C. 5512(c)(3).

[20] 12 U.S.C. 5512(c)(3)(B).

[21] 12 U.S.C. 5511(c)(3).

[22] *See, e.g.,* CFPB Semiannual Regulatory Agenda, 87 FR 5326, 5328 (Jan. 31, 2022) (''The Bureau's market monitoring work assists in identifying issues

Continued

further detail below, this proposed rule seeks to continue and build upon that commitment by creating an order registry to accomplish a number of goals, with a particular focus on monitoring for risks to consumers related to repeat offenders of consumer protection law. A public registry of agency and court orders issued or obtained in connection with violations of law would help the Bureau and the broader public monitor trends concerning corporate recidivism relating to consumer protection law, including areas where prior violations of law are indicia of risk to consumers.

More generally, entities subject to such public orders relating to the offering or provision of consumer financial products and services may pose ongoing risks to consumers in the markets for those products and services. A comprehensive collection of such public orders would shed light on how laws are being enforced across consumer protection laws, jurisdictions, and markets, and help identify trends and potential gaps in enforcement. Both heightened enforcement and the absence of enforcement could possibly provide information regarding risks to consumers—the former as evidence that government agencies with various jurisdictions have identified the need to enforce consumer protection laws, and the latter as potential evidence of less risk to consumers, or perhaps of inattention by regulatory agencies. A centralized, up-to-date repository of such public orders would provide valuable market-based insight that the Bureau could use both to identify concerning trends in these markets that it otherwise might miss and to decide which of several different policy tools would best address the consumer risks presented by these trends. In short, the information sought would significantly increase the Bureau's ability to identify, understand, and ultimately prevent harm in the markets for consumer financial products and services. These and other core goals of the information the Bureau proposes to collect are discussed further below at section IV.

C. Congress Authorized the Bureau To Supervise Certain Nonbank Covered Persons

One of the Bureau's key responsibilities under the CFPA is the supervision of very large banks, thrifts, and credit unions, and their affiliates, and certain nonbank covered persons. Congress has authorized the Bureau to supervise certain categories of nonbank covered persons under CFPA section 1024.[23] Congress provided that the Bureau ''shall require reports and conduct examinations on a periodic basis'' of nonbank covered persons subject to its supervisory authority for purposes of ''assessing compliance with the requirements of Federal consumer financial law''; ''obtaining information about the activities and compliance systems or procedures of such person[s]''; and ''detecting and assessing risks to consumers and to markets for consumer financial products and services.'' [24] Pursuant to the CFPA, the Bureau implements a risk-based supervision program under which it prioritizes nonbank covered persons for supervision in accordance with its assessment of risks posed to consumers.[25] In making prioritization determinations, the Bureau considers several factors, including ''the asset size of the covered person,'' [26] ''the volume of transactions involving consumer financial products or services in which the covered person engages,'' [27] ''the risks to consumers created by the provision of such consumer financial products or services,'' [28] ''the extent to which such institutions are subject to oversight by State authorities for consumer protection,'' [29] and ''any other factors that the Bureau determines to be relevant to a class of covered persons.'' [30] CFPA section 1024(b)(7)(A)–(C) further authorizes the Bureau to prescribe rules to facilitate supervision and assessing and detecting risks to consumers, as well as to ensure that supervised nonbanks ''are legitimate entities and are able to perform their obligations to consumers.'' [31]

Under those authorities, the Bureau is proposing to require that certain supervised nonbanks annually submit a written statement regarding the company's compliance with any outstanding registered orders. The statement would be signed by a designated senior executive. In the written statement, the attesting executive would generally describe the steps the executive has undertaken to review and oversee the company's activities subject to the applicable order for the preceding calendar year. The executive would then provide an attestation regarding the company's compliance with the order.

The Bureau believes that the proposed written statement would assist it in achieving each of the statutory objectives listed in CFPA section 1024(b)(7)(A)–(C). Therefore, each of those objectives would provide a distinct, independently sufficient basis for the proposed written-statement requirements.[32]

First, requiring submission of an annual written statement would facilitate Bureau supervision and the Bureau's assessment and detection of risks to consumers. In particular, as part of the Bureau's risk-based supervision program, the Bureau considers supervised nonbanks' compliance record regarding consumer protection law when prioritizing supervisory resources. The requirement would also provide valuable information in connection with other aspects of the Bureau's supervisory work and would assist the Bureau's monitoring efforts. For example, the Bureau recently announced that it is increasing its supervisory focus on repeat offenders, particularly those who violate agency or court orders.[33] As part of that focus, it created a Repeat Offender Unit within its supervision program focused on: (i) reviewing and monitoring the activities of repeat offenders; (ii) identifying the root cause of recurring violations; (iii) pursuing and recommending solutions and remedies that hold entities accountable for failing to consistently comply with Federal consumer financial law; and (iv) designing a model for order review and monitoring that reduces the occurrences of repeat offenses.[34] The Repeat Offender Unit is

for potential future rulemaking work.''); Payday, Vehicle, and Certain High-Cost Installment Loans, 82 FR 54472, 54475, 54488, 54498 (Nov. 17, 2017) (citing information obtained through Bureau market monitoring efforts); Arbitration Agreements, 82 FR 33210, 33220 (July 19, 2017) (same). *See also, e.g.,* Consumer Fin. Prot. Bureau, *Buy Now, Pay Later: Market trends and consumer impacts* (Sept. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf* (publishing information obtained through Bureau market monitoring efforts); Consumer Fin. Prot. Bureau, *Consumer Credit Trends: Credit Card Line Decreases* (June 2022), *https://files.consumerfinance.gov/f/documents/cfpb_credit-card-line-decreases_report_2022-06.pdf* (same); Consumer Fin. Prot. Bureau, *Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors* (Dec. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_overdraft-core-processors_report_2021-12.pdf* (same).

[23] 12 U.S.C. 5514.

[24] 12 U.S.C. 5514(b)(1).

[25] 12 U.S.C. 5514(b)(2).

[26] 12 U.S.C. 5514(b)(2)(A).

[27] 12 U.S.C. 5514(b)(2)(B).

[28] 12 U.S.C. 5514(b)(2)(C).

[29] 12 U.S.C. 5514(b)(2)(D).

[30] 12 U.S.C. 5514(b)(2)(E).

[31] 12 U.S.C. 5514(b)(7)(A)–(C).

[32] For a more extended discussion of these matters, *see* section IV(D) below.

[33] *See* Consumer Fin. Prot. Bureau, *Supervisory Highlights: Issue 28, Fall 2022,* at 2–3 (Nov. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-28_2022-11.pdf.*

[34] *Id.*

tasked more generally with enhancing detection of repeat offenses, developing processes for rapid review and response designed to address root causes of violations, and recommending corrective actions designed to stop recidivist behavior.[35] The Bureau anticipates that the proposed annual written statement would greatly facilitate that work, among other things.

Second, the proposed written statement requirements would help ensure the company providing the statement is a legitimate entity and is able to perform its obligations to consumers. Information regarding a company's compliance with outstanding orders is probative of whether the company is willing and able to satisfy its legal obligations and of whether the company treats potential sanctions for repeat violations of relevant consumer protection laws as a mere cost of doing business. The Bureau also believes that the written-statement requirement would provide an incentive for supervised nonbanks to perform their obligations to consumers by requiring supervised nonbanks to specify which individual executives are responsible for achieving compliance with particular orders. Publication of the identity of this executive would enhance the incentive.

D. Consultation With Other Agencies in Exercising the Authorities Relied Upon in the Proposal

One of the authorities cited as a proposed basis for components of the Bureau's proposed rule is CFPA section 1022(c)(7), which provides that the ''Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.'' [36] Congress provided that ''[i]n developing and implementing registration requirements under [section 1022(c)(7)], the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.'' [37] CFPA section 1024(b)(7)—the proposed statutory basis for the written-statement requirement—includes a similar consultation provision.[38]

Accordingly, the Bureau has consulted with State agencies, including State agencies involved in supervision of nonbanks and State agencies charged with law enforcement, in crafting the proposed registration requirements and system. In developing this proposal, the Bureau considered the input it received from State agencies, including concerns expressed regarding possible duplication between any registration system the Bureau might build and existing registration systems.

In addition, before proposing a rule under the Federal consumer financial laws, including CFPA sections 1022(b)–(c) and 1024(b), the Bureau must consult with appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or systemic objectives administered by such agencies.[39] In developing this proposal, the Bureau consulted with prudential regulators and other Federal agencies and considered the input it received.

The Bureau also consulted with tribal governments regarding this rulemaking pursuant to CFPA sections 1022(c)(7)(C) and 1024(b)(7)(D).[40] Also, during the rulemaking process for issuing rules under the Federal consumer financial laws, Bureau policy is to consult with appropriate tribal governments.[41] In developing this proposal, the Bureau considered the input of tribal governments, including concerns tribal governments expressed regarding maintaining tribal sovereignty.

III. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under the CFPA. This section includes a general discussion of several CFPA provisions on which the Bureau relies in this rulemaking. Additional description of these authorities, and the proposal's reliance on them, is also contained in section IV below and in the section-by-section analysis.

A. CFPA Section 1022(b)

CFPA section 1022(b)(1) authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [42] Among other statutes, the CFPA—*i.e.,* title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)—is a Federal consumer financial law.[43] Accordingly, in issuing the proposed rule, the Bureau would be exercising its authority under CFPA section 1022(b) to prescribe rules that carry out the purposes and objectives of the CFPA and prevent evasions thereof. CFPA section 1022(b)(2) prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).[44] For a discussion of the Bureau's standards for rulemaking under CFPA section 1022(b)(2), see section VII below.

B. CFPA Section 1022(c)(1)–(4) and (7)

The CFPB's proposals to (1) require nonbank covered persons to inform the CFPB that they have an applicable order entered against them, (2) provide basic identifying and administrative information and information regarding the orders (including copies of the orders), and (3) publish this information, are authorized under CFPA sections 1022(c)(1) through (4) and 1022(c)(7), as well as CFPA section 1022(b).[45]

CFPA sections 1022(c)(1)–(4) authorize the CFPB to prescribe rules to collect information from covered persons for purposes of monitoring for risks to consumers in the offering or provision of consumer financial products or services. The CFPB is collecting this information to monitor, on an ongoing basis, both individual and market-wide compliance with consumer protection laws and orders for alleged violations of those laws. The CFPB considers violations of consumer protection laws probative of ''risks to consumers in the offering and provision of consumer financial products or services.'' [46] In particular, the CFPB believes that entities subject to public orders enforcing the law relating to the offering or provision of consumer financial products and services may

[35] *Id.* at 3.

[36] 12 U.S.C. 5512(c)(7)(A).

[37] 12 U.S.C. 5512(c)(7)(C).

[38] 12 U.S.C. 5514(b)(7)(D) (''In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.'').

[39] 12 U.S.C. 5512(b)(2)(B) (''In prescribing a rule under the Federal consumer financial laws . . . the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies . . . .'').

[40] *See* 12 U.S.C. 5512(c)(7)(C), 5514(b)(7)(D) (requiring consultation with ''State agencies''); *see also* 12 U.S.C. 5481(27) (term ''State'' includes ''any federally recognized Indian tribe, as defined by the Secretary of the Interior under'' 25 U.S.C. 5131(a)).

[41] *See* Consumer Fin. Prot. Bureau, *Policy for Consultation with Tribal Governments, https://files.consumerfinance.gov/f/201304_cfpb_consultations.pdf.*

[42] 12 U.S.C. 5512(b)(1).

[43] *See* 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the provisions of title X of the Dodd-Frank Act).

[44] *See* 12 U.S.C. 5512(b)(2).

[45] 12 U.S.C. 5512(b), (c)(1)–(4).

[46] 12 U.S.C. 5512(c)(1).

pose heightened and ongoing risks to consumers in the markets for those products and services. It further anticipates that monitoring for such orders would allow the CFPB to track specific instances of, and more general developments regarding, potential corporate recidivism, which presents special risks to consumers for reasons discussed in greater detail below. The Bureau also believes that enforcement trends, as shown by public orders enforcing the law across consumer protection laws, jurisdictions, and markets, would potentially shed light on risks to consumers in the offering or provision of consumer financial products or services. Heightened enforcement could indicate areas where numerous regulators have identified risk of harm to consumers. Conversely, the absence of enforcement in other areas could indicate less risk to consumers, or perhaps a lack of attention by regulators that shows a need for further monitoring.

More specifically, section 1022(c)(1) of the CFPA requires the Bureau to support its rulemaking and other functions by monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in the markets for such products or services.[47] As discussed further below at section IV(B), section 1022(c)(2) of the CFPA authorizes the Bureau to allocate resources to perform the monitoring required by section 1022 by considering ''likely risks and costs to consumers associated with buying or using a type of consumer financial product or service,'' ''understanding by consumers of the risks of a type of consumer financial product or service,'' ''the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers,'' ''rates of growth in the offering or provision of a consumer financial product or service,'' ''the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers,'' and ''the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.'' [48] Section 1022(c)(4)(A) of the CFPA authorizes the Bureau to conduct the monitoring required by section 1022 by ''gather[ing] information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.'' [49] The Bureau is authorized to gather this information by, among other things, requiring covered persons participating in consumer financial services markets to file annual or special reports, or answers in writing to specific questions, that furnish information ''as necessary for the Bureau to fulfill the monitoring . . . responsibilities imposed by Congress.'' [50] The Bureau may require such information to be filed ''in such form and within such reasonable period of time as the Bureau may prescribe by rule or order.'' [51]

Section 1022(c)(7)(A) of the CFPA further authorizes the Bureau to ''prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.'' [52] Section 1022(c)(7)(B) provides that, ''[s]ubject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.'' [53] The Bureau interprets section 1022(c)(7)(B) as authorizing it to publish registration information required by Bureau rule under section 1022(c)(7)(A) so that consumers may identify the nonbank covered persons on which the Bureau has imposed registration requirements.

Finally, CFPA section 1022(c)(3) authorizes the Bureau to publicly release information obtained pursuant to CFPA section 1022, subject to limitations specified therein.[54] Specifically, section 1022(c)(3) states that the Bureau ''may make public such information obtained by the Bureau under [section 1022] as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with [specified protections in section 1022].'' [55] Information submitted to the Bureau's registry is protected by, among other things, CFPA section 1022(c)(8), which states that ''[i]n collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under [the Freedom of Information Act, 5 U.S.C. 552(b)] or [the Privacy Act of 1974, 5 U.S.C. 552a,] or any other provision of law, is not made public under [the CFPA].'' [56] The CFPB's registry is designed to not collect any proprietary, personal, or confidential consumer information, and thus, the CFPB will not publish, or require public reporting of, any protected information.

C. CFPA Section 1024(b)

As explained above, section 1024(b) of the CFPA authorizes the Bureau to exercise supervisory authority over certain nonbank covered persons.[57] Section 1024(b)(1) requires the Bureau to periodically require reports and conduct examinations of persons subject to its supervisory authority to assess compliance with Federal consumer financial law, obtain information about the activities and compliance systems or procedures of persons subject to its supervisory authority, and detect and assess risks to consumers and to markets for consumer financial products and services.[58] Section 1024(b)(2) requires that the Bureau exercise its supervisory authority over nonbank covered persons based on its assessment of risks posed

[47] 12 U.S.C. 5512(c)(1) (''In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.'').

[48] 12 U.S.C. 5512(c)(2)(A)–(F).

[49] 12 U.S.C. 5512(c)(4)(A).

[50] 12 U.S.C. 5512(c)(4)(B)(ii) (''In order to gather information described in subparagraph (A), the Bureau may . . . require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.'').

[51] 12 U.S.C. 5512(c)(4)(B)(ii).

[52] 12 U.S.C. 5512(c)(7)(A).

[53] 12 U.S.C. 5512(c)(7)(B).

[54] *See* 12 U.S.C. 5512(c)(3)(B).

[55] 12 U.S.C. 5512(c)(3)(B).

[56] 12 U.S.C. 5512(c)(8).

[57] The nonbank covered persons over which the Bureau has supervisory authority are listed in section 1024(a)(1) of the CFPA. They include covered persons that: offer or provide origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans; are larger participants of a market for consumer financial products or services, as defined by Bureau rule; the Bureau has reasonable cause to determine, by order, that the covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services; offer or provide private education loans; or offer or provide payday loans. 12 U.S.C. 5514(a)(1).

[58] 12 U.S.C. 5514(b)(1) provides: ''The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—(A) assessing compliance with the requirements of Federal consumer financial law; (B) obtaining information about the activities and compliance systems or procedures of such person; and (C) detecting and assessing risks to consumers and to markets for consumer financial products and services.''

to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable: ''(A) the asset size of the covered person; (B) the volume of transactions involving consumer financial products or services in which the covered person engages; (C) the risks to consumers created by the provision of such consumer financial products or services; (D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and (E) any other factors that the Bureau determines to be relevant to a class of covered persons.'' [59]

Section 1024(b)(7) of the CFPA in turn identifies three independent sources of Bureau rulemaking authority. First, section 1024(b)(7)(A) requires the Bureau to prescribe rules to facilitate the supervision of nonbank covered persons subject to the Bureau's supervisory authority and assessment and detection of risks to consumers.[60] Second, section 1024(b)(7)(B) authorizes the Bureau to require nonbank covered persons subject to its supervisory authority to ''generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.'' [61] This section authorizes the Bureau to require nonbank covered persons subject to its supervisory authority to create reports regarding their activities for submission to the Bureau. ''Records'' is a broad term encompassing any ''[i]nformation that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form,'' or any ''documentary account of past events.'' [62] Section 1024(b)(7)(B) thus authorizes the Bureau to require nonbank covered persons subject to its supervisory authority to ''generate''—*i.e.,* create [63]—reports regarding their activities and then ''provide'' them to the Bureau.[64]

The third source of authority, CFPA section 1024(b)(7)(C), authorizes the Bureau to prescribe rules regarding nonbank covered persons subject to its supervisory authority ''to ensure that such persons are legitimate entities and are able to perform their obligations to consumers.'' [65] Under this section, the Bureau may prescribe substantive rules to ensure that supervised entities are willing and able to comply with their legal, financial, and other obligations to consumers, including those imposed by Federal consumer financial law. The term ''obligations'' encompasses ''anything that a person is bound to do or forbear from doing,'' including duties ''imposed by law, contract, [or] promise.'' [66] The Bureau construes the phrase ''legitimate entities'' as encompassing an inquiry into whether an entity takes seriously its duty to ''[c]omply[ ] with the law.'' [67] Legitimate entities do not treat the risk of enforcement actions for violations of legal obligations as a mere cost of doing business. Instead, legitimate entities work in good faith to have protocols in place aimed at ensuring compliance with their legal obligations and detecting and appropriately addressing any legal violations that the entity may commit.

While each of the three subparagraphs of section 1024(b)(7) discussed above operates as independent sources of rulemaking authority, the subparagraphs also overlap in several respects, such that a particular rule may be (and, in the case of this proposal, is) authorized by more than one of the subparagraphs. For example, rules requiring the generation, provision, or retention of records generally will be authorized under both subparagraphs 1024(b)(7)(A) and (B). That is so because subparagraph 1024(b)(7)(B) makes clear that the Bureau's authority under subparagraph 1024(b)(7)(A) to prescribe rules to facilitate supervision and assessment and detection of risks to consumers extends to requiring covered persons subject to the Bureau's supervisory authority ''to generate, provide or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.'' [68]

IV. Why the Bureau Is Issuing This Proposal

A. Overview

The Bureau is issuing this proposal to require nonbanks to report certain public agency and court orders because the Bureau believes that not only the Bureau, but also consumers, the public, and other potential users of the proposed registration system would benefit from the creation and maintenance of a central public repository for information regarding certain public orders that have been imposed upon nonbank covered persons.

Agency and court orders are not suggestions. They are legally binding orders intended to prevent and remedy violations of the law. When an agency issues such an order, or seeks a court order, it typically has determined that the problems at the applicable entity are sufficiently serious to merit the expenditure of that agency's limited resources and perhaps the attention of the courts.

By establishing an effective system for collecting public orders enforcing the law across different sectors of entity misconduct, the proposed rule would allow the Bureau to more effectively monitor for potential risks to consumers arising from both individual instances and broader patterns of recidivism. Persons that are subject to one or more orders that would require registration under the proposal may pose greater risks to consumers than others. And the existence of multiple orders may serve as a particular ''red flag'' with respect to risks to consumers and as a signal of potential recidivism. The existence of multiple orders may also indicate broader problems at the entity that pose related risks to consumers—including lack of sufficient controls related to the

[59] 12 U.S.C. 5514(b)(2).

[60] 12 U.S.C. 5514(b)(7)(A) (''The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.'').

[61] 12 U.S.C. 5514(b)(7)(B) (''The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.'').

[62] *Record, Black's Law Dictionary* (11th ed. 2019); *accord, e.g., Andrews* v. *Sirius XM Radio Inc.,* 932 F.3d 1253, 1259 (9th Cir. 2019) (citing *Black's Law Dictionary* and *Webster's Third New International Dictionary* definitions of ''record'').

[63] *See Generate, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/generate* (defining ''generate'' as ''to bring into existence'').

[64] The Bureau's authority under section 1024(b)(7)(B) to require generation of records complements its authority under section 1024(b)(1) to ''require reports . . . on a periodic basis'' from nonbank covered persons subject to its supervisory authority. 12 U.S.C. 5514(b)(1).

[65] 12 U.S.C. 5514(b)(7)(C) (''The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.'').

[66] *Obligation, Black's Law Dictionary* (11th ed. 2019).

[67] *Legitimate, Black's Law Dictionary* (11th ed. 2019) (defining ''legitimate'' as ''[c]omplying with the law; lawful''); *see also Legitimate, Webster's Second New International Dictionary* (1934) (defining ''legitimate'' as ''[a]ccordant with law or with established legal forms and requirements; lawful''); *Legitimate, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/legitimate* (defining ''legitimate'' as ''accordant with law or with established legal forms and requirements'').

[68] 12 U.S.C. 5514(b)(7)(B); *see also, e.g., Barton* v. *Barr,* 140 S. Ct. 1442, 1453 (2020) (''redundancies . . . in statutory drafting'' may reflect ''a congressional effort to be doubly sure''); *Atlantic Richfield Co.* v. *Christian,* 140 S. Ct. 1335, 1350 n.5 (2020) (concluding that ''Congress employed a belt and suspenders approach'' in statute); *Marx* v. *Gen. Revenue Corp.,* 568 U.S. 371, 383–85 (2013) (statutory language is ''not . . . superfluous if Congress included it to remove doubt'' about an issue).

offering and provision of consumer financial products and services, inadequate compliance management systems and processes, and an unwillingness or inability of senior management to comply with laws subject to the Bureau's jurisdiction.

The Bureau also believes that a comprehensive collection of public agency and court orders enforcing the law would help it identify broader trends related to risks to consumers in the offering and provision of consumer financial products and services. Notably, by studying how laws are being enforced across consumer protection laws, jurisdictions, and markets, the Bureau believes it will be able to identify indications of risks to consumers. For example, the existence of enforcement activity in multiple jurisdictions among certain products, services, or features, or related to certain legal requirements, or concerning certain consumer risks, could indicate areas of heightened consumer risk that warrant further attention by regulators. By contrast, the absence of enforcement activity in certain areas could potentially indicate less risk to consumers or could be evidence of less attention by regulators and a need to increase monitoring activities. The Bureau thus believes that obtaining information regarding such orders will enable it to better monitor risks to consumers in the offering or provision of consumer financial products and services, including developments in the markets for such products and services, under its authority at CFPA section 1022(c).[69]

The Bureau further anticipates that making a registry of these orders publicly available would, among other things, allow other regulators at the Federal, State, and local level tasked with protecting consumers to realize the same market monitoring benefits that the Bureau anticipates obtaining from this rule. Publication would also facilitate the ability of consumers to identify the covered persons that are registered with the Bureau. In addition, publication would enhance the ability of consumer advocacy organizations, researchers, firms conducting due diligence, and the media to locate, review, and monitor orders enforcing the law.

The Bureau believes that the proposal also will assist its supervisory work by collecting additional information in the form of a written statement from certain entities that are subject to the Bureau's supervision and examination authority. As explained in greater detail below, requiring certain supervised entities to designate a senior executive officer with knowledge of, and control over, the entity's efforts to comply with each relevant order, and requiring that executive to submit the information required to be contained in the proposed written statement, would facilitate Bureau supervision efforts by providing important information about the entity, helping to prioritize the Bureau's supervisory activities, and otherwise assisting the Bureau's supervisory work. These requirements would also help ensure that the relevant entities are ''legitimate'' and ''are able to perform their obligations to consumers'' under CFPA section 1024(b)(7)(C), in part by incentivizing entities who might otherwise not take seriously their obligations to instead endeavor to comply with consumer protection laws and by highlighting the designated senior executive's personal responsibility for such compliance.[70]

B. Why the Bureau Is Interested in Issuing a Rule To Monitor for Risks Associated With Certain Agency and Court Orders

The Bureau believes that requiring registration and submissions regarding certain agency and court orders as proposed would assist the Bureau in monitoring for risks to consumers in the offering or provision of consumer financial products or services, in accordance with CFPA section 1022(c).[71] The proposal's requirements to submit and update information regarding such agency and court orders related to the provision or offering of consumer financial products or services would provide important support for a variety of Bureau functions.

As the principal Federal regulator responsible for administering the Federal consumer financial laws, the Bureau's ability to effectively identify and monitor for potential risks to consumers arising out of apparent violations of core Federal and State consumer laws is vital to the Bureau achieving its statutory purposes and objectives. Such information will help the Bureau satisfy its statutory obligation to monitor for risks to consumers in the markets for consumer financial products and services.[72] For example, the system would enable the Bureau to better identify an increase in the number of orders in a particular product market, in a particular geographic market, addressing similar consumer risks, or with other common features. The Bureau would be able to use this information to identify areas of heightened consumer risk that warrant further attention, thus helping to inform and prioritize its other market monitoring efforts, including research regarding particular markets and the risks to consumers presented in such markets.[73] By contrast, the absence of enforcement activity in certain areas could indicate less risk to consumers, or it potentially could be evidence of less attention by regulators and a need to increase monitoring and other supervisory or regulatory activities.

Likewise, the Bureau's rulemaking efforts would benefit from information about such orders, so that the Bureau might, for example, consider drafting rules to address identified consumer risks.[74] The Bureau's consumer response function would be informed by increased monitoring of risks and trends, as the Bureau could direct resources or investigate risks in a certain area or on a certain topic.[75] And the Bureau may choose to direct its consumer education efforts toward educating consumers about risks identified via the proposed registry.[76]

The information that the Bureau would obtain under the proposed rule would also be valuable to the Bureau in exercising its supervisory and enforcement functions.[77] Among other things, the information may be informative when the Bureau makes determinations whether a covered person is engaging, or has engaged, in

[69] 12 U.S.C. 5512(c).

[70] 12 U.S.C. 5514(b)(7)(C).

[71] 12 U.S.C. 5512(c).

[72] *See* 12 U.S.C. 5512(c)(1).

[73] *See* 12 U.S.C. 5511(c)(3) (identifying as one of the ''primary functions of the Bureau . . . collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets'').

[74] *See* 12 U.S.C. 5511(c)(5) (identifying as one of the ''primary functions of the Bureau . . . issuing rules, orders, and guidance implementing Federal consumer financial law'').

[75] *See* 12 U.S.C. 5511(c)(2) (identifying as one of the ''primary functions of the Bureau . . . collecting, investigating, and responding to consumer complaints''); *see also* Consumer Fin. Prot. Bureau, *Consumer Response Annual Report: January 1—December 31, 2021,* at 5–8 (Mar. 2022), *https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf* (describing the Bureau's consumer-complaint process and how the Bureau uses complaint information).

[76] *See* 12 U.S.C. 5511(c)(1) (identifying as one of the ''primary functions of the Bureau . . . conducting financial education programs'').

[77] *See* 12 U.S.C. 5511(c)(4) (identifying as one of the ''primary functions of the Bureau . . . supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law''). Section IV(D) below, and the section-by-section discussion of proposed § 1092.203, contain additional discussion of how the proposed rule would facilitate the Bureau's supervisory efforts.

conduct that poses risk to consumers with regard to the offering or provision of consumer financial products or services under CFPA section 1024(a)(1)(C), such that the Bureau may determine to subject the covered person to Bureau supervision under that provision.[78] The information contained in the proposed registry may also be relevant in assessing civil penalties for violations of Federal consumer financial laws, given that Congress has provided that such penalties should take into account an entity's ''history of previous violations'' and ''such other matters as justice may require.'' [79]

Furthermore, there is a heightened likelihood that entities that are subject to public orders enforcing the law and relating to the offering or provision of consumer financial products and services may pose risks to consumers in the markets for those products and services, and risk of consumer harm is a significant factor that weighs heavily in the Bureau's decisions regarding the general allocation of its resources. Knowledge of whether a covered person has engaged in previous violations of consumer financial protection laws is valuable information that the Bureau considers when evaluating the risk of consumer harm. In the Bureau's experience, entities that have previously been subject to enforcement actions, including those brought by local, State, and other Federal authorities, present an increased risk of committing violations of laws subject to the Bureau's jurisdiction, and thus causing the additional consumer harm associated with such violations. Prior enforcement actions are also likely to be a good indication of continuing risks to consumers present in a particular market for consumer financial products or services. Because the orders that would be covered by the proposed rule are regularly issued, modified, and terminated, the Bureau needs to collect this information regularly and on a timely basis in order to stay abreast of developments.

Although referrals from and other information provided by other agencies have been valuable to the Bureau's work, the Bureau currently often relies on other agencies to take proactive steps to contact it. Having access to a centralized list of all relevant orders entered against nonbanks would significantly increase the Bureau's ability to monitor the market so that the Bureau can identify, better understand, and ultimately, prevent further consumer harm, particularly from repeat offenders. Recidivism—whether in the form of a company that repeatedly violates the law and as a result becomes subject to multiple orders, or in the form of a company that violates the orders to which it is subject—poses particular risks to consumers. Companies that repeatedly violate the law do more than just deprive consumers of protections in the marketplace. They may also charge their customers more in order to cover the costs of any fines or other costs resulting from the company's legal violations. In other words, consumers may end up subsidizing corporate malfeasance. When government orders fail to deter future misconduct by a company, that company's operations are more likely to present risk to consumers. Thus, the existence of multiple orders may be highly probative of heightened risks to consumers in the markets for consumer financial products and services, including the risk of noncompliance with laws subject to the Bureau's jurisdiction.

The Bureau believes that collecting information about such public orders across markets and agencies as proposed will improve the Bureau's efforts to determine where entities, either as a group or individually, are repeatedly violating the law. The Bureau particularly needs to be made aware of entities that become subject to multiple orders, or that are found to be out of compliance with existing orders, as well as of trends in such developments. Systematic or repeat violations of the law may indicate broader problems within a market for consumer financial products and services. Such problems might include lack of sufficient controls related to the offering and provision of certain consumer financial products and services, inadequate compliance management systems and processes within a set of market participants, and an unwillingness or inability of senior management at certain entities to comply with Federal consumer financial laws. The proposed registry would provide a valuable mechanism to help ensure that the Bureau is rapidly made aware of such repeat offenders across a range of markets and enforcement agencies.

The Bureau believes that the proposed registry would be especially useful with respect to the particular nonbank markets that are subject to the Bureau's supervision and examination authority under CFPA section 1024(a). In those markets, the Bureau would be able to take account of risks identified through the proposed registry in conducting its risk-based supervisory prioritization and enforcement work. The Bureau believes that the existence of an order that would require registration under the proposal is probative of a potential need for supervisory examination, to the extent that the nonbank is subject to the Bureau's supervision and examination authorities. Under CFPA section 1024(b)(2), the Bureau is required to exercise its supervisory authority in a manner designed to ensure that such exercise, with respect to persons described in CFPA section 1024(a), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets and taking into consideration the factors enumerated at CFPA section 1024(b)(2)(A)–(E).[80]

Depending upon the circumstances, the Bureau may consider the existence of an order requiring registration under the proposal to be a risk factor under these provisions for covered persons subject to the proposed rule. CFPA section 1024(b)(2)(C) refers to ''the risks to consumers created by the provision of such consumer financial products or services.'' [81] The Bureau believes that the existence of an order that would require registration under the proposal would be probative of such risks to consumers. CFPA section 1024(b)(2)(D) provides that the Bureau shall also take into account ''the extent to which such institutions are subject to oversight by State authorities for consumer protection.'' [82] The Bureau believes that the existence of one or more orders issued or obtained by the types of State agencies described in the proposal in connection with violations of law would provide important and directly relevant information regarding the extent to which nonbanks are subject to oversight by State authorities for consumer protection. CFPA section 1024(b)(2)(E) provides that the Bureau shall also take into account ''any other factors that the Bureau determines to be relevant to a class of covered persons.'' [83] For the classes of covered persons subject to the proposal, the Bureau believes that the existence of an order that would require registration under the proposal would be a relevant factor under this statutory provision for the Bureau to take into consideration when exercising its supervisory authorities under CFPA

[78] *See* 12 U.S.C. 5514(a)(1)(C) (authorizing Bureau orders subjecting nonbanks to supervision based upon consumer complaints ''or information from other sources''); 12 CFR part 1091 (Bureau procedural rule to establish supervisory authority over certain nonbank covered persons based on risk determination).

[79] *See* 12 U.S.C. 5555(c)(3)(D), (E). The Bureau may consider certain matters identified in previous enforcement actions published in the proposed registry to be relevant under these provisions.

[80] 12 U.S.C. 5514(a), (b)(2).

[81] 12 U.S.C. 5514(b)(2)(C).

[82] 12 U.S.C. 5514(b)(2)(D).

[83] 12 U.S.C. 5514(b)(2)(E).

section 1024. Thus, knowledge of such orders would be relevant information in prioritizing and scoping the Bureau's supervisory activities under CFPA section 1024(b) with respect to the markets subject to that provision. In exercising its authorities under section 1024(b), the Bureau may take into account any risks that it identifies in connection with a covered person's registration with the nonbank registration (NBR) system and any information submitted under the proposed rule.

In crafting the proposed requirements to register and submit certain agency and court orders, the Bureau has considered (among others) the factors listed at CFPA section 1022(c)(2), to the extent relevant here to the proposed allocation of Bureau resources to perform market monitoring. For example, the Bureau considered the ''likely risks and costs to consumers associated with buying or using a type of consumer financial product or service.'' [84] As discussed above, the Bureau believes companies that violate the law, especially repeatedly, generally pose more risk to consumers. The proposal will assist the Bureau in identifying and evaluating such risks—and their associated costs—across companies, industries, products, and regions.

The Bureau also considered the ''understanding by consumers of the risks of a type of consumer financial product or service.'' [85] The Bureau is concerned that consumers currently may not adequately understand risks posed by certain institutions, including risks arising from recidivism. With a clear window into nationwide trends and gaps in nonbank covered persons' compliance with consumer protection laws, the Bureau can target its various functions—including consumer education—to ensure that consumers understand the risks and associated costs of such conduct on their use of certain consumer financial products or services.

The Bureau further considered ''the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers.'' [86] The Bureau believes that the proposal would enhance the Bureau's ability to effectively assess whether and to what extent the orders themselves, as well as other relevant laws, in practice adequately protect consumers. Information collected in connection with this proposal would aid the Bureau in better understanding how effectively the nation's consumer protection laws operate in practice, which should assist the Bureau in determining (among other things) how best to allocate its resources to ensure consumers are adequately protected from bad actors.

The Bureau also considered ''the extent . . . to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers.'' [87] The Bureau generally is concerned that traditionally underserved communities may be disproportionately the target of consumer protection violations—particularly, unfair, deceptive, or abusive acts or practices—in the offering or provision of consumer financial products or services. The information collected should provide the Bureau with robust nationwide data to identify and evaluate the extent to which this is the case.

Finally, the Bureau considered ''the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.'' [88] For the reasons discussed, law violator status—but especially repeat law violator status—is a highly pertinent characteristic. The Bureau believes that risks to consumers posed by law violators warrants market monitoring. In particular, it would provide greater visibility into nonbank covered persons' compliance with consumer protection laws in the offering or provision of consumer financial products and services, in addition to more generally aiding the Bureau's overall understanding of nonbank covered persons and the products or services they provide.

The Bureau has considered alternative means of collecting the information subject to the proposed rule, including requesting the information on an ad hoc basis from entities that are subject to relevant orders through a Bureau order issued pursuant to CFPA section 1022(c)(4)(B)(ii).[89] However, the Bureau believes this alternative would be inadequate. There is no existing comprehensive list of covered persons subject to Bureau regulation or supervision, so the Bureau would be unable to issue a standing order to such entities to produce information. It is not clear how the Bureau would obtain this information without issuing a rule. Also, the Bureau wishes to collect information that changes over time—for example, information regarding new orders and changes to orders, as well as with respect to changes in registration information. An order that required submission of information at a single point in time—assuming that the Bureau could identify the entities to which such an order should be addressed—would be inadequate to capture such changes in information. While the Bureau might issue frequently recurring orders under its market-monitoring authority, such an approach would be less reliable and predictable for all parties than a rule-based approach.

The Bureau further considered using its supervisory and examination authority to obtain information solely from entities that are subject to that authority. While the Bureau believes that approach would certainly provide the Bureau with invaluable information, it preliminarily concludes that collecting information from a wider range of covered persons is appropriate to achieve its market monitoring objectives.

The Bureau seeks comment on its preliminary conclusion that collecting and registering public agency and court orders imposing obligations based upon violations of consumer law would assist with monitoring for risks to consumers in the offering or provision of consumer financial products and services. The Bureau seeks comment on whether the types of orders described in the proposal, and the types of information that would be collected about those orders and covered nonbanks under the proposal, would provide useful information to the Bureau. The Bureau also seeks comment on any other risks that might be identified through collecting the information described in the proposal. Finally, the Bureau seeks comment on whether it should consider collecting any other information in order to identify risks to consumers associated with orders.

C. Why the Bureau Has Identified Orders Issued Under the Types of Laws Described in the Proposal as Posing Particular Risk

The proposal would prescribe registration requirements with reference to certain types of ''covered laws'' that served as the basis for an applicable order. As discussed herein, the Bureau believes that orders issued under the types of covered laws described in the proposal are likely to be probative of risks to consumers in the offering or provision of consumer financial products or services, including

[84] 12 U.S.C. 5512(c)(2)(A).
[85] 12 U.S.C. 5512(c)(2)(B).
[86] 12 U.S.C. 5512(c)(2)(C).
[87] 12 U.S.C. 5512(c)(2)(E).
[88] 12 U.S.C. 5512(c)(2)(F).
[89] 12 U.S.C. 5512(c)(4)(B)(ii).

developments in markets for such products or services.[90]

First, the Bureau is proposing to require registration in connection with orders issued under the Federal consumer financial laws, to the extent that the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service. As explained above, numerous Federal and State agencies besides the Bureau have authority to enforce Federal consumer financial laws. In matters where an agency other than the Bureau has issued or obtained a final, public order concluding that a covered person has violated Federal consumer financial law, the Bureau also will generally have jurisdiction over the conduct that resulted in that order. Requiring registration of such orders will facilitate effective market monitoring by providing the Bureau a tool to identify and understand the nature of the risks to consumers presented by the conduct addressed in those orders, including the risk that the conduct might continue unabated outside of the particular jurisdiction that issued the order. For example, such information may inform the Bureau's supervisory or enforcement activities, as the Bureau may consider bringing its own action in connection with the same or related conduct. Or the conduct may be probative of a more systemic problem with one or more entities' overall willingness or capacity to comply with Federal consumer financial law across different product lines or aspects of their operations. Likewise, requiring registration of orders involving Federal consumer financial law will facilitate effective market monitoring by ensuring that the Bureau can quickly and effectively identify patterns of similar conduct across multiple nonbank covered persons. The identification of such patterns may indicate a problem that the Bureau could best address by engaging in rulemaking to clarify or expand available consumer protections to address emerging consumer risk trends. It may also prompt the Bureau to use other tools, such as consumer education, to address the identified risks.

Second, the Bureau is proposing to require registration of orders in connection with a violation of any other law as to which the Bureau may exercise enforcement authority, to the extent such violation arises out of conduct in connection with the offering or provision of a consumer financial product or service. The Bureau may enforce certain laws other than Federal consumer financial laws, as that term is defined in CFPA section 1002(14).[91] The Bureau believes that the proposed registry should collect information regarding orders issued under any law that the Bureau may enforce, where the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service. By definition, the conduct addressed in such orders will generally fall within the scope of the Bureau's enforcement authority. More generally, the Bureau believes that evidence of such conduct could be probative of a broader risk that the entity has engaged or will engage in conduct that may violate Federal consumer financial law. For example, violations of the Military Lending Act, as to which the Bureau has enforcement authority, may overlap with, or be closely associated with, violations of the CFPA's UDAAP prohibitions [92] or the Truth in Lending Act,[93] among other Federal consumer financial laws. In addition, in the Bureau's experience, a violation of one law within the Bureau's enforcement authority may be indicative of broader inadequacies in an entity's compliance systems that are resulting or could result in other legal violations, including violations of Federal consumer financial laws. Furthermore, including in the registry orders issued under any law that the Bureau may enforce (where the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service) would further the Bureau's objective of creating a registry that could serve as a single, consolidated reference tool for use in monitoring for risks to consumers, thereby increasing the Bureau's ability to use the registry to monitor for patterns of risky conduct of nonbank covered persons across entities, industries, and product offerings.

Third, the Bureau is proposing to require registration in connection with orders issued under the prohibition on unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45, or any rule or order issued for purpose of implementing that prohibition, to the extent that the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service. In matters where a government agency has reached a determination that an entity has violated section 5 of the FTC Act in connection with the offering or provision of a consumer financial product or service, the Bureau has reason to be concerned that the entity poses unusual risks to consumers in financial markets. For one thing, the conduct resulting in the order well might have violated Federal consumer financial law. CFPA section 1031, for example, authorizes the Bureau to take action ''to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.'' [94] And CFPA section 1036(a)(1)(B) provides that ''[i]t shall be unlawful'' for a covered person ''to engage in any unfair, deceptive, or abusive act or practice.'' [95] Congress modeled the CFPA's prohibition of unfair or deceptive acts or practices after the similar prohibition in section 5 of the FTC Act.[96] Therefore, violations of FTC Act section 5 in connection with the provision or offering of a consumer financial product or service is highly probative of a heightened risk that UDAAP violations subject to the Bureau's jurisdiction have occurred or are occurring.

Moreover, the high probative value of such orders is not simply a function of the likelihood that underlying conduct could violate Federal consumer financial law. The Bureau believes that, where an entity has engaged in conduct prohibited under FTC Act section 5 in connection with offering or providing a consumer financial product or service, there is a significant risk that upon

[90] *See also* the discussion of the definition of the term ''covered law'' in the section-by-section discussion of proposed § 1092.201(c) below.

[91] *See, e.g.,* 10 U.S.C. 987(f)(6) (authorizing Bureau enforcement of the Military Lending Act). As the Bureau has explained in a recent interpretive rule, it also has authority to supervise nonbanks subject to its supervision regarding risks to consumers arising from conduct that violates the Military Lending Act. *See* Bureau Interpretive Rule, Examinations for Risks to Active-Duty Servicemembers and Their Covered Dependents, 86 FR 32723 (June 23, 2021). In this proposed rulemaking, however, the Bureau does not need to rely on the authority described in that interpretive rule. Instead, to the extent that the Bureau's proposal would collect information regarding orders issued under laws described in proposed § 1092.201(c)(2) for the purpose of facilitating the Bureau's supervisory activities, the Bureau would do so because the Bureau believes such orders may be probative of a broader risk that an entity has engaged or will engage in conduct that may violate Federal consumer financial law.

[92] 15 U.S.C. 5531, 5536(a)(1)(B).

[93] 15 U.S.C. 1601 *et seq.*

[94] 12 U.S.C. 5531(a).

[95] 12 U.S.C. 5536(a)(1)(B).

[96] *See* 15 U.S.C. 45; *see also, e.g., Consumer Fin. Prot. Bureau* v. *ITT Educ. Servs., Inc.,* 219 F. Supp. 3d 878, 902–04 (S.D. Ind. 2015).

closer inspection of the entity's activities it has engaged in other acts or omissions that either violate Federal consumer financial law or otherwise present risks to consumers in the consumer financial markets. For example, inadequacies in compliance systems are not likely limited to a particular Federal or State consumer protection law, and compliance-system inadequacies that result in FTC Act section 5 violations indicate a heightened risk of similar inadequacies related to the prevention of violations of Federal consumer financial laws. And, as described above, a registry of orders is particularly useful because a core purpose of the Bureau's monitoring efforts is to analyze patterns of risky conduct across entities, industries, product offerings, and jurisdictions. Such patterns would help the Bureau identify risks to consumers that warrant further action, such as more monitoring, increased supervisory attention in the case of supervised persons, regulation, or consumer education.

Fourth, the Bureau proposes to require registration in connection with orders issued under State laws prohibiting unfair, deceptive, or abusive acts or practices that are identified in proposed appendix A of part 1092, to the extent that the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service. State UDAP/UDAAP laws are generally modeled after—or otherwise prohibit conduct similar to that prohibited by—FTC Act section 5 or CFPA sections 1031 and 1036(a)(1)(B).[97] Therefore, violations of State UDAP/UDAAP law in connection with the provision or offering of a consumer financial product or service are similarly highly probative of a heightened risk that UDAAP violations subject to the Bureau's jurisdiction have occurred or are occurring. In addition, violations of State UDAP/UDAAP law may be probative of the existence of violations of other laws within the Bureau's jurisdiction.[98]

Obtaining a better understanding of entities' compliance with State UDAP/UDAAP laws will assist the Bureau in the assessment and detection of risks for the same general reasons described with respect to alleged or found violations of FTC Act section 5—namely, that (i) conduct that violates State UDAP/UDAAP prohibitions commonly also violates laws under the Bureau's jurisdiction; and (ii) the Bureau believes that evidence of such conduct may be highly probative of a broader risk that the entity has engaged or will engage in similar conduct that may violate laws within the Bureau's jurisdiction, either as a result of a willingness to violate such laws or a lack of sufficient protections in place to prevent violations. Registration of State UDAP/UDAAP orders will facilitate effective market monitoring by ensuring that the Bureau can quickly and effectively identify patterns of risky conduct across entities, industries, consumer financial product or service offerings, and jurisdictions. The Bureau could then decide which Bureau functions are best suited to address the consumer risks raised by the orders.[99]

The Bureau seeks comment on its preliminary conclusion that these categories of public orders would assist with monitoring for risks to consumers in the offering or provision of consumer financial products and services, including any information regarding whether and how the categories of orders described in the proposal correlate with additional risk to consumers, or conversely, any information indicating that these types of orders are overinclusive and do not correlate with additional risk to consumers.

D. Why the Bureau Is Proposing To Require Supervised Nonbanks To Designate Attesting Executives and Submit Written Statements

The proposal would also require entities above a certain size that are subject to the Bureau's supervision and examination authority to annually submit a written statement signed by a designated attesting executive regarding each covered order to which they are subject. In the written statement, the attesting executive would (i) generally describe the steps that the executive has undertaken to review and oversee the entity's activities subject to the applicable covered order for the preceding calendar year, and (ii) attest whether, to the executive's knowledge, the entity during the preceding calendar year has identified any violations or other instances of noncompliance with any of the obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law. The proposed rule would further require that the entity designate as the attesting executive for each covered order its highest-ranking duly appointed senior executive officer (or, if the entity does not have any duly appointed officers, the highest-ranking individual charged with managerial or oversight responsibility for the entity) whose assigned duties include ensuring the entity's compliance with Federal consumer financial law, who has knowledge of the entity's systems and procedures for achieving compliance with the covered order, and who has control over the entity's efforts to comply with the covered order. The Bureau would publish the name and title of that executive in the proposed public registry.

The Bureau believes these requirements would serve two sets of distinct purposes relating to its exercise of its supervisory and examination authorities under CFPA section 1024.

First, the Bureau believes the proposed requirements that certain supervised entities (which are referred to in the proposed rule as ''supervised registered entities'') designate attesting executives and provide written statements would facilitate the Bureau's supervision efforts, including its efforts to assess compliance with the requirements of Federal consumer financial law, obtain information about supervised entities' activities and compliance systems or procedures, and detect and assess risks to consumers and to markets for consumer financial products and services.[100] As discussed, the existence of one or more covered orders involving a supervised registered entity already raises red flags regarding the entity's compliance with Federal consumer financial law and the overall risk posed by such entity to consumers in the offering or provision of consumer financial products and services. Submission of a written statement indicating an absence of good faith efforts to comply with the law or

[97] 15 U.S.C. 45; 12 U.S.C. 5531. *See, e.g.,* Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit, 81 FR 47781, 47783 (July 22, 2016) (''In the 1960s, States began passing their own consumer protection statutes modeled on the [Federal Trade Commission] Act to prohibit unfair and deceptive practices.'').

[98] To take just one example, UDAAP violations in connection with debt-collection efforts may also violate the Fair Debt Collection Practices Act's prohibition against unfair, deceptive, or abusive debt-collection practices. *See* 15 U.S.C. 1692d–1692f.

[99] For discussion of the proposal's requirements with respect to State laws amending or otherwise succeeding a law identified in appendix A, and rules or orders issued by State agencies for the purpose of implementing State UDAP/UDAAP laws, *see* the section-by-section discussion of proposed § 1092.201(c) below.

[100] *See* 12 U.S.C. 5514(b)(1), (7)(A)–(B). As explained in the ''legal authority'' section, 12 U.S.C. 5514(b)(7)(A) authorizes the Bureau to prescribe rules to facilitate Bureau supervision and the assessment and detection of risks to consumers, and 12 U.S.C. 5514(b)(7)(B) authorizes the Bureau to require supervised registered entities to ''generate''—*i.e.,* create—reports regarding their activities (including the proposed written statements) and then ''provide'' them to the Bureau.

identifying problematic instances of noncompliance with reported orders would provide the Bureau with important additional information regarding risks to consumers that may be associated with the orders. Such orders frequently contain provisions aimed at ensuring an entity's future legal compliance, such as reporting requirements, recordkeeping requirements, and provisions requiring the entity to obtain the issuing agency's nonobjection before adopting or amending relevant policies and procedures. An entity's sustained compliance with such provisions may mitigate the continuing risks to consumers presented by the entity and thus reduce the potential need for current supervisory activities. By contrast, an entity's noncompliance with the terms of an order may indicate a heightened need for current supervisory activities. And if an entity is committing significant or repeated violations of a covered order, or it is failing to take appropriate steps to address such violations and prevent their recurrence, that may indicate that the entity lacks the protocols and institutional commitment necessary to ensure compliance with legal obligations aimed at protecting consumers and ultimately with the Federal consumer financial laws. The Bureau believes that entities that fail to comply with orders enforcing the law may be at greater risk of violating one or more laws within the Bureau's jurisdiction. Submission of the proposed written statements would enable the Bureau to conduct additional supervisory reviews or to otherwise investigate the matter in order to identify any such violations and related risks.

As a result, the proposed written statements would be particularly relevant when prioritizing the Bureau's supervisory activities under CFPA section 1024(b). As discussed above at sections III and IV(B), CFPA section 1024(b)(2) requires that the Bureau exercise its authority under CFPA section 1024(a) in a manner designed to ensure that such exercise, with respect to persons described in section 1024(a), is based on the assessment by the Bureau of certain identified risks.[101] For the reasons discussed above, the proposed written statements would help inform the Bureau's risk-based prioritization of its supervisory program under CFPA section 1024(b)(2). The Bureau anticipates that the written statements would be particularly helpful in assessing, among other things, ''the risks to consumers created by the provision of . . . consumer financial products or services'' and ''the extent to which such institutions are subject to oversight by State authorities for consumer protection.'' [102]

The proposed written-statement requirement also would improve the Bureau's ability to conduct its supervisory and examination activities with respect to the supervised nonbank, when it does choose to exercise its supervisory authority. The Bureau exercises its supervisory authority with respect to supervised nonbanks for certain purposes, including assessing compliance with the requirements of Federal consumer financial law, obtaining information about the activities and compliance systems or procedures of supervised nonbanks, and detecting and assessing risks to consumers and markets for consumer financial products and services.[103] The Bureau expects a supervised nonbank's written statements as required under the proposal to provide important information relevant to all of these statutory purposes. As explained below, a supervised nonbank's failure to comply with a relevant order under a covered law could indicate that the entity more generally lacks the will or ability to comply with its legal obligations, including its obligations under Federal consumer financial law. Such noncompliance may also indicate that the entity generally lacks adequate compliance systems or procedures, which in turn would create risks to consumers and to the markets for consumer financial products and services that the entity participates in. Thus, in cases where the Bureau determines to exercise its supervisory authorities with respect to a supervised nonbank required to submit written statements under the proposal, the Bureau would expect those written statements to be of value in conducting its examination work. For example, the Bureau may use the written statements in determining what information to require from a supervised nonbank, in determining the content of supervisory communications and recommendations, or in making other decisions regarding the use of its supervisory authority.[104]

Second, the proposed written-statement requirements would help ensure that supervised registered entities ''are legitimate entities and are able to perform their obligations to consumers.'' [105] As discussed in section VII below, the Bureau believes that most supervised registered entities subject to covered orders endeavor in good faith to comply with consumer protection laws and, accordingly, have put in place some manner of systems and procedures to help achieve such compliance. But the Bureau also expects that other supervised registered entities will not take their legal obligations seriously, including their obligations under Federal consumer financial law.[106] The proposed written statement would provide information that would help the Bureau assess in which category a particular entity falls. If, after reviewing a written statement, the Bureau concludes that an entity is not working in good faith to comply with its legal obligations, that conclusion might provide grounds for prioritizing the entity for supervisory examinations to assess its compliance with Federal consumer financial law. The Bureau expects that the risk of such increased supervisory scrutiny will provide an incentive for some entities to improve their compliance efforts so that they can submit a written statement that is less likely to result in increased scrutiny from the Bureau. Thus, by making it more difficult to quietly disregard the law, the Bureau anticipates that the written-statement requirement would likely motivate at least a few supervised entities with substandard compliance practices to enhance their compliance efforts and comply with their legal obligations, including their obligations under Federal consumer financial law. The Bureau likewise believes that the proposed requirement to designate an attesting executive with knowledge of the entity's systems and procedures for achieving compliance with the covered order and with control over the efforts to comply with the covered order would likely provide an incentive to pay more attention to the entity's legal obligations.

[101] 12 U.S.C. 5514(a), (b)(2).

[102] 12 U.S.C. 5514(b)(2)(C)–(D). *See* additional discussion of the factors for risk-based supervisory prioritization in section IV(B) above.

[103] 12 U.S.C. 5514(b)(1).

[104] As explained below in the section-by-section discussion of proposed § 1092.203(e), the Bureau is proposing to require supervised registered entities to maintain records to support their written statements. That recordkeeping requirement will further facilitate the Bureau's supervisory and examination activities because it will ensure the availability of records for the Bureau to review regarding the matters addressed in the written statements.

[105] 12 U.S.C. 5514(b)(7)(C). As explained in the ''legal authority'' section above, 12 U.S.C. 5514(b)(7)(A), (B), and (C) provide independent sources of rulemaking authority.

[106] In several cases, the Bureau has found that entities have violated prior orders that the Bureau has issued or obtained. *See, e.g., Discover Bank,* CFPB No. 2020–BCFP–0026 (Dec. 22, 2020); *CFPB* v. *Encore Capital Grp.,* No. 20–cv–01750–GPC–KSC (S.D. Cal. Oct. 16, 2020); *Military Credit Servs., LLC,* CFPB No. 2016–CFPB–0029 (Dec. 20, 2016).

To be clear, the proposed rule would not establish any minimum procedures or otherwise specify the steps the attesting executive must take in order to review and oversee the supervised registered entity's activities. Nor would the proposal establish any minimum level of compliance management or expectation for compliance systems and procedures at such entities. However, as explained above, the Bureau expects that most supervised registered entities will be at least somewhat hesitant to repeatedly report the absence of good faith efforts to comply with covered orders. Also, the rule would require supervised registered entities to identify a central point of contact and responsibility regarding an entity's efforts to comply with a covered order.

The Bureau seeks comment on all aspects of the proposed written-statement requirement, including its preliminary findings that requiring supervised nonbanks to designate attesting executives and to submit certain written statements relating to compliance with reported orders will facilitate the Bureau's supervisory efforts and better ensure that supervised registered entities are legitimate entities and are able to perform their obligations to consumers. Among other things, the Bureau seeks comment on whether the proposed requirements would help ensure such entities are legitimate and are able to perform their obligations to consumers, and whether they would facilitate supervision of such entities and assessment and detection of risks to consumers. The Bureau also seeks comment on whether the proposed eligibility requirements regarding which individuals may be designated as attesting executives are too broad or too narrow. The Bureau also seeks comment on whether supervised registered entities should submit additional or different information to the Bureau.[107]

E. Why the Bureau Is Proposing To Publish the Information Collected Under the Proposed Registration Requirements

The Bureau is proposing to publish the information collected under the proposed registration requirements (except for the written statement submitted under § 1092.203, which would be treated as confidential supervisory information). While the orders that would be published under the proposal would already be public, they may not all be readily accessible in a comprehensive and collected manner, and some of the additional information submitted to the registry may not be readily available to the public. The Bureau is proposing to publish this information because it believes publication would provide benefits to the general public, other regulators, and to consumers, and would be consistent with Federal government efforts to make government data assets publicly available.[108] The Bureau has authority to publish the registration information under CFPA section 1022(c)(3)(B), which authorizes it to publish information obtained under section 1022 ''as is in the public interest,'' [109] and under CFPA section 1022(c)(7)(B), which authorizes the Bureau to ''publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.'' [110]

A variety of Federal regulators, including the prudential regulators, as well as State attorneys general and other State agencies, all have authority to issue orders to address legal violations in the provision or offering of consumer financial products or services. Consequently, similar conduct may be addressed through separate orders, by separate regulators, or across separate lines of business. Again, the orders that would be published under the proposal would already be public. But such orders, while public, are currently subject to distinct publication regimes. The distinct enforcement and publication regimes for the various agencies with authority over nonbank covered persons make it more difficult for the Bureau, consumers, and other interested parties to identify entities that engage in misconduct and repeatedly violate the law. The proposed rule would address that issue by creating such a single, consolidated registry of orders that enforce applicable law.

The Bureau recognizes that much public information about such orders already exists. The applicable Federal and State regulators generally each publish their own orders enforcing consumer financial law; thus, potential users may be able to access some of this information by means of the various websites and other databases maintained by individual agencies. Some information is also available to potential users through certain multiagency websites such as the Nationwide Multistate Licensing System & Registry (NMLS) owned and operated by the State Regulatory Registry LLC, which is owned and operated by the Conference of State Bank Supervisors. And still other information is published and maintained by private actors.

However, there appears to be limited collective information regarding all of the orders that have been issued by multiple regulators to particular entities across multiple product markets and geographic markets related to consumer financial products and services. To the Bureau's knowledge, there is currently no public government system at the Federal or State level for the collection of information about such orders across the entities subject to the Bureau's jurisdiction (though privately maintained databases may exist). No government agency appears to maintain a publicly available repository of such orders and other related information with respect to particular entities as they relate to consumer financial products and services. Furthermore, while certain State regulators publish certain public enforcement actions to the NMLS, such publication does not extend to all of the orders and all of the agencies that are addressed by the proposal, including orders issued by Federal agencies. It is also limited to only certain industry sectors. The Bureau believes that consumers would benefit from a registration system that is maintained by the Federal government for the purpose of providing comprehensive information regarding such orders, including copies of the orders.

The Bureau believes that there would be significant value in creating a single public repository of information related to public agency and court orders that impose obligations based on violations of consumer protection laws, and the nonbanks that are subject to them.[111] The Bureau believes that publication of certain data collected pursuant to this rule is in the public interest in a variety of ways. By improving public transparency, the Bureau intends to mitigate recidivism and more effectively deter unlawful behavior. Providing better tools to monitor repeat law violators and corporate recidivism is in the public interest. Researchers would be able to use published information to better understand the markets regulated by the Bureau and the participants in those markets, and their efforts may result in more thorough understanding and promote compliance with the law. Non-government entities would

[107] *See* additional discussion about other information that the Bureau might seek to collect in the section-by-section discussion of proposed § 1092.203(d) below.

[108] *See also* the discussion of these issues in the section-by-section discussion of proposed § 1092.204 below.

[109] 12 U.S.C. 5512(c)(3)(B).

[110] 12 U.S.C. 5512(c)(7)(B).

[111] *See also* the discussion of these issues in the section-by-section discussions of proposed §§ 1092.202(b) and 1092.204(a) below.

likewise be able to use published information in conducting their work and in identifying potential issues and risks affecting consumers in the markets for consumer financial protection and services. Industry could use the registry as a convenient source of information regarding regulator actions and trends across jurisdictions, helping industry actors to better understand legal risks and compliance obligations. Potential investors, contractual partners, financial firms, and others that are conducting due diligence on a registered nonbank would have a consolidated and updated source of accurate information regarding public orders. Establishing a source for reliable and public data on entity lawbreaking and recidivism will likely promote tracking and awareness of such matters by consumer groups, trade associations, firms conducting due diligence, the media, and other parties.

Government agencies—including, but not limited to, the Bureau—would also benefit from the proposed public registry. While the orders that would be published under the proposal would already be public, every Federal, State, and local agency with jurisdiction over a covered nonbank will benefit from access to a regularly maintained database providing up-to-date information on relevant public orders that have been issued against such entities. Such information will help agencies to detect risks to consumers, and to coordinate and maintain consistency with the Bureau and other agencies in their enforcement strategies and approaches. Agencies might use the published information to better identify registered nonbanks and determine their legal structure and organization, since the registry would require registered nonbanks to submit and maintain up-to-date identifying information, including legal name and principal place of business. The Bureau also believes that the publication of registration information and information regarding orders will assist other agencies in assessing the potential risks to consumers that may be posed by registered nonbanks and in making their own determinations regarding whether to conduct examinations or investigations, bring enforcement actions against nonbanks, or engage in other regulatory activities. For example, a State regulator attempting to improve its assessments of consumer risk trends among nonbank payday lenders in its State should be able to use the registry to identify what other regulators of the same or similar nonbank providers or products have recently identified in terms of such risks. In addition, the Bureau believes that many agencies would find the published information useful in making other determinations regarding the nonbanks registered under the proposal. For example, an agency may be able to use this information when making determinations regarding an application or license, or to ask relevant questions regarding the information that is published. Thus, the Bureau believes that, with access to a single, public registry of these orders, those similarly tasked with protecting consumers in the markets for consumer financial products and services would obtain many of the same powerful market monitoring benefits that the Bureau anticipates obtaining from this rule.

In developing the proposal, the Bureau considered whether it might be better to use confidential channels, or perhaps a private electronic portal, to exchange this information with other government agencies. However, the Bureau believes that such an approach would be impractical. Not every agency that would be able to use the information would be aware of the need to request access to the information from the Bureau or would necessarily be able to expend the resources to maintain access. The Bureau would need to expend its own resources to establish and maintain such channels. And the Bureau believes that such a system would not achieve the benefits of disclosure to consumers and the public discussed in this section. Publication also would formally align the proposed registration system with Federal government standards calling for publishing information online as open data.[112]

Consumers may also benefit from the collection and publication of the information collected by the system, including information about orders that are already public. The Bureau believes that, at least in certain cases, publishing information about the entity and its applicable orders in a public registry would potentially help certain consumers make informed decisions regarding their choice of consumer financial products or services. As discussed at section VII below regarding the Bureau's analysis of this proposal under CFPA section 1022(b),[113] the Bureau does not necessarily expect a wide group of consumers to rely routinely on the proposed registry when selecting consumer financial products or services. However, the Bureau believes that the registry would benefit certain consumers if the information in the registry is recirculated, compiled, or analyzed by other users such as consumer advocacy organizations, researchers, or the media. For example, media outlets could use the registry to report which entities have the most government orders enforcing the law against them, which could inform consumers about the most egregious repeat offenders.

The proposed registry may also facilitate private enforcement of the Federal consumer financial laws by consumers, to the extent those laws provide private rights of action, where consumers have been harmed by a registered nonbank. The information that would be published under the proposal might be useful in helping consumers understand the identity of a company that has offered or provided a particular consumer financial product or service, and in determining whether to file suit or otherwise make choices regarding how to assert their legal rights. And availability of this information may lead consumers and other persons to report to the Bureau instances of similar conduct for the Bureau to investigate.

Under the proposal, the Bureau would not publish the written statement submitted by a supervised registered entity but would instead treat the written statement as Bureau confidential supervisory information subject to the provisions of its rule on the disclosure of records and information at 12 CFR part 1070. The Bureau does propose to publish the name and title of the attesting executive(s) submitted by the supervised registered entity. The Bureau proposes to disclose this name and title information because it believes publication of this information would be in the public interest—namely, it would help ensure accountability at the entity for noncompliance. The Bureau believes that the publication of the executive's name and title would provide an incentive to pay more attention to covered orders. The Bureau believes that designating an executive as ultimately accountable for ensuring compliance with a covered order will prompt the executive to focus greater attention on ensuring the entity's compliance, and in turn increase the likelihood of compliance. The Bureau believes that publication of this designation will increase the likelihood of these effects. Publication of the designation will identify for other regulators (and the general public) the person at the supervised registered entity who is ultimately responsible for compliance with the covered order, as

[112] *See, e.g.,* Open, Public, Electronic, and Necessary Government Data Act, in title II of Public Law No. 115–435 (Jan. 14, 2019).

[113] 12 U.S.C. 5512(b).

well as more general efforts to comply with Federal consumer financial law. Just as the possibility of Bureau scrutiny of the attesting executive's conduct is likely to motivate the executive to devote greater attention to compliance efforts, the additional scrutiny from others outside the Bureau will further promote compliance. Publishing the attesting executive's name and title thus dovetails with the supervisory goals discussed above in section IV(D).

The Bureau also believes that publishing the name and title of the executive who has knowledge and control of the supervised entity's efforts to comply with the covered order would benefit users of the system in other ways. Such information would enable employee whistleblowers, or other consumers who have knowledge and information about violations of the applicable order, to ensure that such information gets to the person who is in charge of such compliance. The Bureau also believes that the public would benefit from understanding the names and titles of the highest-ranking executive who is responsible for compliance with a public order enforcing the law, as this information could help consumers better understand and monitor the conduct of the entities with whom they do business. It would also inform consumers of a person to whom they could direct escalated complaints. Other regulators, especially those that have issued covered orders regarding the supervised entity, would likely benefit from understanding which executive(s) have been tasked with ensuring compliance with their orders. Finally, disclosure of this information would increase transparency regarding how the Bureau processes and verifies information submitted as part of the registration system. The Bureau requests comment on this provision, including whether this requirement would assist users of the NBR system and whether it would unduly interfere with the privacy interests of the attesting executive or other interests of the supervised registered entity.

The Bureau seeks comment on the proposed publication requirements and the above-stated rationales for them. Among other things, the Bureau seeks information on the current state of published information in existing systems or databases about the types of orders addressed in this proposed rule. The Bureau also seeks comment on whether the Bureau should publish less information in the proposed registry, or retain discretion to do so, and whether publication of the names and titles of attesting executives will have the desired effects.

V. Section-by-Section Analysis

Part 1092

Subpart A—General

Section 1092.100 Authority and Purpose

100(a) Authority

Proposed § 1092.100(a) would set forth the legal authority for proposed 12 CFR part 1092, including all subparts. Proposed § 1092.100 would refer to CFPA section 1022(b) and (c) and section 1024(b),[114] which are discussed in section III of the proposal above.

100(b) Purpose

Proposed § 1092.100(b) would explain that the purpose of part 1092 is to prescribe rules regarding NBR requirements, to prescribe rules concerning the collection of information from registered entities, and to provide for public release of that information as appropriate.

Section 1092.101 General Definitions

Proposed § 1092.101 would define terms that are utilized elsewhere in proposed part 1092 of the rules. Proposed § 1092.101(a) would define the terms ''affiliate,'' ''consumer,'' ''consumer financial product or service,'' ''covered person,'' ''Federal consumer financial law,'' ''insured credit union,'' ''person,'' ''related person,'' ''service provider,'' and ''State'' as having the meanings set forth in the CFPA, 12 U.S.C. 5481. Some of these terms would be used only in subpart B.

Proposed § 1092.101(b) would define the term ''Bureau'' as a reference to the Consumer Financial Protection Bureau.

Proposed § 1092.101(c) would clarify that the terms ''include,'' ''includes,'' and ''including'' throughout part 1092 would denote non-exhaustive examples covered by the relevant provision.[115]

Proposed § 1092.101(d) would define the term ''nonbank registration system'' to mean the Bureau's electronic registration system identified and maintained by the Bureau for the purposes of part 1092. Proposed § 1092.101(e) would define the term ''nonbank registration system implementation date'' to mean, for a given requirement or subpart of part 1092, the date(s) determined by the Bureau to commence the operations of the NBR system in connection with that requirement or subpart. The Bureau seeks comment on how much time entities would need to comply with the requirements of part 1092 and to register with the NBR system. The Bureau currently anticipates that the NBR system implementation date with respect to subpart B would occur sometime after the effective date of the proposed rule, and no earlier than January 2024. The actual NBR system implementation date would depend upon the Bureau's ability to develop and launch the required technical systems that will support the submission and review of applicable filings, and on feedback provided by commenters regarding the time registrants would need to implement this part's requirements. The Bureau would provide advance public notice regarding the NBR system implementation date with respect to subpart B to enable entities subject to subpart B to prepare and submit timely filings to the NBR system.

Section 1092.102 Submission and Use of Registration Information

102(a) Filing Instructions

Proposed § 1092.102(a) would provide that the Bureau shall specify the form and manner for electronic filings and submissions to the NBR system that are required or made voluntarily under part 1092. The Bureau would issue specific guidance for filings and submissions. The Bureau anticipates that its filing instructions may, among other things, specify information that filers must submit to verify that they have authority to act on behalf of the entities for which they are purporting to register. The Bureau proposes to accept electronic filings and submissions to the NBR system only and does not propose to accept paper filings or submissions.

Proposed § 1092.102(a) also would state that the Bureau may provide for extensions of deadlines or time periods prescribed by the proposed rule for persons affected by declared disasters or other emergency situations. Such situations could include natural disasters such as hurricanes, fires, or pandemics, and also could include other emergency situations or undue hardships, including technical problems involving the NBR system. For example, the Bureau could defer deadlines during a presidentially declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or a presidentially declared pandemic-related national emergency under the National Emergencies Act (50 U.S.C. 1601 *et seq.*). The Bureau would issue guidance regarding such situations. The Bureau seeks comment on the types of

[114] 12 U.S.C. 5512(b), (c); 12 U.S.C. 5514(b).

[115] *See, e.g., Christopher* v. *SmithKline Beecham Corp.,* 567 U.S. 142, 162 (2012) (use of ''includes'' indicates that ''the examples enumerated in the text are intended to be illustrative, not exhaustive'').

situations that may arise in this context, and about appropriate mechanisms for addressing them.

102(b) Coordination or Combination of Systems

Proposed § 1092.102(b) would provide that in administering the NBR system, the Bureau may rely on information a person previously submitted to the NBR system under part 1092 and may coordinate or combine systems with State agencies as described in CFPA sections 1022(c)(7)(C) and 1024(b)(7)(D). Those statutory provisions provide that the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate. This proposed section would clarify that the Bureau may develop or rely on such systems as part of maintaining the NBR system and may also rely on previously submitted information. The Bureau seeks comment on the types of coordinated or combined systems that would be appropriate and the types of information that could be obtained from or provided to State agencies.

102(c) Bureau Use of Registration Information

Proposed § 1092.102(c) would provide that the Bureau may use the information submitted to the NBR system under this part to support its objectives and functions, including in determining when to exercise its authority under CFPA section 1024 to conduct examinations and when to exercise its enforcement powers under subtitle E of the CFPA.

The Bureau proposes to establish the NBR system under its registration and market-monitoring rulemaking authorities under CFPA section 1022(b)(1), (c)(1)–(4), and (c)(7), and under its supervisory rulemaking authorities under CFPA section 1024(b)(7)(A), (B), and (C). As discussed in greater detail elsewhere in this preamble, the Bureau intends to use the information submitted under the NBR system to monitor for risks to consumers in the offering or provision of consumer financial products or services, and to support all of its functions as appropriate, including its supervisory, rulemaking, enforcement, and other functions.

Proposed § 1092.102(c) also would provide that part 1092, and registration under that part, would not alter any applicable process whereby a person may dispute that it qualifies as a person subject to Bureau authority. For example, 12 CFR 1090.103 establishes a Bureau administrative process for assessing a person's status as a larger participant under CFPA section 1024(a)(1)(B) and 1024(a)(2) and 12 CFR part 1090. As specified in 12 CFR 1090.103(a), if a person receives a written communication from the Bureau initiating a supervisory activity pursuant to CFPA section 1024, such person may respond by asserting that the person does not meet the definition of a larger participant of a market covered by 12 CFR part 1090 within 45 days of the date of the communication. 12 CFR 1090.103 establishes a process for review and determination by a Bureau official regarding the person's larger participant status. 12 CFR 1090.103(c) provides that, in reaching that determination, the Bureau official shall review the person's affidavit and related information, as well as any other information the official deems relevant.

Under proposed § 1092.102(c), a person may submit such an assertion regarding the person's status as a larger participant under 12 CFR 1090.103 notwithstanding any registration or information submitted to the NBR system under part 1092, including any submission of identifying information or a written statement, or any designation of attesting executive(s) for purposes of proposed subpart B. Submission of such assertions regarding larger participant status to the Bureau under 12 CFR 1090.103, including the Bureau's processes regarding the treatment of such assertions and the effect of any determinations regarding the person's supervised status, would be governed by the provisions of 12 CFR part 1090. The Bureau may use the information provided to the NBR system in connection with making any determination regarding a person's supervised status under 12 CFR 1090.103, along with the affidavit submitted by the person and other information as provided in that section. However, the submission of information to the NBR system would not prevent a person from also submitting other information under 12 CFR 1090.103.

Section 1092.103 Severability

Proposed § 1092.103 would provide that the provisions of the proposed rule are separate and severable from one another, and that if any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect. This is a standard severability clause of the kind that is included in many regulations to clearly express agency intent about the course that is preferred if such events were to occur. The Bureau has carefully considered the requirements of the proposed rule, both individually and in their totality, including their potential costs and benefits to covered persons and consumers. In the event a court were to stay or invalidate one or more provisions of this rule as finalized, the Bureau would want the remaining portions of the rule as finalized to remain in full force and legal effect.

Subpart B—Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders

Section 1092.200 Scope and Purpose

200(a) Scope

Proposed § 1092.200(a) would describe the scope of proposed subpart B. Proposed subpart B would require nonbank covered persons that are subject to certain public agency and court orders enforcing the law to register with the Bureau and to submit copies of the orders to the Bureau and would describe the registration information the Bureau would make publicly available. It would also provide that proposed subpart B would require certain nonbank covered persons that are supervised by the Bureau to prepare and submit an annual written statement. The requirements regarding annual written statements are described in proposed § 1092.204. The Bureau solicits comment on this proposed statement of scope.

200(b) Purpose

Proposed § 1092.200(b) would explain that the purposes of the information collection requirements in proposed subpart B would be to support Bureau functions by monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services, pursuant to CFPA section 1022(c)(1); to prescribe rules regarding registration requirements applicable to nonbank covered persons, pursuant to CFPA section 1022(c)(7); and to facilitate the supervision of persons described in CFPA section 1024(a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers, and to assess and detect risks to consumers, pursuant to CFPA section 1024(b).[116] The Bureau solicits comment on this proposed statement of purpose.

Section 1092.201 Definitions

Proposed § 1092.201 would define terms used in proposed subpart B. These definitions would supplement the general definitions for the entirety of

[116] More detailed discussions of how the proposal would achieve these purposes are contained elsewhere in this preamble.

part 1092 that would be provided in proposed § 1092.101. The Bureau seeks comment on each of the definitions set forth in proposed subpart B and any suggested clarifications, modifications, or alternatives.

201(a) Administrative Information

Proposed § 1092.201(a) would define the term ''administrative information'' to mean contact information regarding persons subject to subpart B and other information submitted or collected to facilitate the administration of the NBR system. Administrative information would include information such as date and time stamps of submissions to the NBR system, contact information for nonbank personnel involved in making submissions, filer questions and other communications regarding submissions and submission procedures, reconciliation or correction of errors, information submitted under proposed §§ 1092.202(g) and 1092.203(f),[117] and other information that would be submitted or collected to facilitate the administration of the NBR system.

Proposed § 1092.204(a) would provide that the Bureau may determine not to publish such administrative information, as discussed below in the section-by-section discussion of proposed § 1092.204(a). The Bureau seeks comment whether any other information that might be collected through the NBR system should also be treated as administrative information.

201(b) Attesting Executive

Proposed § 1092.201(b) would define the term ''attesting executive'' to mean, with respect to any covered order regarding a supervised registered entity, the individual designated by the supervised registered entity to perform the supervised registered entity's duties with respect to the covered order under proposed § 1092.203. That section would require a supervised registered entity to designate as its ''attesting executive'' its highest-ranking duly appointed senior executive officer (or, if the supervised registered entity does not have any duly appointed officers, the highest-ranking individual charged with managerial or oversight responsibility for the supervised registered entity) whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, who has knowledge of the entity's systems and procedures for achieving compliance with the covered order, and who has control over the entity's efforts to comply with the covered order.

Below, in the section-by-section discussion of proposed § 1092.203, the Bureau proposes requirements regarding attesting executives.

201(c) Covered Law

Proposed § 1092.201(c) would define the term ''covered law'' to mean one of several types of laws, as described. The proposed term ''covered law'' would be central to defining which orders and portions of orders would be subject to the requirements of proposed subpart B. Proposed § 1092.201(e) would define the term covered order to include certain orders that impose certain obligations on a covered nonbank based on an alleged violation of a covered law. Thus, the proposed term ''covered law'' would help determine the application of proposed subpart B's registration requirements. The Bureau believes that requiring registration of covered nonbanks that are subject to covered orders issued under these laws would further the purposes of proposed subpart B.

Under the proposal, a law listed in proposed § 1092.201(c)(1) through (6) would qualify as a covered law only to the extent that the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service. The Bureau is interested in registering orders that relate to offering or providing consumer financial products or services. The Bureau recognizes that the laws listed in proposed § 1092.201(d)(1) through (6) may apply to a wide range of conduct not involving consumer financial products or services. While the Bureau believes that reporting on such violations could still be probative of risks to consumers in the markets for consumer financial products and services—as misconduct in one line of business is not necessarily cabined to that line of business—the Bureau believes that a more limited definition of covered law strikes the right balance between ensuring that the Bureau remains adequately informed of risks to consumers in the offering or provision of consumer financial products and services and minimizing the potential burden of the reporting requirements on nonbank covered persons. The Bureau seeks comment on whether this definition achieves this balance or should be modified to achieve it.

The proposal lists categories of laws that would constitute ''covered laws'' to the extent that the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service. For the reasons discussed above in section IV(C), the Bureau believes that orders issued under the types of covered laws described in the proposal are likely to be probative of risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

First, proposed § 1092.201(c) would define the term covered law to include a Federal consumer financial law, as that term is defined in proposed § 1092.101(a) and the CFPA.[118] The Bureau is charged with administering, interpreting, and enforcing the Federal consumer financial laws, which include the CFPA itself, 18 enumerated consumer laws (such as the Fair Credit Reporting Act and the Truth in Lending Act),[119] and the laws for which authorities were transferred to the Bureau under subtitles F and H of the CFPA, as well as rules and orders issued by the Bureau under any of these laws.[120]

The Bureau believes that requiring registration of covered nonbanks in connection with certain orders issued under Federal consumer financial laws will further the purposes of proposed subpart B. As discussed in section IV, ''to support [the Bureau's] rulemaking and other functions,'' Congress mandated that the Bureau ''shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.'' [121] In matters where an agency other than the Bureau has issued or obtained a final, public order concluding that an entity has violated Federal consumer financial law in connection with the offering or provision of a consumer financial product or service, the Bureau will generally have jurisdiction over the conduct that resulted in that order. The Bureau therefore has a clear interest in identifying and understanding the nature of the risks to consumers presented by such conduct, including the risk that the conduct continues outside the particular jurisdiction or in connection with other consumer financial products or services that are offered or provided by the covered nonbank. A pattern of similar alleged or found violations of Federal consumer financial law across multiple nonbank covered persons may indicate a problem

[117] *See* discussion in the section-by-section discussion of these provisions below.

[118] *See* 12 U.S.C. 5481(14).

[119] *See* 12 U.S.C. 5481(12).

[120] 12 U.S.C. 5481(14).

[121] 12 U.S.C. 5512(c)(1).

that the Bureau can best address by engaging in rulemaking to clarify or expand available consumer protection to address emerging consumer risk trends, or by using other tools, such as consumer education, to address the identified risks. And, depending on the facts and circumstances, the Bureau may consider bringing its own supervisory or enforcement action in connection with the same or related conduct.[122] Thus, the Bureau believes that violations of the Federal consumer financial laws, and especially repeat violations of such laws, may be probative of risks to consumers and may indicate more systemic problems at an entity or in the relevant market related to offering or provision of consumer financial products or services.

The Bureau seeks comment on including Federal consumer financial laws in the definition of ''covered law'' and whether it should consider any related inclusions, exclusions, or conditions relating to Federal consumer financial laws.

Second, proposed § 1092.201(c)(2) would define the term ''covered law'' to include any other law as to which the Bureau may exercise enforcement authority. As explained above in section IV(C), the Bureau may enforce certain laws other than Federal consumer financial laws, such as the Military Lending Act.[123] The Bureau believes that the proposed registry should collect information regarding agency and court orders issued under any law that the Bureau may enforce, where the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service. By definition, the conduct addressed in such orders will generally fall within the scope of the Bureau's enforcement authority. More generally, in the Bureau's experience, evidence of such conduct could be highly probative of a broader risk that the entity has engaged or will engage in conduct that may violate Federal consumer financial laws. For example, violations of the Military Lending Act may overlap with, or be closely associated with, violations of the CFPA's UDAAP prohibitions[124] or the Truth in Lending Act,[125] among other Federal consumer financial laws. In addition, in the Bureau's experience, a violation of one law within the Bureau's enforcement authority may be indicative of broader inadequacies in an entity's compliance systems that are resulting in or could result in other legal violations, including violations of Federal consumer financial laws. Furthermore, including in the registry orders issued under any law that the Bureau may enforce (where the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service) would further the Bureau's objective of creating a registry that could serve as a single, consolidated reference tool for use in monitoring for risks to consumers, thereby increasing the Bureau's ability to use the registry to monitor for patterns of risky conduct of nonbank covered persons across entities, industries, and product offerings.

The Bureau seeks comment on whether it should include the laws described in proposed § 1092.201(c)(2) in the definition of ''covered law.'' The Bureau also seeks comment on whether it should consider any exclusions from, or revisions to, the description of the laws captured by proposed § 1092.201(c)(2).

Third, proposed § 1092.201(c)(3) would define the term ''covered law'' to include the prohibition of unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45, or any rule or order issued for the purpose of implementing that prohibition. The proposal would *not* include within the definition of ''covered law'' FTC Act section 5's prohibition of ''[u]nfair methods of competition in or affecting commerce,'' or rules or orders issued solely pursuant to that prohibition.[126] The Bureau expects that entities would be aware in any specific case whether a provision of an applicable order has been issued under FTC Act section 5's prohibition of unfair or deceptive acts or practices (or a rule or order issued for the purpose of implementing that prohibition), as opposed to section 5's prohibition of ''[u]nfair methods of competition in or affecting commerce'' (or a rule or order issued thereunder), and thus whether the order provision was issued under a ''covered law'' or not. The Bureau understands that orders issued in connection with violations of FTC Act section 5 routinely distinguish between these two authorities, and that orders issued under FTC Act section 5's prohibition of ''[u]nfair methods of competition in or affecting commerce'' rarely, if ever, relate to UDAP violations involving the offering or provision of a consumer financial product or service. The Bureau requests comment on whether the proposal should also require registration of orders issued under FTC Act section 5's prohibition of ''[u]nfair methods of competition in or affecting commerce,'' or rules or orders issued pursuant to that prohibition. The Bureau also seeks comment on whether the proposal should include measures to clarify any matters relating to this proposed distinction between types of FTC Act section 5 order provisions.

As discussed further in section IV(C) above, the Bureau believes that an order issued under FTC Act section 5's prohibition of unfair or deceptive acts or practices may be probative of violations of Federal consumer financial law, including CFPA sections 1031 and 1036(a)(1)(B).[127] Because the CFPA's prohibition of unfair or deceptive acts or practices is modeled after FTC Act section 5's similar prohibition,[128] conduct that constitutes a UDAP violation under FTC Act section 5 also likely violates the CFPA's UDAAP provisions. The Bureau also believes that FTC Act section 5 unfairness and deception violations related to the offering or provision of consumer financial products or services may indicate more systemic problems at an entity that may impact the offering or provision of consumer financial products or services other than those issues specifically identified in the order. The Bureau would need to know about such findings so that it can assess whether the violation is indicative of a larger and potentially more systemic problem at the covered nonbank, or potentially throughout an entire market. And, as discussed, information about such violations would inform the Bureau's exercise of its various rulemaking, supervisory, enforcement, consumer education, and other functions.

''Covered law'' under the proposal would include not only FTC Act section 5, but also any rules or orders issued for the purpose of implementing FTC Act section 5's UDAP prohibition.[129]

[122] The Bureau is also proposing to require registration of orders that the Bureau has obtained or issued for violations of Federal consumer financial laws. While the Bureau is of course aware of such orders, collecting all orders for violations of covered laws—including those obtained or issued by the Bureau—within the proposed registry would benefit the Bureau, other regulators, and the general public by providing a single point of reference for such orders. The Bureau would also benefit from receiving the written statements required under proposed § 1092.203 with respect to orders it obtains or issues.

[123] 10 U.S.C. 987(f)(6) (authorizing Bureau enforcement of the Military Lending Act).

[124] 15 U.S.C. 5531, 5536(a)(1)(B).

[125] 15 U.S.C. 1601 *et seq.*

[126] 15 U.S.C. 45(a)(1).

[127] 12 U.S.C. 5531, 5536(a)(1)(B).

[128] *See, e.g., Consumer Fin. Prot. Bureau* v. *ITT Educ. Servs.,* 219 F. Supp. 3d at 902–04.

[129] In certain circumstances, the Bureau may enforce a rule prescribed under the FTC Act by the FTC with respect to an unfair or deceptive act or practice. *See* 12 U.S.C. 5581(b)(5)(B)(ii). Such an

Continued

Section 18 of the FTC Act, 15 U.S.C. 57a, authorizes the FTC to prescribe ''rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce'' within the meaning of FTC Act section 5(a)(1).[130] These FTC rules, which are known as ''trade regulation rules,'' would be covered laws under the proposed definition to the extent the conduct found or alleged to violate such rules relates to the offering or provision of a consumer financial product or service. Violations of these rules generally constitute violations of FTC Act section 5 itself.[131] And the Bureau believes that, like violations of FTC Act section 5 itself, violations of the rules issued under FTC Act section 5, where they arise out of conduct in connection with the offering or provision of consumer financial products or services, would likely be probative of risks to consumers and warrant attention by the Bureau.

The proposed definition of ''covered law'' would also include orders issued by the FTC itself under FTC Act section 5's UDAP prohibition, as well as by other agencies. The Bureau believes that violations of such orders present similar risks to consumers as those presented by violations of FTC Act section 5 and the rules issued thereunder. The Bureau seeks comment on including the prohibition on unfair or deceptive acts or practices under FTC Act section 5, and rules and orders issued for the purpose of implementing that prohibition, in the definition of ''covered law,'' and whether it should consider any related inclusions, exclusions, or conditions.

Fourth, proposed § 1092.201(c)(4) would define the term ''covered law'' to include a State law prohibiting unfair, deceptive, or abusive acts or practices that is identified in appendix A of part 1092. Proposed appendix A provides a list of State statutes that prohibit unfair, deceptive, or abusive acts or practices and that the Bureau has reviewed and proposes to define as a covered law under this provision. As with the other laws described in proposed § 1092.201(c), a State UDAAP law would only qualify as a covered law to the extent the conduct found or alleged to violate the State UDAAP law relates to the offering or provision of a consumer financial product or service. The Bureau has reviewed the State statutes identified in proposed appendix A and as explained below, it believes that requiring registration of covered nonbanks that are subject to covered orders issued under such statutes would likely further the purposes of proposed subpart B.

Proposed appendix A includes State laws of general applicability that prohibit unfair, deceptive, or abusive acts or practices and that might apply to the offering or provision of consumer financial products or services. Although the scope and content of these State laws may vary at the margin, the Bureau believes these statutes cover a core concept of unfairness, deception, or abusiveness that makes violations of them likely probative of risks to consumers in the offering or provision of consumer financial products and services. These statutes may commonly be referred to as ''UDAP'' or ''UDAAP'' statutes, or ''little FTC Acts,'' and are often labeled in State statutes as State ''consumer protection acts'' or as laws addressing ''unfair'' or ''deceptive'' ''trade practices.'' State or local agencies may use these statutes to bring cases or actions with respect to practices that injure consumers. While these State statutes may also authorize private suits by consumers and other persons, the proposal would only require registration with respect to covered orders issued at least in part in any action or proceeding brought by any Federal agency, State agency, or local agency (as described further below in the section-by-section discussion of proposed § 1092.201(e)(2)).

The Bureau is proposing to list these statutes in appendix A, and thus to include them in the proposed rule's definition of covered law, in part because those statutes are generally analogous to CFPA sections 1031 and 1036(a)(1)(B) and FTC Act section 5.[132] Several of these State statutes specifically provide that ''it is the intent of the legislature that in construing [the State statute], the courts will be guided by the interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act,'' or words to this effect.[133] Obtaining a better understanding of entities' compliance with State UDAP/UDAAP laws will assist the Bureau in the assessment and detection of risks for the same general reasons described with respect to alleged or found violations of FTC Act section 5. The Bureau believes that entities that have violated one of these State statutes, and especially repeat violators of such statutes, may pose heightened risks to consumers in the offering or provision of consumer financial products and services, including the risk that they have engaged, and may continue to engage, in unfair, deceptive, or abusive acts and practices in violation of CFPA section 1031. And information identifying patterns of such risky conduct across entities, industries, product offerings, or jurisdictions would be highly informative to the Bureau's monitoring work. The Bureau has attempted to identify all of the applicable State UDAP/UDAAP statutes of general applicability in appendix A, but requests comment on whether it has comprehensively done so. The Bureau proposes to include in appendix A all such State statutes and seeks comment on any additions, subtractions, or modifications to the State UDAP/UDAAP statutes of general applicability in appendix A.

The Bureau is also proposing to include in appendix A, and thus to include in the definition of the term covered law, certain other industry-specific State statutes that prevent unfair, deceptive, or abusive conduct in connection with certain specific consumer financial industries or markets. For example, proposed appendix A would include New York Banking Law section 719(2), regarding prohibited practices by student loan servicers. This State statutory provision prohibits ''[e]ngag[ing] in any unfair, deceptive or predatory act or practice toward any person or misrepresent[ing] or omit[ting] any material information in connection with the servicing of a student loan.'' [134] The Bureau is proposing to include this New York State law and others like it in appendix A, to the extent that the conduct found or alleged to violate such law relates to the offering or provision of a consumer financial product or service.

As with State UDAP/UDAAP laws of general applicability, the Bureau believes that violation of such industry-specific State statutes that prohibit unfair, deceptive, or abusive acts or practices in connection with consumer financial industries or markets and in connection with the offering or provision of consumer financial products or services would be probative of potential violations of CFPA sections 1031 and 1036, and also of other related risks to consumers within the scope of

FTC rule, where issued by the FTC to implement FTC Act section 5, would be a covered law under the proposed definition.

[130] 15 U.S.C. 57a(a)(1)(B).

[131] 15 U.S.C. 57a(d)(3) (''When any rule under subsection (a)(1)(B) takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 45(a)(1) of this title, unless the Commission otherwise expressly provides in such rule.'').

[132] 12 U.S.C. 5531, 5536(a)(1)(B); 15 U.S.C. 45.

[133] *E.g.,* Mass. Gen. Laws ch. 93A, sec. 2(b); Conn. Gen. Stat. sec. 42–110b(b).

[134] New York Banking Law sec. 719(2).

the Bureau's jurisdiction. The Bureau believes that omitting these industry-specific statutes from the definition of ''covered law'' may cause the information submitted to the proposed registry to be incomplete. Among other things, the Bureau understands that many State agencies typically rely upon such industry-specific statutes to enforce prohibitions on conduct by covered nonbanks that is similar to that prohibited under UDAP/UDAAP laws of general applicability. Thus, the Bureau believes registration of orders issued under such State statutes would provide information that is probative of the types of risks the Bureau believes to be associated with orders issued under State UDAP/UDAAP laws of general applicability. The Bureau has attempted to identify applicable State UDAP/UDAAP statutes related to applicable consumer financial industries or markets in appendix A, but requests comment on whether it has comprehensively done so. The Bureau proposes to include in appendix A all such State statutes.

The Bureau proposes to require registration of all orders issued under State laws listed in appendix A, as long as the conduct at issue relates to the offering or provision of a consumer financial product or service, and the order satisfies the definition of ''covered order'' in proposed § 1092.201(e). The Bureau recognizes that some State UDAP/UDAAP statutes listed in appendix A may prohibit conduct that regulated entities might argue is not prohibited under CFPA sections 1031 and 1036(a)(1)(B). For example, State UDAP/UDAAP statutes modeled after FTC Act section 5 may include provisions that, in addition to prohibiting ''unfair'' and ''deceptive'' conduct, also prohibit ''unfair methods of competition'' in connection with antitrust or anticompetition matters. While it is possible that such orders *might* be less probative than other orders, the Bureau believes that limiting the scope of such covered laws to those involving the offering or provision of consumer financial products and services sufficiently assures that most orders reported will be valuable in effectively monitoring for risks to consumers in the offering or the provision of such products and services. Moreover, the Bureau anticipates that it will not always be the case that an agency or court order will clearly distinguish whether it is issued under State statutory provisions preventing ''unfair,'' ''deceptive,'' or ''abusive'' acts and practices on the one hand, or ''anticompetitive'' acts or practices on the other—especially in cases where a State statute addresses all of them. Unlike orders issued under FTC Act section 5, it is not clear to the Bureau that orders issued under such State laws routinely distinguish between these two types of authorities. Therefore, attempting to carve out portions of State UDAP/UDAAP statutes that extend beyond the conduct prohibited by CFPA sections 1031 and 1036(a)(1)(B) would be impracticable and risk undermining the effectiveness of the rule. The Bureau thus proposes to define the term ''covered law'' by listing specific State statutes. Where a State statute is listed in appendix A and otherwise satisfies proposed § 1092.201(c), the Bureau would propose to treat it as a covered law, regardless of whether any specific order issued under that law expressly refers to the State law's prohibition of ''unfair,'' ''deceptive,'' or ''abusive'' acts and practices. In most cases, the Bureau anticipates that violations of the listed State statutes that relate to the offering or provision of a consumer financial product or service will be probative of risks to consumers within the Bureau's jurisdiction. The Bureau seeks comment on this approach, including whether it should further clarify the definition of covered law in this regard, and whether the proposed list at proposed appendix A adequately identifies such State laws.

The Bureau also seeks specific comment on whether to require registration, and to list in appendix A, additional State statutes that prohibit ''unconscionable'' conduct but do not also contain a specific reference to ''unfair,'' ''deceptive,'' or ''abusive'' conduct.[135] While the Bureau has not included such State laws in appendix A, the Bureau believes that such prohibitions on unconscionable conduct often reach conduct that qualifies as a UDAAP violation subject to the Bureau's jurisdiction under CFPA sections 1031 and 1036(a)(1)(B).[136] Therefore, the Bureau seeks comment regarding whether requiring nonbank covered persons to report violations of such State unconscionability prohibitions, when they relate to the offering or provision of a consumer financial product or service, would significantly assist the Bureau in effectively monitoring for risks to consumers within the Bureau's jurisdiction, or facilitate the Bureau's exercise of its rulemaking and other authorities.

The Bureau has not included laws of tribal governments in appendix A. While the Bureau believes that many orders issued under such laws may be highly probative of risks to consumers and could assist the Bureau in carrying out its market monitoring obligations—as well as assist the Bureau in assembling an effective nonbank registry—the Bureau preliminarily concludes that considerations of administrative efficiency favor focusing on other orders. The Bureau, however, is continuing to consider whether to include tribal UDAP/UDAAP laws in appendix A. The Bureau seeks comment on whether tribal UDAP/UDAAP laws should be included among the list of ''covered laws,'' and if so, which specific tribal UDAP/UDAAP laws should be included in the list.

Fifth, proposed § 1092.201(c)(5) would include in the definition of the term ''covered law'' a State law amending or otherwise succeeding a law identified in appendix A, to the extent that such law is materially similar to its predecessor, and the conduct found or alleged to violate such law relates to the offering or provision of a consumer financial product or service.

The Bureau is proposing § 1092.201(c)(5) in order to clarify that appendix A is intended to capture certain future changes made by States to the State laws listed therein. States may make immaterial changes from time to time, including renumbering or amending the statutes listed in appendix A, in a manner that could cause proposed appendix A to become technically ''incorrect'' or ''obsolete'' in the view of some regulated entities. Proposed § 1092.201(c)(5) makes clear that is not the Bureau's intent. To the extent the amended or otherwise succeeding law is materially similar to its predecessor, proposed § 1092.201(c)(5) would ensure that it would still qualify as a ''covered law.'' The definition of covered law thus would capture a successor to a law listed in appendix A if, for example, the conduct found or alleged to violate the successor law would have constituted a violation of the predecessor law were it still in effect. The Bureau seeks comment on all aspects of proposed § 1092.201(c)(5), including whether the Bureau should define successor laws covered by appendix A more broadly or

[135] *See, e.g.,* Kan. Stat. Ann. sec. 50–627.

[136] *Compare, e.g.,* Kan. Stat. Ann. sec. 50–627(b)(1) (providing that, in determining whether an act or practice is unconscionable, a court shall consider whether ''[t]he supplier took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor''), *with* 12 U.S.C. 5531(d)(2)(B) (act or practice is abusive if, among other things, it ''takes unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service'').

narrowly than the approach adopted here, and whether regulated entities would benefit from any additional guidance in determining whether a successor law is materially similar to a predecessor law listed in appendix A.

Finally, proposed § 1092.201(c)(6) would include in the definition of the term ''covered law'' a rule or order issued by a State agency for the purpose of implementing a State law described in proposed § 1092.201(c)(4) or (5), to the extent the conduct found or alleged to violate such regulation relates to the offering or provision of a consumer financial product or service. Various State statutes authorize one or more State agencies to issue regulations implementing the terms of those statutes, thereby authorizing the State agency to further define specific unfair, deceptive, or abusive acts or practices.[137] Proposed § 1092.201(c)(6) would include such State agency regulations within the meaning of the term ''covered law.''

The Bureau seeks comment on all aspects of proposed section § 1092.201(c), including whether the types of covered laws proposed are appropriate, whether they may be either overinclusive or underinclusive in light of the Bureau's objectives in this rulemaking, and whether the definition of the term ''covered law'' may be clarified or strengthened to achieve the purposes of proposed subpart B.

201(d) Covered Nonbank

The proposal would define the term ''covered nonbank'' to mean a covered person [138] that does not fall into one of five categories. First, the Bureau proposes to exclude from the definition insured depository institutions, insured credit unions, or related persons. The Bureau has considered proposing to collect information about relevant orders in place against such persons under its authority to issue rules mandating collection of information set forth in CFPA section 1022(c)(4)(B)(ii). While the Bureau might at some point consider collecting or publishing the information described in the proposal from such persons, the Bureau believes that there is currently greater need to collect this information from the nonbanks under its jurisdiction. Among other things, the identity and size of all insured depository institutions and insured credit unions is known to the Bureau due to registration regimes maintained by the prudential regulators, which track and make public such information. Also, there are only four prudential regulators, and they regularly publish their consumer financial protection orders. In contrast, comprehensive, readily accessible information is currently lacking about the identity of, and orders issued against, nonbanks subject either to the Bureau's market monitoring authority or to its supervisory authority across the various markets for consumer financial products and services. As a result, there is a unique need to identify nonbanks subject to orders through this proposed registration system. In addition, the proposal would conform with the Bureau's registration authority under CFPA section 1022(c)(7), which states that the Bureau may impose registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.[139]

Second, the proposal would exclude from the definition of the term ''covered nonbank'' a ''State,'' as defined in CFPA section 1002(27)—a term that includes ''any federally recognized Indian tribe, as defined by the Secretary of the Interior'' under section 104(a) of the Federal Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5131(a).[140] The Bureau has other avenues of collaborating with State partners (including tribal partners) and, out of considerations of comity, does not seek to subject them to an information collection requirement in this proposal.

Third, the proposal excludes natural persons from the definition of ''covered nonbank.'' The Bureau is not proposing to impose subpart B's registration requirements on natural persons, even though natural persons may be covered persons and may be subject to the types of orders described in the proposal. (For example, a sole proprietor not incorporated as a legal entity could qualify as a covered person.) Under the proposed exclusion, for example, natural persons subject to orders issued under FTC Act section 5, removal and prohibition orders or orders assessing civil money penalties issued by an appropriate Federal banking agency under section 8 of the Federal Deposit Insurance Act,[141] or State licensing orders or orders issued under the S.A.F.E. Mortgage Licensing Act of 2008 [142] would not be subject to the proposal's registration requirements. The ''natural person'' exception in proposed § 1092.201(c)(3) is intended only to exclude individual human beings from the definition of ''covered nonbank.'' The definition of ''covered nonbank'' would include trusts and other entities that meet the definition of ''covered person'' under CFPA section 1002(6).[143] The Bureau is primarily interested in obtaining information regarding orders that apply to entities because it believes such orders will be most useful in identifying relevant risks to consumers. The Bureau believes that many of the agency and court orders enforcing the law issued against individuals are highly specific to the facts and circumstances relevant to the individual's conduct and are less likely to implicate broader risks to consumers and markets. In addition, the Bureau is primarily interested in obtaining and publishing registration information regarding nonbank entities that are subject to its jurisdiction, which among other things would enable consumers to better identify such entities and would provide information to the public and other regulators. The Bureau is concerned that, if the Bureau should extend the registration requirement to natural persons, the information provided would be less relevant to consumers and the other users of the NBR system. Therefore, the potential benefit of extending the registration requirement to natural persons likely would not justify the additional Bureau resources that would need to be allocated to implement and administer such an expansion of the Bureau's registration system. The Bureau also believes that proposed § 1092.203's requirements to designate one or more attesting executives and submit written statements would not be appropriate for natural persons. The Bureau requests comment on this proposed exclusion.

Fourth, the proposal excludes from the definition of ''covered nonbank'' a motor vehicle dealer that is predominantly engaged in the sale and

[137] *See, e.g.,* Cal. Fin. Code sec. 90009(c).

[138] As provided in proposed § 1092.101(a), the proposal would define the term ''covered person'' to have the same meaning as in 12 U.S.C. 5481(6). The proposal would not define ''service providers,'' as defined in 12 U.S.C. 5481(26), as covered nonbanks *per se.* Entities that are service providers, however, may nevertheless also be covered persons under the CFPA. Among other things, a person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service. *See* 12 U.S.C. 5481(26)(C). And a service provider that acts as a service provider to its covered person affiliate may itself be deemed to be a covered person as provided in 12 U.S.C. 5481(6)(B).

[139] An affiliate of an insured depository institution, insured credit union, or related person could be subject to the proposed rule if it is not itself an insured depository institution, insured credit union, or related person.

[140] 12 U.S.C. 5481(27).

[141] 12 U.S.C. 1818.

[142] 12 U.S.C. 5101 *et seq.*

[143] *See* 12 U.S.C. 5481(6). *See also* 12 U.S.C. 5481 (defining the term ''person'' to include, in addition to individuals, any ''partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity'').

servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, within the meaning of 12 U.S.C. 5519(a), except to the extent such a person engages in functions that are excepted from the application of 12 U.S.C. 5519(a) as described in 12 U.S.C. 5519(b). CFPA section 1029 provides an exclusion from the Bureau's rulemaking authority for certain motor vehicle dealers.[144] However, CFPA section 1029(b) exempts certain persons from this exclusion. Persons covered by section 1029(a) *would* qualify as ''covered nonbanks'' under the proposal so long as they engage in the functions described in section 1029(b)—in which case they would be ''covered nonbanks.'' Proposed § 1092.201(e), discussed below, would further provide that the only orders issued to such motor vehicle dealers that would require registration would be those issued in connection with the functions that are excepted from the application of 12 U.S.C. 5519(a) as described in 12 U.S.C. 5519(b).

Fifth, the proposal excludes a person from the definition of ''covered nonbank'' if the person qualifies as a covered person based solely on conduct that is the subject of, and that is not otherwise exempted from, an exclusion from the Bureau's rulemaking authority under 12 U.S.C. 5517.[145] This provision would clarify that persons whose activities are wholly excluded from the rulemaking authority of the Bureau under one or more of the provisions of section 1027 of the CFPA are not ''covered nonbanks.'' However, where the CFPA provides that any of the activities engaged in by such persons *are* subject to the Bureau's rulemaking authority, this limitation would not exclude the person from qualifying as a ''covered nonbank.'' For example, CFPA section 1027(*l*)(1) provides an exclusion from the Bureau's rulemaking authority for certain persons engaging in certain activities relating to charitable contributions.[146] Under the proposal, a covered person would not be deemed a ''covered person'' if it qualifies for this statutory exclusion and is not otherwise exempt from it. But CFPA section 1027(*l*)(2) exempts certain activities from this statutory exclusion by providing that ''the exclusion in [CFPA section 1027(*l*)(1)] does not apply to any activities not described in [CFPA section 1027(*l*)(1)] that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.'' [147] As proposed, persons described in CFPA section 1027(*l*)(1) engaging in the activities described therein *would* qualify as ''covered nonbanks'' so long as they engage in any of the activities described in CFPA section 1027(*l*)(2), and they would thus be subject to all of the information-collection requirements of the rule applicable to ''covered nonbanks,'' regardless of whether the applicable ''covered order'' addressed the conduct subject to the statutory exclusion.

The Bureau is also considering whether it should adopt an alternative approach that would limit all of the proposal's registration requirements to covered persons that are subject to the Bureau's supervision and examination authority under CFPA section 1024(a).[148] The Bureau believes this approach would significantly narrow the number of entities that would be required to register under proposed subpart B, and therefore would also limit the information provided to the NBR system. However, this alternative approach would nevertheless provide significant benefits to the Bureau and other users of the system. The Bureau would be able to use the information provided to identify risk to consumers, to prioritize its supervisory activities, and to support its other functions as described in this proposal. In addition, the Bureau has a particular interest in those supervised entities due to its exclusive Federal supervisory and enforcement authority, with certain exceptions as described in the CFPA.[149] The Bureau seeks comment on this alternative approach, including whether the proposed scope of the approach is appropriate and why or why not.

More generally, the Bureau seeks comment regarding the overall scope of the proposed definition of ''covered nonbank,'' including whether the definition should be expanded or limited in light of the purposes and objectives of subpart B. The Bureau further seeks comment on whether a more limited or expanded approach to the registration of covered persons would be appropriate instead of the proposed requirements, whether it should consider any other modifications to the scope of the rule, and how such modifications would match the Bureau's policy goals.

201(e) Covered Order

The Bureau proposes to add proposed § 1092.201(e) to define the term ''covered order.'' The proposal would define the term to include only orders that are both public and final. The term ''public'' is defined at proposed § 1092.201(k). The proposed term ''covered order'' is intended to cover only final settlement or consent orders, or final agency or court orders resulting from litigation or adjudicated agency proceedings. By ''final'' order, the proposal means to exclude such orders as preliminary injunctions, temporary restraining orders, orders partially granting and partially denying motions to dismiss or summary-judgment motions, and other interlocutory orders.[150] The proposed term would also exclude temporary cease-and-desist orders that come into effect pending the resolution of an underlying contested matter but would include a related final cease-and-desist or other order resolving the matter. The proposed term would also exclude notices of charges, accusations, or complaints that are part of disciplinary or enforcement proceedings but do not constitute a final order. The Bureau proposes to include orders that are final by their own terms or under applicable law, even where Federal, State, or local law allows for the appeal of such orders. Proposed § 1092.201(f), defining the term ''effective date,'' addresses situations where an order is subject to a stay following issuance. The Bureau seeks comment on whether the term ''final'' should be further defined in the regulatory text. The Bureau also seeks comment on whether certain types of non-final orders should be included in the proposed definition of ''covered order,'' or whether the Bureau should consider expressly excluding other types of orders.

The proposed definition includes orders issued by either an agency or a court. The proposal would clarify that the definition would include an otherwise covered order whether or not issued upon consent. Accordingly, ''covered orders'' may be issued upon consent or settlement. They may also be issued after the filing of a lawsuit or complaint and a process of litigation or adjudication. The proposed term would not include corporate resolutions adopted by an entity and not issued by an agency or court. Nor would the proposed term generally include licenses, including conditional licenses; but the term would include an order

[144] 12 U.S.C. 5519 (''Exclusion for Auto Dealers'').

[145] 12 U.S.C. 5517.

[146] 12 U.S.C. 5517(l)(1) (''Exclusion for Activities Relating to Charitable Contributions'').

[147] 12 U.S.C. 5517(*l*)(2).

[148] 12 U.S.C. 5514(a).

[149] *See* 12 U.S.C. 5514(c)(1), (d).

[150] *See, e.g., Gelboim* v. *Bank of Am. Corp.,* 574 U.S. 405, 408–09 (2015) (discussing the meaning of ''final decision'' under 28 U.S.C. 1291).

suspending, conditioning, or revoking a license based on a violation of law. Nor would the proposed term include related stipulations or consents, where those documents are not incorporated into or otherwise made part of the order. The Bureau seeks comment on whether certain types of orders should be categorically excluded from registration.

Proposed § 1092.201(e)(1) would also include, as a component of the definition of the term ''covered order'' for a given covered nonbank, a requirement that the order identify the covered nonbank by name as a party subject to the order. Thus, for example, orders that indirectly refer to a covered nonbank as an ''affiliate'' of a named party, but do not name the covered nonbank as itself a party subject to the order, would not be covered orders under proposed § 1092.201(e) with respect to the covered nonbank. Nor would orders that apply to a covered nonbank only as a ''successor and assign'' of a named party, where the order does not expressly identify the covered nonbank by name as a party subject to the order. The proposal would include in the definition a covered nonbank that is listed by name as a party somewhere within the body of the order, even if the covered nonbank is not listed in the order's title or caption. In other words, to fall within the proposed § 1092.201(e) definition, it would be sufficient that the order identifies the covered nonbank by name as a party subject to the order even if the covered nonbank is not listed in the title or caption of the order, or as the primary respondent, defendant, or subject of the order. A covered nonbank may satisfy the proposed definition even if the issuing agency or court does not list the covered nonbank as a party in related press releases or internet links. The Bureau seeks comment on the scope of proposed § 1092.201(e)(1)'s limitation of the definition of ''covered order,'' and whether proposed § 1092.201(e)(1) should also include affiliates, successors and assigns, or other methods of identifying entities subject to orders, even though they are not expressly named in the order.

Proposed § 1092.201(e)(2) would include, as a component of the definition of the term ''covered order,'' a requirement that the order have been issued at least in part in any action or proceeding brought by any Federal agency, State agency, or local agency. The Bureau believes that limiting the registration requirement to orders involving such agencies will provide sufficient information to support Bureau functions. This proposed requirement would include orders issued by the Bureau itself, the ''prudential regulators,'' as that term is defined at CFPA section 1002(24),[151] and any ''Executive agency,'' as that term is defined at 5 U.S.C. 105. The proposed requirement would also include orders issued by ''State agencies'' as defined at proposed § 1092.201(n) and ''local agencies'' as defined at proposed § 1092.201(i). An order issued by a local agency would satisfy this proposed requirement, but such an order would not satisfy the requirement set forth in proposed § 1092.201(e)(4) (described below) unless the order imposes the obligations described in proposed § 1092.201(e)(3) on the covered nonbank based on one or more violations of a covered law. While certain Federal and State laws are included in the § 1092.201(c) definition of the term covered law, local laws are not. The Bureau seeks comment on its use and descriptions of the terms ''Federal agency,'' ''State agency,'' and ''local agency'' and whether the Bureau should consider excluding any agencies as defined or, conversely, broadening these terms to include other relevant agencies or entities.

Proposed § 1092.201(e)(3) further would include, as a component of the definition of the term ''covered order,'' a requirement that the order contain public provisions that impose obligations on the covered nonbank to take certain actions or to refrain from taking certain actions. Such obligations may include, for example, injunctions or other obligations to cease and desist from violations of the law; to pay civil money penalties, refunds, restitution, disgorgement, or other money; to amend certain policies and procedures, including but not limited to instances where the order requires submission of the proposed amendments to policies and procedures for nonobjection; to maintain records or to provide them upon request; or to take or to refrain from taking other actions. An order suspending, conditioning, or revoking a license based on a violation of law would meet this requirement. An order that lacks any public provision imposing such an obligation on the covered nonbank would not meet the requirement in proposed § 1092.201(e)(3). An example of the type of orders that might not satisfy this requirement would be a declaratory judgment order finding that an entity has violated the law, but not imposing any remedial obligations. Other examples might include orders whose only public provisions are releases and general contractual terms frequently contained in consent orders, such as severability and counterpart signature provisions, but only to the extent these provisions do not impose any other obligations described by proposed § 1092.201(e)(3).

The proposed § 1092.201(e)(3) requirement would exclude order provisions that are not ''public'' as that term is defined in proposed § 1092.201(k). For example, obligations imposed by non-public provisions that constitute confidential supervisory information of another agency would not be considered when determining whether a particular order satisfies this proposed requirement. Proposed § 1092.201(e)(3) would also exclude orders that lack any public provision imposing an obligation on the covered nonbank to take certain actions or to refrain from taking certain actions. For example, an order that describes unlawful conduct but does not contain any such public provisions imposing obligations described at proposed § 1092.201(e)(3) would not satisfy this requirement. The Bureau proposes to exclude from the rule's information-collection requirements nonpublic orders and portions of orders in order to help protect the confidential processes of other agencies, including their supervisory processes. The Bureau is concerned that requiring registration of confidential supervisory information might interfere with the functions and missions of other agencies and does not believe that requiring such registration is necessary to accomplish the purposes of the proposed rule. To the extent that the Bureau has a need to review nonpublic orders or nonpublic portions of orders, it may seek access to relevant information through inter-agency information sharing that protects applicable privileges and confidentiality. In addition, as discussed below in the section-by-section discussion of proposed § 1092.201(k), the Bureau believes that publication of nonpublic information, including but not limited to confidential supervisory information of the Bureau or other agencies, would be inappropriate. The Bureau requests comment on its proposed exclusion from the registry of nonpublic orders and nonpublic portions of orders, including whether these provisions would sufficiently protect confidential information of other agencies, and whether covered nonbanks would have sufficient information to comply with these provisions.

Proposed § 1092.201(e)(4) would also include, as a component of the definition of the term covered order, a requirement that the order impose one

[151] 12 U.S.C. 5481(24).

or more of the obligations described in proposed § 1092.201(e)(3) on the covered nonbank based on an alleged violation of a covered law. A covered order need not include an admission of liability or any particular factual predicate. The Bureau anticipates that agency and court orders will vary widely in form and content, depending in part on such matters as the relevant individual laws being enforced, the historical practices of the various enforcement agencies, and the negotiations and facts and circumstances underlying specific orders. Because of these expected variations in form and content in the orders that the Bureau would expect to be registered under the proposal, the Bureau believes that requiring registration only of orders that contain an admission of liability, or a statement setting forth certain types of findings or other factual predicates underlying the order, would omit relevant orders. The Bureau believes that an order that contains neither an admission of liability nor a statement setting forth the factual predicate underlying the order may nevertheless be probative of risks to consumers of the type that the Bureau is obligated to monitor.

For purposes of this proposed definition, an obligation would be ''based on'' an alleged violation where the order identifies the covered law in question, asserts or otherwise indicates that the covered nonbank has violated it, and imposes the obligation on the covered nonbank at least in part as a result of the alleged violation.[152] This would include, for example, obligations imposed as ''fencing-in'' or injunctive relief, so long as those obligations were imposed at least in part as a result of the entity's violation of a covered law. This element of the definition would also be satisfied, for example, by any obligation imposed as part of other legal or equitable relief granted with respect to the violation, as well as by any obligation imposed in order to prevent, remedy, or otherwise address a violation of a covered law, or the conditions resulting from the violation. However, an order that does not identify a covered law as at least one of the legal bases for the obligations it imposes on a covered bank would not satisfy the requirement set forth at proposed § 1092.201(e)(4). An order may identify a covered law as a legal basis for the obligations imposed by referencing another document, such as a written opinion, stipulation, or complaint, that shows that a covered law served as the legal basis for the obligations imposed in the order. But the requirements of proposed § 1092.201(e)(4) would not be satisfied where the legal basis for the obligations imposed is specified only in extrinsic documents not referenced in the order at issue, such as a press release or blog post.

The Bureau seeks comment on whether the requirement articulated in proposed § 1092.201(e)(4) is appropriate, and whether it should be expanded or restricted. The Bureau also seeks comment on whether this requirement would exclude a material number of otherwise applicable orders from the scope of proposed subpart B or would exclude otherwise applicable orders because of a particular agency or court drafting practice.

The § 1092.201(e)(4) requirement would include an order issued by an agency exercising any powers conferred on such agency by applicable law to enforce a covered law, so long as the order imposes one or more of the obligations described in proposed § 1092.201(e)(4) on the covered nonbank based on an alleged violation of a covered law. For example, certain Federal agencies may issue an order predicated on violation of a Federal consumer financial law under the authority of another enabling enforcement or licensing statute. Among other examples, an appropriate Federal banking agency may issue orders in connection with certain violations of Federal consumer financial law under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), the Administrator of the National Credit Union Administration may issue such orders under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*), and the Securities and Exchange Commission may issue such orders under the Federal securities laws. Such an order issued in connection with violations of Federal consumer financial law would satisfy the requirement set forth in proposed § 1092.201(e)(4) in cases where the order imposes the obligations described in proposed § 1092.201(e)(3) on the covered nonbank based on one or more violations of Federal consumer financial law (or another covered law).

Other agencies also may rely upon their enforcement authorities under other laws in issuing orders in connection with violations of FTC Act section 5 (and rules and orders issued thereunder). For example, an appropriate Federal banking agency may issue orders in connection with violations of FTC Act section 5 by relying on its enforcement authorities under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818). Such an appropriate Federal banking agency order would satisfy the requirement set forth in proposed § 1092.201(e)(4) in cases where the order imposes the obligations described in proposed § 1092.201(e)(3) on the covered nonbank based on one or more violations of the prohibition on unfair or deceptive acts or practices under FTC Act section 5 (or a rule or order issued for the purpose of implementing that prohibition) or another covered law. The order would satisfy the requirement provided in proposed § 1092.201(e)(4) even though the FTC Act does not expressly authorize the federal banking agencies to enforce FTC Act section 5.

Similarly, an obligation is ''based on'' an alleged violation of a covered law where: (i) a State agency issues an order pursuant to certain State statutes that treat violations of Federal or State laws as violations of the State statute; [153] and (ii) the order (or, as discussed above, an extrinsic document referenced in the order) states that one or more violations of a covered law (*e.g.,* a Federal consumer financial law) served as the legal basis for imposing the obligations under such statute. In such cases, while the majority of these State laws do not themselves qualify as covered laws under proposed subpart B—and therefore are not captured in appendix A—the underlying law violation does so qualify. The Bureau believes including such instances is important, as it understands that State agencies sometimes issue orders in connection with violations of Federal consumer financial law relying on their authorities under these State licensing and other statutes that do not themselves satisfy the definition of covered law. Importantly, however, such an order would *not* meet the proposed definition of ''covered order'' unless the order itself (or, as discussed above, an extrinsic document referenced in the order) states that a covered law served as the legal basis for the obligations imposed in the order. A State order that relied upon such a statute, but that did not identify a covered law as the legal basis for the obligations imposed thereunder, would not satisfy the requirement set forth in proposed § 1092.201(e)(4).[154] Nor would an order

[152] An obligation imposed based on multiple violations, some of covered laws and some of other laws, would qualify as an ''obligation[ ] . . . based on an alleged violation of a covered law'' within the meaning of proposed § 1092.201(e)(4), even if the violations of the non-covered laws would themselves have sufficed to warrant the imposition of the obligation.

[153] *See, e.g.,* Wash. Rev. Code sec. 19.146.0201(11).

[154] The obligations imposed in an order issued or obtained by a State agency under a State law that

Continued

that imposed obligations solely based on violations of other laws, even laws that are analogous to covered laws but do not themselves qualify as covered laws under proposed subpart B. This requirement is intended to capture only orders that impose obligations based upon an agency's or court's determination that the applicable covered nonbank has actually violated the covered law itself.

The Bureau seeks comment on this aspect of the term ''covered order,'' including the interaction between covered laws and related statutes providing for administrative enforcement, and whether these definitions should be modified to serve the identified purposes of the proposed rule. The Bureau also seeks comment on whether there may be alternative methods of identifying whether obligations contained in an order are ''based on'' a violation of a covered law.

Under proposed § 1092.201(e)(5), the proposal would also define ''covered order'' to mean an order that has an effective date on or later than January 1, 2017. The Bureau believes that limiting the registration requirement to orders with more recent effective dates will provide sufficient information to support Bureau functions. Many orders issued by Federal, State, and local agencies do not have expiration dates or do not expire until after the passage of many years. While the Bureau believes that many earlier-in-time orders remain highly probative of ongoing risks to consumers and could assist the Bureau in carrying out its market monitoring obligations—as well as assist the Bureau in assembling an effective nonbank registry—the Bureau preliminarily concludes that considerations of administrative efficiency favor focusing on orders issued within approximately the first several years preceding any final rule. The Bureau seeks comment on this proposed approach.

Finally, proposed § 1092.201(e) would provide that the term ''covered order'' would not include an order issued to a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, within the meaning of CFPA section 1029(a),[155] except to the extent such order is in connection with the functions that are excepted from the application of CFPA section 1029(a) as described in CFPA section 1029(b).[156] This provision would exclude certain orders issued to motor vehicle dealers that are described in CFPA section 1029(a), and would incorporate the definitions provided at CFPA section 1029(f).[157] CFPA 1029(a) establishes a statutory exclusion from the Bureau's authority; CFPA section 1029(b) excepts certain functions of motor vehicle dealers from that exclusion.[158] An order that is issued to a motor vehicle dealer that relates to the functions described in section 1029(a)—that is, the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both—generally would not be a ''covered order'' under this proposed definition. However, if the order related at least in part to a function excepted from the application of CFPA section 1029(a) as described in CFPA section 1029(b), this limitation would not apply, and the order would qualify as a ''covered order.'' The functions described in 1029(b) include: ''provid[ing] consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property;'' ''operat[ing] a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source;'' and ''offer[ing] or provid[ing] a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' [159]

Whereas the Bureau is confident that orders issued to nonbank covered persons involving conduct that is the subject of a CFPA section 1027 exclusion generally will be probative of risks to consumers in connection with conduct by such person that is *not* excluded under section 1027, the Bureau is less certain that the same is true with respect to orders issued to persons identified in section CFPA section 1029(a) involving conduct beyond the functions described in section 1029(b). To be sure, orders issued solely in connection with section 1029(a) conduct may nevertheless reflect upon a motor vehicle dealer's compliance systems and procedures and otherwise indicate potential risk to consumers that the Bureau might address through its authority as provided in 1029(b). But the Bureau is less certain that this is generally the case, given the nature and scope of the section 1029(a) exclusion relative to its exemptions under 1029(b). Notwithstanding this limitation, the Bureau is proposing to collect information regarding orders that relate to the functions conducted by motor vehicle dealers that are within the Bureau's jurisdiction under section 1029(b). The Bureau seeks comment on this limitation in the proposed definition of ''covered order,'' including any reasons why orders issued to motor vehicle dealers should or should not be covered.

201(f) Effective Date

The proposal would define the term ''effective date'' to mean, in connection with a covered order, the effective date as identified in the covered order; however, if no other effective date is specified, then the date on which the covered order was issued would be treated as the effective date for purposes of subpart B. The Bureau anticipates that the effective date for many covered orders will be evident from the face of the order, and in nearly all cases should be relatively easy to identify. The Bureau seeks comment on whether this definition would be sufficient to identify effective dates for covered orders.

Proposed § 1092.201(f) would also provide that if the issuing agency or a court stays or otherwise suspends the effectiveness of the covered order, the effective date shall be delayed until such time as the stay or suspension of effectiveness is lifted. Thus, the registration obligations under proposed subpart B would also be delayed accordingly. The Bureau anticipates that such situations would be rare and seeks comment on whether this proposal would adequately address them.

201(g) Identifying Information

Proposed § 1092.201(g) would define the term ''identifying information.'' This term would describe the scope of identifying information a covered nonbank may be required to submit pursuant to proposed § 1092.202(c). Proposed § 1092.201(g) would limit this information to information that is already available to the covered nonbank, and which uniquely identifies the covered nonbank. As described in

incorporates Federal law may be ''based on'' an alleged violation of Federal consumer financial law under proposed § 1092.201(e)(4), even if the Federal consumer financial law itself does not expressly authorize that State agency to enforce it. So long as the State agency states that the relevant order provisions are based on one or more violations of the Federal consumer financial law, it would be a covered order under the proposed definition.

[155] 12 U.S.C. 5519(a).

[156] 12 U.S.C. 5519(b).

[157] 12 U.S.C. 5519(f).

[158] 12 U.S.C. 5519(a), (b).

[159] 12 U.S.C. 5519(b).

proposed § 1092.201(g), this information would include, to the extent already available to the covered nonbank, legal name, State of incorporation or organization, principal place of business address, and any unique identifiers issued by a government agency or standards organization. Examples of the latter identifiers that entities might be required to provide under proposed § 1092.202(c) would include an NMLS identifier, a Home Mortgage Disclosure Act (HMDA) Reporter's Identification Number, the Legal Entity Identifier (LEI) issued by a utility endorsed by the LEI Regulatory Oversight Committee or endorsed or otherwise governed by the Global LEI Foundation (GLEIF, or any successor of the GLEIF),[160] and a Federal Tax Identification number.

This information will help the Bureau identify covered nonbanks with specificity, including ensuring that the Bureau can identify covered nonbanks' submissions to other registries and databases where applicable, such as the NMLS, and HMDA submissions. Furthermore, upon publication, this information will facilitate the ability of consumers to identify covered persons that are registered with the Bureau. The proposal would not require the entity to obtain an identifier. Thus, for example, if the NBR system were to ask about a particular type of identifier and that type of identifier had not been assigned to the covered nonbank, then under the proposal, the covered nonbank would be able to indicate the identifier is not applicable. The Bureau seeks comment on these proposed types of identifying information, and other types of identifying information that the NBR system might collect and publish.

201(h) Insured Depository Institution

The proposal would define the term ''insured depository institution'' to have the same meaning as in 12 U.S.C. 5301(18)(A). Section 5301(18)(A), in turn, incorporates the meaning of ''insured depository institution'' provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.[161]

201(i) Local Agency

The proposal would define the term ''local agency'' to mean a regulatory or enforcement agency or authority of a county, city (whether general law or chartered), city and county, municipal corporation, district, or other political subdivision of a State, other than a State agency. The term would not include State agencies.

The Bureau proposes to require registration in connection with applicable orders issued or obtained by local agencies. The Bureau understands that local agencies do issue or obtain public orders under covered laws.[162] For the reasons described above with respect to orders issued by Federal and State agencies, the Bureau believes that such orders may indicate risk to consumers, and that obtaining information about these orders will support Bureau functions. The Bureau seeks comment on including local agency orders in the proposal and whether any aspects of local agency orders may require adjustments or tailoring of the registration requirements.

201(j) Order

The proposal would define the term ''order'' to include any written order or judgment issued by an agency or court in an investigation, matter, or proceeding. The term would include orders or judgments issued after trials or agency hearings. It would also include default judgments or orders issued after an entity fails to properly respond to charges or claims made against it. In addition, it would include orders or judgments issued to resolve matters without the need for further litigation, including stipulated or consent orders, decrees, or judgments, as well as settlements, multistate settlements, or assurances of discontinuances embodied in orders or judgments issued by agencies or courts. Furthermore, the term would include cease-and-desist orders and orders suspending, conditioning, or revoking a license based on a violation of law. The proposed definition would also include legally enforceable written agreements under sections 8 and 50 of the Federal Deposit Insurance Act[163] or any State counterparts. The Bureau seeks comment on this definition, including whether any of these types of orders do not merit registration, and whether any other types of orders should be included in the definition.

The proposed definition of the term ''order'' would include an order or judgment issued by one agency or a single order or judgment jointly issued by multiple agencies. However, where more than one agency issues a distinct order under its own authority, or a court issues distinct orders with respect to the different parties in connection with various actions or proceedings, even where the orders involve the same subject matter or laws, each order would be considered to be a separate order under the proposed definition. The Bureau seeks comment on whether additional detail would be useful in applying the proposed definition.

201(k) Public

The proposal would define the term ''public'' to mean, with respect to a covered order or any portion thereof, published by the issuing agency or court, or required by any provision of Federal or State law, rule, or order to be published by the issuing agency or court. The proposal would clarify that the term ''public'' does not include orders or portions of orders that constitute confidential supervisory information of any Federal or State agency.

The proposed term would include orders that are actually published by the issuing agency or court, as well as orders that are required by any provision of Federal or State law, rule, or order to be published by the issuing agency or court. For example, section 8(u) of the Federal Deposit Insurance Act[164] requires the publication of certain types of Federal banking agency orders. The proposed definition is intended to include those orders, as well as those required to be published by any other similar Federal or State law.

Under the proposal, an order would only be ''public'' if it has been released or disseminated (or is required to be released or disseminated) in a manner such that the order is accessible by the general public—for example, by posting the order on a publicly accessible website or by publishing it in a written format generally available to members of the public. The proposed term, however, would not include documents that are not made generally available but are disclosed to specific persons, such as in response to Federal or State Freedom of Information Act or open records law requests or as part of litigation discovery proceedings. Under the proposal, an order also would only qualify as ''public'' if it is published (or required to be published) ''by the issuing agency or court.'' Therefore, independent publication by a third party, such as publication that may occur in connection with a covered person's securities disclosures, would not make an order ''public'' within the

[160] *See* 12 CFR 1003.4(a)(1)(i)(A) (addressing LEIs).

[161] *See* 12 U.S.C. 1813(c)(2) (defining ''insured depository institution'' as ''any bank or savings association the deposits of which are insured by the [Federal Deposit Insurance] Corporation pursuant to this chapter'').

[162] *See, e.g.,* Cal. Bus. & Prof. Code sec. 17204 (authorizing enforcement of Cal. Bus. & Prof. Code sec. 17200 by certain county counsel and city attorneys).

[163] 12 U.S.C. 1818, 1831aa.

[164] 12 U.S.C. 1818(u).

meaning of the proposal.[165] The Bureau does not anticipate that requiring registration of orders disclosed only through such methods as freedom-of-information requests or securities disclosures would materially improve the quantity and quality of the information provided to the NBR system. To the contrary, the Bureau anticipates that third-party disclosures in the securities context, or pursuant to freedom-of-information requests, may sometimes fail to capture all significant aspects of an order. The Bureau is also concerned that if such types of disclosures were included in the final rule, subpart B's registration requirements might affect an entity's decisions regarding securities or litigation disclosures in a manner not intended by the Bureau.

The Bureau seeks comment as to whether the term ''public'' should also include other types of disclosures, in addition to those proposed.

The proposed term would exclude orders or portions of orders that constitute confidential supervisory information of any Federal or State agency. The Bureau is concerned that requiring registration and disclosure of confidential supervisory information might interfere with the functions and missions of other agencies and does not believe that requiring such registration and disclosure is necessary to accomplish the purposes of the proposed rule. Such agencies may rely on confidential communications with covered nonbanks in order to, for example, foster full cooperation between those institutions and their regulators and to protect those institutions and the public from harm that could result from the disclosure of agency concerns regarding the integrity and security of these institutions.[166] The proposed definition would therefore expressly exclude confidential supervisory information. Where an order is not clearly marked or otherwise designated by the regulator as confidential supervisory information, the Bureau would expect the entity to have confirmed the confidential supervisory information status of any order or portion of an order with its regulator before relying on that status in connection with subpart B's registration requirements.

201(l) Registered Entity

The proposal would define the term ''registered entity'' to mean any person registered or required to be registered under proposed subpart B. Entities that fail to comply with a requirement to register under proposed subpart B would nonetheless still be subject to all of the requirements applicable to registered entities under proposed subpart B. If such an entity would be a supervised registered entity, it would also be subject to the requirements applicable to a supervised registered entity under proposed subpart B.

201(m) Remain(s) In Effect

The proposal would define the terms ''remain in effect'' and ''remains in effect'' to mean, with respect to any covered order, that the covered nonbank remains subject to public provisions that impose obligations on the covered nonbank to take certain actions or to refrain from taking certain actions based on an alleged violation of a covered law.

Proposed § 1092.202(a) would use this proposed term in defining the scope of proposed section 202's registration requirement. Proposed § 1092.202(f) would use this proposed term in specifying when a covered nonbank would be required to submit a final filing to the NBR system and would be permitted to cease updating its registration information and filing written statements with respect to a covered order.

201(n) State Agency

The proposal would define the term ''State agency'' to mean the attorney general (or the equivalent thereof) of any State and any other State regulatory or enforcement agency or authority. The Bureau intends this definition to encompass all State government officials and regulators authorized to bring actions to enforce any covered law, including actions to enforce the CFPA's provisions or regulations issued under the CFPA pursuant to CFPA section 1042(a)(1).[167] The Bureau seeks comment regarding whether its proposed definition is sufficiently expansive to accomplish this objective. The term would also include regulatory or enforcement agencies of certain tribal governments that are included in the CFPA's definition of the term ''State.'' [168]

The Bureau also seeks comment on whether and to what extent (if any) the proposed definition should be limited.

201(o) Supervised Registered Entity

The proposal would define the term ''supervised registered entity'' to mean a registered entity that is subject to supervision and examination by the Bureau pursuant to CFPA section 1024(a),[169] with certain exceptions.[170] The CFPA authorizes the Bureau to require reports and conduct examinations of certain persons, as described in CFPA section 1024(a)(1)(A)–(E); the proposed term would refer to a registered entity that is subject to supervision and examination by the Bureau pursuant to any of those provisions.[171]

For purposes of proposed § 1092.201(o), the proposal would clarify that the term ''subject to supervision and examination by the Bureau pursuant to CFPA section 1024(a)'' would include an entity that qualifies as a larger participant of a market for consumer financial products or services under any rule issued by the Bureau pursuant to CFPA section 1024(a)(1)(B) and (a)(2) (providing Bureau supervisory authority over larger participants in certain markets as defined by Bureau rule), or that is subject to an order issued by the Bureau pursuant to CFPA section 1024(a)(1)(C) (providing Bureau supervisory authority over certain nonbank covered persons based on risk determination). The Bureau is proposing this language in 1092.201(o)(2) only to clarify and make express that such persons would be included in the proposed definition of the term supervised registered entity. The Bureau is not proposing by means of this language to limit the scope of the term ''supervised registered entity.''

Under the proposed definition of ''supervised registered entity,'' the

[165] By contrast, an order would qualify as ''public'' where the issuing agency or court makes the order available to a third-party printing service or reporter for the purpose of publishing the order in a publicly available format.

[166] The Bureau has considered requiring covered nonbanks to submit to the Bureau portions of orders that constitute confidential supervisory information under proposed § 1092.202, but then exempting those confidential portions from publication under proposed § 1092.204. The Bureau, however, has preliminarily concluded that the administrative burden associated with implementing such an approach likely outweighs the advantage of collecting such confidential portions of orders under the proposed rule. The Bureau notes that it can use other mechanisms to obtain confidential supervisory information from other regulators in appropriate cases.

[167] 12 U.S.C. 5552(a)(1).

[168] *See* 12 U.S.C. 5481(27) (defining ''State'' to include ''any federally recognized Indian tribe, as defined by the Secretary of the Interior under'' 25 U.S.C. 5131(a)).

[169] 12 U.S.C. 5514(a).

[170] An affiliate of an insured depository institution that is subject to examination and supervision by the Bureau under 12 U.S.C. 5515(a) would not be included in the proposed definition of supervised registered entity, where the affiliate is not subject to examination and supervision by the Bureau under 12 U.S.C. 5514(a). *See* 12 U.S.C. 5514(a)(3)(A) (providing that 12 U.S.C. 5514 shall not apply to persons described in 12 U.S.C. 5515(a) or 5516(a)).

[171] The proposal would not increase the number of entities subject to Bureau examinations or otherwise modify the scope of the Bureau's supervisory jurisdiction.

Bureau need not have previously exercised its authority to require reports from, or conduct examinations of, a particular registered entity for that entity to qualify as a supervised registered entity. A registered entity would qualify as a supervised registered entity if the Bureau *could* require reports from, or conduct examinations of, that entity because it is a person described in CFPA section 1024(a)(1). Such an entity would be ''subject to supervision and examination'' within the meaning of the proposal even if the Bureau has never previously exercised its authority to require reports or conduct examinations with respect to that entity.

Persons would be subject to the proposal's requirements applicable to ''supervised registered entities'' so long as they satisfy the proposed definition of that term. The Bureau recognizes that certain entities may, in certain circumstances, satisfy the definition only for a limited period of time. For example, an entity's activity levels may change in such a manner as to cause the entity to cease to qualify as a larger participant of a market for consumer financial products and services as defined by CFPA section 1024(a)(1)(B) and 12 CFR part 1090,[172] or an entity may cease to be a person subject to Bureau supervision under CFPA section 1024(a)(1)(C) and 12 CFR part 1091.[173] An entity would be required to comply with the proposal's requirements applicable to ''supervised registered entities'' so long as it qualifies as such an entity, but not once it ceases to so qualify. Thus, for example, depending upon the timing of events, a supervised registered entity might be required to register with, and submit information to, the NBR system under proposed § 1092.202 but not subsequently submit a written statement under proposed § 1092.203 if it ceases to qualify as a supervised registered entity before § 1092.203(d)'s submission deadline.

The Bureau believes that applying proposed § 1092.203's requirements to supervised registered entities so long as they satisfy the proposed definition of that term, even if they do so for limited periods of time, would serve its goals in imposing such requirements, as described above in section IV(D). The Bureau does not believe that it should exempt, or otherwise distinguish for purposes of the proposal, entities that are subject to supervision under CFPA section 1024(a) for limited periods of time. The Bureau believes that it is important to obtain reports from such supervised registered entities under proposed § 1092.203 for the reasons discussed above in section IV(D), including to ensure they are legitimate entities and able to perform their obligations to consumers, to detect and assess risks to consumers related to entities subject to Bureau supervision, and to facilitate its assessments in connection with its risk-based supervisory program under CFPA section 1024(b)(2). In addition, requiring regular submission of written statements from such entities would assist the Bureau in determining whether the entity should continue to be subject to Bureau supervision under CFPA section 1024(a)(1)(C), for example. However, the Bureau preliminarily concludes that obtaining such written statements from entities that are no longer subject to the Bureau's supervision and examination authority under CFPA section 1024(a) is not necessary to serve these purposes.

The Bureau seeks comment on its approach to persons whose supervisory status may vary over time. In particular, the Bureau seeks comment on whether to finalize an alternative arrangement whereby a qualifying entity would be deemed a supervised registered entity for purposes of the proposed rule for some set period of time—for example, for the remainder of the calendar year following a change in supervised entity status. The Bureau also seeks comment on an alternative arrangement that would permit individual entities to petition the Bureau for individualized treatment, or that would provide for specific and individual consideration regarding subjecting such entities to the proposal's reporting requirements.

The Bureau's proposed approach to applying the term ''supervised registered entity'' would also extend to the recordkeeping requirements proposed in § 1092.203(e). Proposed § 1092.203(e) would require a supervised registered entity to maintain certain documents and other records for five years after the submission of a written statement is required, and to make such documents and other records available to the Bureau upon request. Once a supervised registered entity ceases to qualify as a supervised registered entity under proposed § 1092.201(o), it would no longer be subject to § 1092.203(e)'s requirement to maintain and provide such records. (The entity may nevertheless be subject to other requirements to maintain and provide such records, where such requirements are imposed by Federal consumer financial law or other applicable law.) If, because of a change in circumstances, the entity later once again qualifies as a supervised registered entity, the entity would once again become subject to proposed § 1092.203(e)'s recordkeeping requirement, but only as to conduct undertaken to comply with § 1092.203 that occurs after the entity requalifies as a supervised registered entity. The Bureau seeks comment on the proposed recordkeeping requirements for such entities.

The proposal would provide that the term ''supervised registered entity'' would not include a service provider that is subject to Bureau examination and supervision solely in its capacity as a service provider and that is not otherwise subject to Bureau supervision and examination. CFPA section 1024(e) authorizes the Bureau to exercise supervisory authority with respect to a service provider to a person described in CFPA section 1024(a)(1).[174] CFPA sections 1025(d) and 1026(e) authorize the Bureau to exercise supervisory authority with respect to certain other service providers.[175] This provision of the proposed definition clarifies that the term ''supervised registered entity'' would not include a registered entity that is subject to Bureau examination and supervision solely in its capacity as a service provider under any of these provisions. However, the term supervised registered entity would include a registered entity if the registered entity is otherwise subject to Bureau supervision and examination under CFPA section 1024(a)—*i.e.*, if the registered entity is a person that is described in CFPA section 1024(a)(1)—even if the registered entity is also a service provider for some purposes under the CFPA.[176] The Bureau preliminarily concludes that, at least in the first instance, the requirements set forth in proposed § 1092.203 are best directed at persons described in CFPA section 1024(a). The Bureau believes that it can achieve the anticipated benefits described above without extending its coverage to service providers subject to supervision under CFPA section 1024.

Proposed § 1092.201(o)(2) would provide that the term ''supervised

[172] Such a determination would be made under the provisions of 12 CFR part 1090. *See, e.g.,* 12 CFR 1090.102 (providing that ''[a] person qualifying as a larger participant under subpart B of [12 CFR part 1090] shall not cease to be a larger participant under [12 CFR part 1090] until two years from the first day of the tax year in which the person last met the applicable test under subpart B'').

[173] Such a determination would be made under the provisions of 12 CFR part 1091. *See, e.g.,* 12 CFR 1091.113 (regarding petitions for termination of an order issued under 12 CFR 1091.109).

[174] 12 U.S.C. 5514(e).

[175] 12 U.S.C. 5515(d), 5516(e).

[176] As discussed above, entities that are service providers may nevertheless also be covered persons under the CFPA.

registered entity'' would not include a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, within the meaning of 12 U.S.C. 5519(a), except to the extent such a person engages in functions that are excepted from the application of CFPA section 1029(a) as described in CFPA 1029(b).[177] Proposed § 1092.201(e), discussed above, would further provide that the only orders issued to such motor vehicle dealers that would subject the dealer to the requirements of proposed §§ 1092.202 and 1092.203 would be those issued in connection with the functions that are excepted from the application of CFPA section 1029(a) as described in CFPA 1029(b). The Bureau generally seeks comment on this proposed limitation.

Proposed § 1092.201(o)(3) would provide that the term ''supervised registered entity'' would not include a person that qualifies as a covered person based solely on conduct that is the subject of, and that is not otherwise exempted from, an exclusion from the Bureau's supervisory authority under CFPA section 1027.[178] This proposed component of the term ''supervised registered entity'' would be similar to a component in the proposed definition of the term ''covered nonbank,'' as discussed in more detail in the section-by-section discussion of proposed § 1092.201(d), above. However, while proposed § 1092.201(d) would describe exclusions from the Bureau's rulemaking authority, proposed § 1092.201(o)(3) would describe exclusions from the Bureau's supervisory authority. This provision would clarify that persons excluded from the supervisory authority of the Bureau under one or more of the provisions of section 1027 of the CFPA would not be ''supervised registered entities.'' However, where the CFPA provides that any of the activities engaged in by such persons *are* subject to the Bureau's supervisory authority, this limitation would not exclude the person from qualifying as a ''supervised registered entity.'' For example, CFPA section 1027(*l*)(1) provides an exclusion from the Bureau's supervisory authority for certain persons engaging in certain activities relating to charitable contributions.[179] Under the proposal, a person would not be deemed a ''supervised registered entity'' if it qualifies for this statutory exclusion and is not otherwise exempt from it. But CFPA section 1027(*l*)(2) exempts certain activities from this statutory exclusion by providing that ''the exclusion in [CFPA section 1027(*l*)(1)] does not apply to any activities not described in [CFPA section 1027(*l*)(1)] that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.'' [180] Under proposed § 1092.201(o), an entity described in CFPA section 1027(*l*)(1) engaging in the activities described therein *would* qualify as a ''supervised registered entity'' so long as it also engages in any of the activities described in CFPA section 1027(*l*)(2). And, as a ''supervised registered entity'' under the proposed § 1092.201(o), such entity would be subject to all of proposed § 1092.203's requirements applicable to ''supervised registered entities'' with respect to any ''covered order,'' regardless of whether the applicable ''covered order'' addressed conduct subject to the statutory exclusion in CFPA section 1027(*l*)(1). The Bureau generally seeks comment on this proposed limitation.

Finally, proposed § 1092.201(o)(4) would provide that the term ''supervised registered entity'' would not include a person with less than $1 million in annual receipts. The exclusion would be based on the receipts resulting from offering or providing all consumer financial products and services described in CFPA section 1024(a).[181] The Bureau proposes to define the term ''annual receipts'' to have the same meaning as it has in § 104(a) at part 1090 of the Bureau's regulations, including the provisions of that definition at § 104(a)(i) regarding receipts, § 104(a)(ii) regarding period of measurement, and § 104(a)(iii) regarding annual receipts of affiliated companies.[182] The Bureau is proposing the exclusion in proposed § 1092.201(o) for two reasons. First, providers of consumer financial products and services with significantly lower levels of receipts generally pose lower risks because they engage with fewer consumers, obtain less money from those consumers, or both. Second, the information collection burdens on entities with receipts of $1 million or less, on a relative basis, generally would be higher than for larger entities.

The proposed exclusion from the definition of ''supervised registered entity'' based on volume of annual receipts would also be consistent with the CFPA's requirement that the Bureau take entity size into account as part of its risk-based supervision program.[183] Accordingly, the Bureau is proposing to exclude persons with less than $1 million in annual receipts from the proposed annual reporting requirements applicable to supervised registered entities under proposed § 1092.203.

However, the Bureau is not proposing to exclude such smaller entities from the information-collection requirements provided in proposed § 1092.202. The Bureau believes that the limited burden that would be imposed on such entities due to such information-collection requirements would be warranted in light of the market-monitoring benefits to the Bureau and other users of the NBR system, as discussed elsewhere in this proposal. The Bureau could evaluate the need for additional supervisory attention related to a smaller supervised nonbank based on its submissions under proposed § 1092.202 and any additional information at its disposal. As discussed above in section IV and the section-by-section discussion of proposed § 1092.202, those submissions would provide additional information relevant to the Bureau's

[177] 12 U.S.C. 5519 (''Exclusion for Auto Dealers''). Also, as with other supervised registered entities, the motor vehicle dealer would only qualify as a ''supervised registered entity'' if it were subject to the Bureau's supervisory jurisdiction under 12 U.S.C. 5514(a). Technically, the exclusion in proposed § 1092.201(o)(2) should be unnecessary because it is identical to the proposed exclusion from the definition of ''covered nonbank'' in proposed § 1092.201(d)(4), and only covered nonbanks can qualify as supervised registered entities. Nevertheless, the Bureau has proposed § 1092.201(o)(2) to reiterate that the exclusion described in proposed § 1092.201(d)(4) also limits which entities qualify as ''supervised registered entities.''

[178] 12 U.S.C. 5517.

[179] 12 U.S.C. 5517(*l*)(1) (''Exclusion for Activities Relating to Charitable Contributions'').

[180] 12 U.S.C. 5517(*l*)(2).

[181] 12 U.S.C. 5514(a).

[182] 12 CFR 1090.104(a).

[183] *See* 12 U.S.C. 5514(b)(2)(A), (B) (requiring the Bureau to take into consideration ''the asset size of the covered person'' and ''the volume of transactions involving consumer financial products or services in which the covered person engages''). Furthermore, while the Bureau does not believe that it needs to rely on its authority under 12 U.S.C. 5512(b)(3) to exempt classes of covered persons from rules in proposing this small-entity exclusion, the Bureau believes that the exclusion would be warranted as an exercise of its section 1022(b)(3) exemption authority, to the extent that provision was applicable. *See* 12 U.S.C. 5512(b)(3). As under 12 U.S.C. 5514(b)(2), an entity-size-based exclusion accords with 12 U.S.C. 5512(b)(3)(B)(i) and (ii), which instruct the Bureau to consider ''the total assets of the class of covered persons'' and ''the volume of transactions . . . in which the class of covered persons engage'' in issuing exemptions. 12 U.S.C. 5512(b)(3)(B)(i)–(ii). In addition, given the relatively limited scope of the harm to consumers that entities with annual receipts not exceeding $1 million would generally be able to cause, the Bureau does not believe that the factor articulated in 12 U.S.C. 5512(b)(3)(B)(iii) (''existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protection'') weighs against adopting the proposed small-entity exclusion.

assessments of risk in connection with its prioritization efforts under CFPA section 1024(b)(2).[184]

The Bureau seeks comment on the scope of the proposed definition, including the proposed exclusions.

Section 1092.202 Registration and Submission of Information Regarding Covered Orders

Proposed § 1092.202 would require covered nonbanks to register with the NBR system by timely submitting information to the NBR system regarding covered orders. The proposed section would establish requirements regarding the timing and content of information to be submitted.

The Bureau believes that requiring covered nonbanks to register with the NBR system would further the objectives of proposed subpart B even in the event the Bureau were not to finalize proposed requirements that supervised registered entities submit written statements as described in proposed § 1092.203. Proposed § 1092.202 would apply to a broader set of entities than would proposed § 1092.203, and the Bureau believes that requiring registration of entities under proposed § 1092.202 would provide independent benefit to the Bureau and to consumers.

202(a) Scope of Registration Requirement

Proposed § 1092.202(a) defines the scope of the registration requirement. To maximize the value of subpart B's registration requirements, while taking into consideration administrative costs to the Bureau and covered nonbanks in keeping the registry updated, the Bureau proposes to limit § 1092.202 to covered orders (as that term is defined at proposed § 1092.201(e)) that have an effective date (as that term is defined at proposed § 1092.201(f)) on or after the effective date of subpart B, or that remain in effect (as that term is defined at proposed § 1092.201(m)) as of the effective date of subpart B. The Bureau preliminarily concludes that this limitation of the registration requirement's scope would help ensure that the most relevant orders are submitted into the NBR system. The Bureau recognizes that there is potential value in requiring registration with respect to older orders that no longer remain in effect. Among other things, such registration would help inform the Bureau and consumers regarding older orders and help to identify an even larger number of repeat offenders than could be identified through the registration requirement as proposed in § 1092.202. On the other hand, requiring covered nonbanks to identify and register older orders to which they were once subject, but that no longer impose any present obligations, may be burdensome. In addition, extending the registration requirement to older orders would impose additional administrative costs on the Bureau. The Bureau believes that limiting the registration requirement to covered orders with an effective date on or after the effective date of subpart B, or that remain in effect as of subpart B's effective date, strikes the appropriate balance in terms of establishing an informative and useful registry without imposing undue burdens on either industry or the Bureau. To maximize the value of subpart B's registration requirements, while taking into consideration administrative costs to the Bureau and covered nonbanks in keeping the registry updated, the Bureau therefore proposes to limit § 1092.202 to covered orders (as that term is defined at proposed § 1092.201(e)) that have an effective date (as that term is defined at proposed § 1092.201(f)) on or after the effective date of subpart B, or that remain in effect (as that term is defined at proposed § 1092.201(m)) as of the effective date of subpart B. However, the Bureau seeks comment as to whether the registration requirement should be modified to include registration of older orders.

202(b) Requirement To Register and Submit Information Regarding Covered Orders

Proposed § 1092.202(b) would establish subpart B's requirements for covered nonbanks to register with the NBR system and to provide and maintain certain registration information.

Proposed § 1092.202(b)(1) would provide that each covered nonbank that is identified by name as a party subject to a covered order described in paragraph (a) shall register as a registered entity with the NBR system in accordance with proposed § 1092.202(b) if it is not already so registered, and shall provide or update, as applicable, the information described in subpart B in the form and manner specified by the Bureau. As discussed in connection with proposed § 1092.201(e)(1), a covered nonbank that is identified by name as a party subject to the order would be required to register under this paragraph even if the covered nonbank is not listed in the title or caption of the order, or as the primary respondent, defendant, or subject of the order. A covered nonbank may be subject to the requirements of proposed § 1092.202 even if the issuing agency or court does not list the covered nonbank as a party in related press releases or Internet links.

The Bureau considered but is not proposing alternative approaches, including applying the requirements of this section to any covered nonbank alleged or found in a covered order to have violated a covered law, even if such party were not expressly named. This alternative would capture circumstances where, for instance, a covered order applies to a category of entities, such as all affiliates of a particular named covered nonbank, but the order does not specifically name all of the entities that fall within that category (*e.g.,* does not specifically list the names of all of the affiliates of the named covered nonbank). While this alternative would potentially widen the scope of information the Bureau would obtain relevant to its market monitoring objectives, it preliminarily concludes that the proposed approach would effectively achieve those objectives with greater administrative ease. The Bureau seeks comment on the scope of the proposed requirement, including this alternative approach and whether other means of identifying applicable covered nonbanks with respect to particular covered orders should be adopted.

As provided at § 1092.102(a), the Bureau proposes to specify the form and manner for electronic filings and submissions to the NBR system that are required or made voluntarily under part 1092, including §§ 1092.202 and 1092.204. The Bureau would issue specific guidance for filings and submissions.

Proposed § 1092.202(b)(2)(i) would require each covered nonbank that is required to register under proposed § 1092.202 to submit a filing containing the information described in proposed §§ 1092.202(c) and 1092.202(d) to the NBR system within the later of 90 days after the applicable NBR system implementation date or 90 days after the effective date of any applicable covered order. Thus, a covered nonbank would not be required under proposed subpart B to register any covered orders to which it may be subject until 90 days after the NBR system implementation date for this provision. For covered orders with effective dates after the NBR system implementation date, an applicable covered nonbank would be required to register the covered order within 90 days after the covered order's effective date, as that term is defined at proposed § 1092.201(f). The Bureau believes the 90-day period would give sufficient time for a covered nonbank to collect and submit the applicable

[184] 12 U.S.C. 5514(b)(2).

information to the NBR system and would also generally permit a sufficient length of time for any relevant agency or court stays to take effect. The Bureau seeks comment on the length of the 90-day period, including whether the filing deadline should be tied to the effective date of the order or some other date, and whether the Bureau should consider taking other measures to address agency or court stays. The Bureau also seeks comment on whether other issues may arise in connection with orders that would indicate a reason not to require registration under proposed § 1092.202(b) within the 90-day period.

As discussed above regarding proposed § 1092.101(e), the Bureau currently estimates that the NBR implementation date for proposed §§ 1092.202 and 1092.203 will be no earlier than January 2024 and may be substantially later. The exact NBR implementation date will depend upon, among other things, the comments received to this proposal and the Bureau's ability to launch the registration system.

Proposed § 1092.202(b)(2)(ii) would require each covered nonbank that is required to register under proposed § 1092.202 to submit a revised filing amending any information described in paragraphs (c) and (d) to the NBR system within 90 days after any amendments are made to the covered order or any of the information described in paragraphs (c) or (d) changes. The Bureau believes that requiring entities to maintain up-to-date information with the NBR system will significantly enhance the usefulness of the NBR system for the Bureau, consumers, and other users of the NBR system.

The Bureau requests comment on the general requirements of proposed § 1092.202(b), including the requirement to register and update registration information within the specified timeframes. The Bureau requests comment on whether registration and registration updates should be required more or less often, and if so, why and in what circumstances.

202(c) Required Identifying Information and Administrative Information

Proposed § 1092.202(c) would require a registered entity to provide all identifying information and administrative information required by the NBR system. In filing instructions, the Bureau would issue under proposed § 1092.102(a), the Bureau would specify the types of identifying information and administrative information registered entities would be required to submit. Proposed § 1092.201(a) would define the term ''administrative information,'' and proposed § 1092.201(g) would define the term ''identifying information.'' Proposed § 1092.202(c) also would clarify that the Bureau's filing instructions may require joint or combined submissions to the NBR system by covered nonbanks that are affiliates as defined in proposed § 1092.101(a).

The Bureau requests comment on the general requirements of proposed § 1092.202(c), including the requirement to register and update identifying information and administrative information within the timeframes described in proposed § 1092.202(b). The Bureau requests comment on whether registration of updates with respect to this information should be required more or less often, and if so, why and in what circumstances. The Bureau also seeks comment on the proposed distinctions between identifying information and administrative information, and whether collection of other types of information would help in the administration of the NBR system or benefit its users.

202(d) Information Regarding Covered Orders

Proposed § 1092.202(d) would require a registered entity to provide additional types of information more specifically related to each covered order subject to proposed § 1092.202. First, proposed § 1092.202(d)(1) would require a registered entity to provide a fully executed, accurate, and complete copy of the covered order, in a format specified by the Bureau. This information would help the Bureau more clearly identify the covered orders to which the registered entity is subject, as well as the terms of those orders, and would provide access to updated copies of those orders. The information would provide similar benefits to other regulators, consumers, and other users of the NBR system upon publication.

This proposed section would also provide that any portions of a covered order that are not public must not be submitted. These nonpublic portions would be required to be clearly marked on the copy submitted, to promote ease of use. For example, a nonpublic section could be redacted and marked as nonpublic. As discussed above regarding proposed §§ 1092.201(e)(3) and 1092.201(k), the Bureau is concerned that requiring registration and disclosure of confidential supervisory information or other nonpublic information might interfere with the functions and missions of other agencies and does not believe that requiring such registration and disclosure is necessary to accomplish the purposes of the proposed rule. The Bureau seeks comment on this aspect of the proposed rule. The Bureau also seeks comment on whether the Bureau should permit covered nonbanks to submit only select portions of covered orders, and if so, what portions of such orders should be submitted, and which should be excluded from the submission requirement.

Proposed § 1092.202(d)(2) would require a registered entity to provide five additional types of data regarding each covered order subject to § 1092.202. The Bureau believes all of the described data fields would be useful to the Bureau in locating, understanding, organizing, and using the information submitted. Upon publication, the data fields will be similarly useful to other users of the NBR system as well. In addition, requiring covered nonbanks to identify and submit these fields will help ensure accuracy and lower administrative costs for the Bureau.

First, proposed § 1092.202(d)(2)(i) would require a registered entity to identify the government entity that issued the covered order. Second, proposed § 1092.202(d)(2)(ii) would require a registered entity to provide the covered order's effective date, as that term is defined at proposed § 1092.201(f). Third, proposed § 1092.202(d)(2)(iii) would require a registered entity to provide the date of expiration, if any, of the covered order, or a statement that there is none. Thus, for example, where a covered order expires by its own terms after perhaps five or some other term of years, the registered entity would be required to provide that information. The Bureau requests comment on whether the date of expiration of covered orders would be sufficiently clear to comply with this provision or whether additional specification on this point from the Bureau would be useful. Fourth, proposed § 1092.202(d)(2)(iv) would require a registered entity to identify all covered laws found to have been violated or, for orders issued upon the parties' consent, alleged to have been violated, in the covered order. The Bureau would expect that registered entities would satisfy this requirement by providing accurate Federal or State citations for the applicable covered laws. The Bureau believes this information would increase the usefulness of the NBR system. It would better enable the Bureau to identify and assess any risks to consumers relating to the violations, and once published

would also enable users of the system to more easily search and review filings.

Fifth, proposed § 1092.202(d)(2)(v) would require a registered entity to provide the names of any of the registered entity's affiliates registered under subpart B with respect to the same covered order. The Bureau anticipates that this information would be useful in identifying affiliate relationships between registered entities that are registered with the NBR system, which might not otherwise be obvious or apparent. Proposed § 1092.101(a) would define the term ''affiliate'' to have the meaning given to that term in the CFPA, which would include any person that controls, is controlled by, or is under common control with another person.[185]

Proposed § 1092.202(d)(3) would require a registered entity, if the registered entity is a supervised registered entity, also to file the name and title of its attesting executive for purposes of proposed § 1092.203 with respect to the covered order. The benefits of designating an attesting executive are discussed in detail above in section IV(D). In addition, the Bureau believes that its collection (and ultimate publication) in the registry of the name and title of a supervised registered entity's attesting executive would be important to the Bureau and other users of the NBR system. Requiring the entity to identify the name and title of the attesting executive designated in connection with each covered order will assist the Bureau in administering the requirements in proposed § 1092.203 regarding annual written statements. In addition, as discussed below regarding proposed § 1092.203(b), collecting information regarding the name and title of the attesting executive for a given covered order will provide the Bureau with insight into the entity's organization, business conduct, and activities, and will inform the Bureau's supervisory work, including its risk-based prioritization process. Publishing this information will also provide benefits to the public and other users of the proposed NBR system, as discussed further below in connection with proposed § 1092.204(a).

The Bureau would rely on two separate statutory grants of authority in collecting the attesting executive's name and title, each of which would provide an independent statutory basis for proposed § 1092.202(d)(3). The Bureau would collect this information under its market-monitoring authority under CFPA section 1022(c)(1) and (4) to ''gather information regarding the organization, business conduct, markets, and activities'' of supervised registered entities.[186] The Bureau would also collect this information under its CFPA section 1024(b)(7) authority to prescribe rules regarding registration, recordkeeping, and other requirements for covered persons subject to Bureau supervision under CFPA section 1024.[187]

The Bureau requests comment on whether proposed § 1092.202(d) should identify additional or different categories of information collected by the NBR system, including but not limited to information regarding covered orders or the registered entity.

202(e) Expiration of Covered Order Status

Proposed § 1092.202(e) would provide for an outer limit on the time period during which the existence of a covered order would subject a registered entity to the requirements of proposed subpart B. In circumstances where a covered order terminates (or otherwise ceases to remain in effect) within ten years after the order's effective date, the registered entity's obligations to update its filing under proposed § 1092.202 or to file written statements with respect to the covered order under proposed § 1092.203 would cease after its final filing under proposed § 1092.202(f)(1).[188] The Bureau, however, recognizes that some covered orders may not terminate (or otherwise cease to remain in effect) within ten years of the orders' effective dates. In such circumstances, proposed § 1092.202(e) would provide that a covered order shall cease to be a covered order for purposes of subpart B as of the later of: (1) ten years after its effective date; or (2) if the covered order expressly provides for a termination date more than ten years after its effective date, the expressly provided termination date.

The Bureau preliminarily concludes that, in most cases, it may be less likely to obtain meaningful information in connection with existing orders after ten years have passed since their effective dates. The Bureau also preliminarily concludes that maintaining the proposal's registration and written-statement requirements for at least ten years after the effective date of covered orders that remain in effect would provide useful information to the Bureau and other uses of the system, as described in this proposal. Among other things, maintaining the obligation to update registration information for ten years would better enable the Bureau to identify covered nonbanks in the event a subsequent covered order requires additional registration. Limiting registration obligations to more recent orders should also help limit the burden imposed by proposed subpart B's requirements on covered nonbanks. However, where a covered order expressly provides for a later termination date, the Bureau believes that it should continue to collect and publish information on the order under the provisions of proposed § 1092.202 through 204. The Bureau seeks comment on all aspects of proposed § 1092.202(e). In particular, the Bureau seeks comment on whether to adopt a different approach to setting and determining the sunset period for orders, and on whether the proposed baseline ten-year period should be longer or shorter. The Bureau also seeks comment on whether registered entities would benefit from additional guidance in determining whether a covered order expressly provides for a termination date more than ten years after its effective date, and what constitutes the expressly provided termination date of such a covered order.

The Bureau also seeks comment on whether the applicable sunset period should depend upon the content of the order. For example, the Bureau considered whether the sunset period for a covered order should be shorter where the only obligations based on alleged violations of covered laws and imposed in the public provisions of such order were to pay money (such as payment of a civil money penalty or fine, or payment of refunds, restitution, or disgorgement). Under this alternative approach, for such covered orders without express termination dates, the orders would have ceased being covered orders for purposes of subpart B after some period shorter than the ten-year sunset proposed here. The Bureau is not proposing this approach for reasons of simplicity and administrative efficiency, and because the Bureau believes that the sunset provision in proposed § 1092.202(e) would generally be preferable for most such covered orders. However, the Bureau seeks comment on this proposed alternative and, more generally, on whether and why it should adopt a shorter sunset period for these orders. The Bureau also seeks comment on other approaches that would establish different sunset periods depending on the content of the order, and other types of orders that might have different sunset periods.

[185] *See* 12 U.S.C. 5481(1).

[186] 12 U.S.C. 5512(c)(1), (4).

[187] 12 U.S.C. 5514(b)(7).

[188] *See* the discussion of proposed § 1092.202(f) below.

The Bureau further considered requiring registered entities to continue treating an order that would otherwise sunset under the proposal as a covered order for purposes of this proposed rule if the Bureau determined, after providing the entity notice and an opportunity to respond, that continuing to do so was necessary for the Bureau to fulfill its monitoring or supervisory responsibilities. For example, based on information supplied by another agency or otherwise in its possession, the Bureau may have cause to believe that the nonbank continued to be in violation of the order. For such cases, the Bureau considered requiring continued compliance with the requirements of subpart B beyond the expiration period if the Bureau ultimately concluded doing so was necessary for the Bureau to fulfill its monitoring or supervisory responsibilities. The Bureau is not proposing this approach for reasons of simplicity and administrative efficiency, and because the Bureau believes that the proposed sunset provision would be likely to provide sufficient information regarding most covered orders. However, the Bureau seeks comment on whether it should include this additional requirement in the final rule and whether any additions or subtractions to it would better achieve its intended purpose. The Bureau also seeks comment on whether, if it included this additional requirement in a final rule, it should specify any alternative or additional criteria that the Bureau might consider in reaching its determination whether a particular covered order should remain subject to the requirements of subpart B.

202(f) Requirement To Submit Revised and Final Filings With Respect to Certain Covered Orders

Proposed § 1092.202(f) would address situations where a covered order is terminated, modified, or abrogated (whether by its own terms, by action of the applicable agency, or by a court). It would also address situations where an order ceases to be a covered order for purposes of subpart B by operation of proposed § 1092.202(e). In all such cases, proposed § 1092.202(f)(1) would require the registered entity to submit a revised filing to the NBR system within 90 days after the effective date of the order's termination, modification, or abrogation, or after the date the order ceases to be a covered order. This requirement will help in administering the registry, and it will support the Bureau's monitoring work by ensuring that the registry is up to date.

Proposed § 1092.202(f)(2) would address situations where a covered order no longer remains in effect or no longer qualifies as a covered order due to the covered order's termination, modification, or abrogation, or the application of § 1092.202(e). In such cases, proposed § 1092.202(f)(2) would clarify that following its final filing under paragraph (1) with respect to the covered order, the registered entity would have no further obligation to update its filing or to file written statements with respect to such covered order under proposed subpart B. However, the Bureau would expect to make historical information publicly available via the NBR registration system. As provided at proposed § 1092.201(m), the proposal would define the term ''remains in effect'' to mean that the covered nonbank remains subject to public provisions of the order that impose obligations on the covered nonbank to take certain actions or to refrain from taking certain actions based on an alleged violation of a covered law. Once a covered nonbank no longer remains subject to such public provisions, proposed § 1092.202(f)(2) would permit the covered nonbank to cease updating its registration information and filing written statements with respect to the order.

The Bureau seeks comment on all aspects of proposed § 1092.202(f).

202(g) Notification by Certain Persons of Non-Registration Under This Section

Proposed § 1092.202(g) would provide that a person may submit a notice to the NBR system stating that it is not registering pursuant to this section because it has a good faith basis to believe that it is not a covered nonbank or that an order in question does not qualify as a covered order. Such a filing may be combined with any similar filing under proposed § 1092.203(f).[189] Proposed § 1092.202(g) would also require the person to promptly comply with § 1092.202 upon becoming aware of facts or circumstances that would not permit it to continue representing that it has a good faith basis to believe that it is not a covered nonbank or that an order in question does not qualify as a covered order. The Bureau is proposing to treat information submitted under this paragraph as ''administrative information'' as defined by proposed § 1092.201(a).

While the Bureau believes the reporting and registration requirements under proposed § 1092.202 impose very minimal burden on nonbank covered persons, and that determining an entity's status as a covered nonbank (or an order's status as a covered order) should be a straightforward task for the vast majority of relevant persons, the Bureau is proposing § 1092.202(g) as an additional means of providing flexibility to those few entities where uncertainty in some respect raises good faith concerns that they do not meet the definition of a covered nonbank (or an order does not meet the definition of a covered order). Under the proposal, such persons could elect to file a notice under proposed § 1092.202(g). When a person makes a non-frivolous filing under proposed § 1092.202(g) stating that it has a good faith basis to believe that it is not a covered nonbank (or that an order is not a covered order), the Bureau would not bring an enforcement action against that person based on the person's failure to comply with proposed § 1092.202 unless the Bureau has first notified the person that the Bureau believes the person does in fact qualify as a covered nonbank (or that an order does qualify as a covered order) and has subsequently provided the person with a reasonable opportunity to comply with proposed § 1092.202.

Among other things, the Bureau would permit entities to file notifications under proposed § 1092.202(g) when they have a good faith basis to believe that they do not qualify as a ''covered nonbank'' because they constitute part of a ''State,'' as that term is defined in CFPA section 1001(27).[190] Under proposed § 1092.102(c), the filing of such a notification would not affect the entity's ability to dispute more generally that it qualifies as a person subject to Bureau authority.[191]

The Bureau anticipates that, in most cases, it would not respond to § 1092.202(g) notices with the Bureau's views on whether filers in fact qualify as covered nonbanks (or whether orders in fact qualify as covered orders). The Bureau also emphasizes that a non-response from the Bureau should not be misapprehended as Bureau acquiescence in the filer's assertions in the notice (or in the legitimacy of the filer's assertion of good faith). The

[189] *See also* the section-by-section discussion of proposed § 1092.203(f), which would provide a similar option with respect to proposed § 1092.203.

[190] 12 U.S.C. 5481(27). As discussed above, proposed § 1092.201(d)(2) would exclude States from the definition of ''covered nonbank.''

[191] As an alternative to filing a notification under proposed § 1092.202(g), an entity could simply choose to register under the proposal, even though it has a good faith basis for believing that it does not qualify as a covered nonbank (or that its order does not qualify as a covered order). Under proposed § 1092.102(c), such registration would not prejudice the entity's ability to dispute the Bureau's authority over it.

Bureau, however, preliminarily concludes that obtaining these notifications may assist the Bureau in better understanding how potentially regulated entities interpret the scope of proposed § 1092.202.

The Bureau considered alternatives to § 1092.202(g), including an alternative whereby entities would *not* file a notice of non-registration with the Bureau, but could avoid penalties for non-registration if in fact they could establish a good faith belief that they did not qualify as covered nonbanks subject to § 1092.202 (or their orders did not qualify as covered orders). Under this alternative, entities would maintain such good faith belief so long as the Bureau had not made clear that § 1092.202 would apply to them (or their orders). Although the Bureau preliminarily concludes that this alternative is not preferable to requiring entities to actually file a notice of non-registration, the Bureau seeks comment on whether it should finalize this alternative instead. It also seeks comment on whether, if it finalized this alternative, entities would require additional guidance on the circumstances pursuant to which an entity could no longer legitimately assert a good faith belief that § 1092.202 would not apply to its conduct. While the Bureau anticipates that such circumstances would certainly include entity-specific notice from the Bureau that § 1092.202 applies, the Bureau does not believe such notice should be required to terminate a good faith defense to registration. Among other circumstances, the Bureau anticipates that at least formal Bureau interpretations of (for example) the definition of a ''covered person'' under the CFPA, or published Bureau interpretations specific to the scope of the proposed registration requirements, would generally suffice to terminate such belief.

Finally, as the Bureau does not believe proposed § 1092.202's reporting and registration requirements impose significant burdens on covered nonbanks, the Bureau also seeks comment on whether it should not finalize proposed § 1092.202(g).

Section 1092.203 Annual Reporting Requirements for Supervised Registered Entities

203(a) Scope of Annual Reporting Requirements

Proposed § 1092.203(a) would provide that the proposed section would apply only with respect to covered orders with an effective date (as that term is defined at proposed § 1092.201(f)) on or after the NBR system implementation date for proposed § 1092.203.

This section would apply only to certain larger supervised entities.[192] The Bureau preliminarily concludes that the reporting requirements set forth in this section—which focus specifically on larger supervised entities' compliance with the orders registered pursuant to § 1092.202—should apply only prospectively to those covered orders with an effective date on or after the NBR implementation date for proposed § 1092.203. The prospective application of § 1092.203 would ensure that entities faced with enforcement actions that might result in covered orders could take § 1092.203's requirements into account in their decisionmaking. While the Bureau does not believe that compliance with § 1092.203's requirements would materially affect an entity's decisionmaking about how to respond to a prospective enforcement action—as discussed in further detail in section VII, for the vast majority of entities, the Bureau generally does not anticipate any of the proposed rule's reporting and publication requirements imposing meaningful burden either operationally or on their bottom line—the Bureau proposes this provision out of an abundance of caution. In addition, this limitation would help ensure that supervised registered entities would be required to submit reports only after the NBR system implementation date. The Bureau seeks comment on whether § 1092.203(a)'s proposed limitation of § 1092.203's scope is warranted. The Bureau also seeks comment on whether any further limitation of or adjustments to § 1092.203's scope may be appropriate, and whether the Bureau should consider excluding any additional persons, orders, laws, or other matters from proposed § 1092.203's reporting requirements.

203(b) Requirement To Designate Attesting Executive

Proposed § 1092.203(b) would require a supervised registered entity subject to an applicable covered order to designate as its attesting executive for purposes of subpart B its highest-ranking duly appointed senior executive officer (or, if the supervised registered entity does not have any duly appointed officers, the highest-ranking individual charged with managerial or oversight responsibility for the supervised registered entity) whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, who has knowledge of the entity's systems and procedures for achieving compliance with the covered order, and who has control over the entity's efforts to comply with the covered order. The supervised registered entity would be required annually to designate one attesting executive for each covered order to which it is subject and for all submissions and other purposes related to that covered order under subpart B. The supervised registered entity would also be required to authorize the attesting executive to perform the duties of an attesting executive on behalf of the supervised registered entity with respect to the covered order as required in proposed § 1092.203, including submitting the written statement described in § 1092.203(d).

Criteria That an Attesting Executive Must Satisfy

For the reasons described above in section IV(D), proposed § 1092.203(b) would provide that a supervised registered entity subject to a covered order described in § 1092.203(a) would generally be required to designate as its attesting executive for purposes of subpart B its highest-ranking duly appointed senior executive officer (i) whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, (ii) who has knowledge of the entity's systems and procedures for achieving compliance with the covered order, and (iii) who has control over the entity's efforts to comply with the covered order. If the supervised registered entity has no duly appointed officers, proposed § 1092.203(b) would require the entity to designate as its attesting executive the highest-ranking individual charged with managerial or oversight responsibility for the supervised registered entity who meets those three criteria.

As explained below in the discussion of proposed § 1092.203(d), the Bureau is proposing that the attesting executive would attest to and sign a written statement submitted by the supervised registered entity regarding the entity's compliance with covered orders. That proposal would have the benefit of ensuring that the supervised registered entity's reporting obligations under proposed § 1092.203 have received attention from the highest applicable level of a supervised registered entity's management. The Bureau is proposing this requirement in proposed § 1092.203(b) in order to ensure that the

[192] As discussed above in the section-by-section discussion of proposed § 1092.201(o)(4), the proposal would exclude from the term ''supervised registered entity'' persons with less than $1 million in annual receipts resulting from offering or providing all consumer financial products and services described in 12 U.S.C. 5514(a).

person who attests and signs the written statement has sufficient authority and access to all the relevant company stakeholders to ensure that the report is as complete and accurate as possible. The Bureau believes that the language of proposed § 1092.203(b) would ensure that the supervised registered entity designates an appropriately high-ranking employee as its attesting executive. Such a person will be in the best position to know all relevant information with respect to the order, and to provide a reliable attestation in the written statement regarding the entity's compliance with the covered order.

The Bureau anticipates that this individual will in most cases likely be a top senior executive of the entity. For entities that are not organized as corporations, and thus may not have duly appointed officers, the proposed § 1092.203(b) clarifies that the attesting executive may be another individual who is charged with managerial or oversight responsibility for the supervised registered entity. The Bureau anticipates that this individual will in most cases serve in a capacity equivalent to a high-ranking senior executive at a corporation. For example, a supervised registered entity organized as a limited liability company that is run by an individual managing member and lacks executive officers may designate the managing member as its ''attesting executive,'' where the managing member's assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law and the managing member has the requisite knowledge and control as described in proposed § 1092.203(b). Likewise, a supervised registered entity organized as a general or limited partnership may designate an individual partner who otherwise satisfies the requirements set forth in proposed § 1092.203(b). The use of the term ''executive'' is not intended to preclude the designation of such persons as ''attesting executives'' where the supervised registered entity otherwise lacks a senior executive officer who satisfies proposed § 1092.203(b)'s requirements.

The Bureau anticipates that entities would take appropriate steps to ensure compliance with the proposed rule in the event that an executive leaves employment or changes duties, or a higher-ranking executive is put in place. For example, a supervised registered entity might consider designating an alternate attesting executive for each covered order to address such possibilities, including by ensuring that they have sufficient knowledge of the entity's systems and procedures for achieving compliance with the applicable covered order(s) and control over the entity's efforts to comply with the covered order(s).

The proposal would also require that the supervised registered entity designate as its attesting executive for a covered order a person who has knowledge of the entity's systems and procedures for achieving compliance with the covered order. The Bureau anticipates that this requirement would help ensure that the annual written statement is completed by an individual with sufficient knowledge of the entity's systems and procedures for achieving compliance to make the written statement required by proposed § 1092.203(d). The Bureau expects that an executive who lacked knowledge of those compliance systems and procedures would not be in the best position to identify violations of the order. Therefore, without the proposed knowledge requirement, the attestation proposed at § 1092.203(d)(2) would lose much of its usefulness.

Proposed § 1092.202(b) would also require that the attesting executive be required to have control over the entity's efforts to comply with the covered order. By this requirement, the Bureau means to require that the executive have the ability, under the entity's existing compliance systems and procedures, to direct and supervise the entity's efforts to comply with the applicable covered order. This proposed requirement would complement the knowledge requirement discussed above, since the Bureau believes an executive with control over the entity's efforts to comply with the covered order will be more likely also to have (and to demand) the requisite knowledge regarding the entity's related compliance systems and procedures. It is possible that an executive with knowledge of an entity's related compliance systems and procedures, but who does not have control over the entity's efforts to comply with an applicable covered order, would not be fully informed regarding violations of the order. The Bureau would also be able to use information regarding which executives have control of the entity's efforts to comply with specific covered orders in connection with its supervisory reviews of the entity's compliance systems and procedures, compliance with Federal consumer financial law, and risks to consumers and markets.

In addition, the Bureau expects that the proposal's requirements to designate an attesting executive who has knowledge of the entity's systems and procedures for achieving compliance with its covered orders, and who has control over the entity's efforts to comply with its covered orders, would create an additional incentive for certain entities to comply with their obligations to consumers. The Bureau believes that most supervised registered entities would comply with covered orders even without the proposal. However, these requirements would motivate additional compliance efforts at certain entities that have failed to take adequate steps to comply with the order. The Bureau also believes that if a particular executive is identified to the Bureau as the person ultimately accountable for ensuring compliance with a covered order, the clear delineation of that executive's responsibility will prompt the executive to focus greater attention on ensuring compliance, which in turn will increase the likelihood of compliance.

In addition, the Bureau anticipates that obtaining information about which senior executive officer(s) at a supervised registered entity have knowledge of the entity's systems and procedures for achieving compliance with specific covered orders, and who have control over the entity's efforts to comply with those covered orders, would facilitate the Bureau's ability to identify situations in which individual executives have recklessly disregarded, or have actual knowledge of, the entity's violations of covered orders. The Bureau believes that this information would better enable the Bureau to identify risks to consumers related to such orders and the entity's compliance systems and procedures, and to take steps to address such risks through its supervisory or other authorities. Where the applicable covered order is a Bureau order, such information will also facilitate the Bureau's efforts to assess compliance with the order and to make determinations regarding any potential related Bureau supervisory or enforcement actions. For example, where information obtained under proposed § 1092.203 indicates that a high-ranking executive has knowledge of (or has recklessly disregarded) violations of legal obligations falling within the scope of the Bureau's jurisdiction, and has authority to control the violative conduct, the Bureau could use that information in assessing whether an enforcement action should be brought not only against the nonbank covered person, but also against the individual executive.

In developing this proposal, the Bureau considered various options other than requiring entities to designate a senior executive officer as an attesting

executive. The Bureau considered permitting entities to designate lower ranking individuals whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law and who possessed sufficient knowledge and control to provide a written statement under proposed § 1092.203. However, the Bureau believes that requiring entities to designate their highest-ranking executive officer would better help ensure that all relevant information was considered when submitting the written statement. In addition, because the attestation that would be provided under proposed § 1092.203(d)(2) would be subject to the knowledge of the attesting executive, the Bureau believes this requirement would help enhance the reliability of that attestation, and thus the accuracy of the written statement. Lower-ranking managers at the entity might not be aware of all relevant facts. Also, the Bureau believes that the designation requirement will provide an important piece of information regarding the organizational structure of an entity's compliance management system—namely, the identity of the entity's highest-ranking executive whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, and who has the requisite level of knowledge and control. This information will be valuable to the Bureau's understanding of the supervised registered entity's compliance systems and procedures and its organization, business conduct, and activities subject to the covered order. Such information would inform the Bureau's functions, including its use of its supervisory and enforcement authorities.

As another alternative to imposing this requirement, the Bureau might instead require the entity to appoint an individual with a given title—for example, the entity's Chief Compliance Officer (CCO), or equivalent. However, the Bureau does not have comprehensive information regarding the organizational structures of the entities it supervises, and the Bureau expects that many supervised registered entities may have organizational structures that do not provide for a CCO or other officer title. The proposed requirement to designate the entity's highest-ranking executive who satisfies the specified criteria would help ensure that an appropriately high-level individual was designated but would retain flexibility to accommodate a range of entity organizational structures. And as discussed above, the Bureau believes that requiring the entity to designate its attesting executive for each covered order would provide the Bureau with information regarding the entity, including its compliance systems and procedures and its organization, business conduct, and activities subject to the covered order.

As another alternative to the approach proposed in § 1092.203(b), the Bureau might require supervised registered entities to obtain a review or audit by an independent third-party consultant of the entities' written statements and the facts underlying the written statements. However, the Bureau believes this alternative would impose costs on the entity that would largely be avoided by the proposal's requirement to designate an attesting executive already providing services to the entity and would require the Bureau to impose controls on such reviews in order to ensure their usefulness. In addition, this alternative would not provide the Bureau with the information regarding the entity described above.

The Bureau requests comment on all aspect of proposed § 1092.203(b), including any additions or alterations of the proposed requirement, as well as comment on each of the alternative approaches discussed above. The Bureau seeks comment as well on whether this provision provides sufficient guidance to supervised registered entities regarding which individuals may be designated as ''attesting executives.'' The Bureau also seeks comment on whether additional clarification should be provided with respect to supervised registered entities that are organized as entities other than corporations. The Bureau further seeks comment on whether the definition identifies an appropriate individual at the supervised registered entity for purposes of fulfilling the obligations set forth in proposed § 1092.203.

Requirement To Designate an Attesting Executive for Each Covered Order on an Annual Basis

Proposed § 1092.203(b) would require a supervised registered entity to annually designate one attesting executive for each applicable covered order to which it is subject and for all submissions and other purposes related to that covered order under proposed subpart B. The Bureau believes that requiring a supervised registered entity to designate an attesting executive for each covered order will facilitate the Bureau's supervision of the supervised registered entity by, among other things, facilitating the Bureau's supervisory communications with the supervised registered entity regarding the covered order, including any related supervisory concerns. The Bureau would also be able to contact the attesting executive with questions and to understand how the executive's responsibilities relate to the entity's obligations under its covered orders. The Bureau thus believes that this proposed designation requirement would help ensure compliance with the proposed rule, facilitate the Bureau's supervision of the supervised registered entity, help the Bureau assess and detect risks to consumers, and help ensure that the entity is legitimate and able to perform its obligations to consumers.

The Bureau expects that under most circumstances, a supervised registered entity would designate one single individual as its attesting executive for all of the covered orders to which it is subject. However, there may be situations in which there is no one senior executive officer with the requisite knowledge of the entity's systems and procedures for achieving compliance with all of the covered orders to which the entity is subject, and who has control over the entity's efforts to comply with those orders. In such a case, the entity could designate different attesting executives for the covered orders. By requiring a supervised registered entity to designate one attesting executive for each covered order described in proposed § 1092.203(a) to which it is subject, proposed § 1092.203(b) would enable the Bureau to better identify such situations. The Bureau seeks comment on this approach, including whether it adequately ensures the submission of informed, accurate, and meaningful written statements under proposed § 1092.203, and whether supervised registered entities should be required to designate one single executive to submit a written statement with respect to all of the covered orders to which the supervised registered entity is subject. The Bureau also seeks comment on whether supervised registered entities are likely to be organized in such a way as to make this provision useful, or whether under the proposed requirements an entity would likely be required to designate a single attesting executive in nearly all cases.

The Bureau also believes that by requiring the entity to designate its attesting executive(s) on an annual basis, the proposal would better enable the Bureau to understand the reporting relationships within the entity and the entity's compliance systems and procedures. The Bureau seeks comment on the requirement to designate attesting executives on an annual basis.

203(c) Requirement To Provide Attesting Executive(s) With Access to Documents and Information

Proposed § 1092.203(c) would require a supervised registered entity subject to proposed § 1092.203 to provide its attesting executive(s) with prompt access to all documents and information related to the supervised registered entity's compliance with all applicable covered order(s) as necessary to make the written statement(s) required in proposed § 1092.203(d).

The Bureau believes that this proposed requirement would help ensure that the attesting executive for an applicable covered order has timely access to the documents and information needed to submit an informed and accurate written statement under proposed § 1092.203(d). A supervised registered entity would not be permitted to refuse or deny to its attesting executive access to documents or information related to the supervised registered entity's compliance with the covered order. Under the proposed requirement, the Bureau would expect the attesting executive to have prompt access to all such documents and information, notwithstanding, for example, any privileges that may apply to the documents and information, or where or how the documents and information are stored.

The Bureau believes that this requirement would enhance the accuracy and usefulness of the written statement, which in turn would enhance the Bureau's ability to supervise the entity effectively, assess and detect risks to consumers, and ensure the entity is legitimate and able to perform its obligations to consumers. The Bureau requests comment on the need for this requirement and whether other requirements, modifications, or amendments to proposed § 1092.203(c) should be considered in order to ensure the accuracy and usefulness of the written statement.

203(d) Annual Requirement To Submit Written Statement to the Bureau for Each Covered Order

Proposed § 1092.203(d) would require, on or before March 31 of each calendar year, that the supervised registered entity submit to the NBR system, in the form and manner specified by the Bureau, a written statement with respect to each covered order described in proposed § 1092.203(a). In the written statement, the attesting executive would be required to provide a summary description of the executive's efforts to review and oversee compliance with the applicable order, and to attest regarding the entity's compliance with the order.

Proposed § 1092.203(d) would require the written statement to be signed by the supervised registered entity's attesting executive for the reasons discussed above.

Proposed § 1092.203(d)(1) would require the written statement to contain a general summary description of the steps, if any, the attesting executive has undertaken to review and oversee the supervised registered entity's activities subject to the applicable covered order for the preceding calendar year. This proposal is intended to provide information to the Bureau regarding the compliance monitoring efforts that have been undertaken by the executive during the applicable time period in connection with the order. The proposed rule would not establish any minimum procedures or otherwise specify the steps the executive must take in order to review and oversee the entity's activities. Instead, the rule would require only that the executive provide the Bureau with a general description of the steps the executive has already taken in this regard. The Bureau believes that this information would enhance the usefulness of the written statement by providing valuable context regarding the basis of the attesting executive's knowledge and by assisting the Bureau with determining the degree to which the Bureau may rely on the written statement. The Bureau believes that this information would be useful because the proposal would not by itself establish minimum requirements regarding the attesting executive's review and oversight of the entity's activities.

Proposed § 1092.203(d)(2) would require the attesting executive to attest whether, to the attesting executive's knowledge, the supervised registered entity during the preceding calendar year identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law. The attestation would be provided subject to the attesting executive's knowledge. As discussed above with respect to proposed § 1092.203(b) and proposed § 1092.203(c), the Bureau anticipates that the attesting executive would have adequate knowledge of the entity's systems and procedures for achieving compliance with the covered order to provide a useful attestation. The Bureau seeks comment as to whether the proposed rule contains sufficient safeguards to achieve this desired outcome.

The written statement described in the proposal would address violations and other instances of noncompliance with obligations that are ''based on'' a violation of a covered law. Consistent with the discussion above in the section-by-section discussion of the definition of ''covered order'' at proposed § 1092.201(e)(4), for purposes of this proposed requirement, an obligation would be ''based on'' an alleged violation where the order identifies the covered law in question, asserts or otherwise indicates that the covered nonbank has violated it, and imposes the obligation on the covered nonbank as a result of the alleged violation.[193] This would include, for example, obligations imposed as ''fencing-in'' or injunctive relief, so long as those obligations were imposed at least in part as a result of the entity's violation of a covered law. The proposed written statement would also need to address, for example, any obligation imposed as part of other legal or equitable relief granted with respect to the violation of a covered law, as well as any obligation imposed in order to prevent, remedy, or otherwise address a violation of a covered law, or the conditions resulting from such violation. As discussed above, an order may identify a covered law as the legal basis for the obligations imposed by referencing another document, such as a written opinion, stipulation, or complaint, that shows that a covered law served as the legal basis for the obligations imposed in the order. The Bureau is proposing this approach because an order may satisfy the proposed definition of ''covered order'' but nonetheless contain provisions that are entirely unrelated to covered laws. This element of the requirement in proposed § 1092.203(d)(2) is intended to exclude such provisions that are entirely unrelated to violations of covered laws. The Bureau seeks comment on this proposed approach.

The supervised registered entity would be required to state whether it has or has not identified instances of noncompliance with respect to each covered order. If no such instances of noncompliance have been identified, the supervised registered entity would be required to so state. The proposed rule would not establish any minimum procedures or otherwise impose or

[193] As in the context of proposed § 1092.201(e)(4), an obligation imposed based on multiple violations, some of covered laws and some of other laws, would qualify as an ''obligation[ ] . . . based on an alleged violation of a covered law'' within the meaning of § 1092.203(d)(1), even if the violations of the non-covered laws would themselves have sufficed to warrant the imposition of the obligation.

specify steps a supervised registered entity must take in order to review or monitor compliance with each covered order.[194] Instead, the proposed rule would merely require supervised registered entities to report violations and noncompliance that they have already identified in the course of their own compliance reviews and assessments. The Bureau believes that supervised registered entities likely already conduct reviews to determine their compliance with covered orders, and those reviews would assist in completing the required written statements. The Bureau would not expect the proposal to amend or affect any review, reporting, or recordkeeping requirement contained in any covered order or other provision of law. The Bureau, however, seeks comment on whether the proposed rule should prescribe minimum requirements for supervised registered entities' review of their compliance with the covered orders to which they are subject. The Bureau also seeks comment on whether the proposal should include other requirements for the written statement to provide related information.

While proposed § 1092.203(d) would require the written statement to be signed by the supervised registered entity's attesting executive, it would not require the attesting executive to submit a statement subject to the penalty of perjury. Nevertheless, knowingly and willfully filing a false attestation or report with the Bureau may be subject to criminal penalties.[195] The Bureau believes that the signature requirement, and the consequent potential for criminal liability where a knowingly false attestation is made, would be likely to deter attesting executives from submitting written statements that are incorrect or based on incomplete or otherwise inadequate information. This requirement should significantly enhance the accuracy and usefulness of the written statement. The Bureau seeks comment on its proposal to require the attesting executive's signature on the statement but not to require a statement subject to the penalty of perjury.

The Bureau relies on its rulemaking authority under CFPA section 1024(b)(7)(A)–(C) in requiring supervised registered entities to submit written statements.[196] Each of those paragraphs provides independent authority for the requirement to submit written statements. First, CFPA section 1024(b)(7)(A) and (B) authorize these written-statement requirements because the statements would facilitate the Bureau's supervision efforts and its assessment and detection of risks to consumers.[197] As discussed in more detail above in section IV(D), the Bureau believes the proposed written statement would facilitate the Bureau's supervision efforts, including by providing the Bureau with important additional information regarding risks to consumers that may be associated with the covered order; informing the Bureau's risk-based prioritization of its supervisory activities under CFPA section 1024(b); and improving the Bureau's ability to conduct its supervisory and examination activities with respect to the supervised nonbank, when it does choose to exercise its supervisory authority. Submission of a written statement that identifies noncompliance with reported orders would provide the Bureau with important information regarding risks to consumers that may be associated with the order. Such orders themselves frequently contain provisions aimed at ensuring an entity's future legal compliance with the covered laws violated. An entity's compliance with such provisions may mitigate the continuing risks to consumers presented by the entity and thus the potential need for current supervisory activities. By contrast, evidence of noncompliance with an order requiring registration under the proposal would be probative of a potential need for supervisory examination of the supervised nonbank and would be a relevant factor for the Bureau to consider in conducting its risk-based prioritization of its supervisory program under CFPA section 1024(b)(2), including (b)(2)(C), (D), and (E). Likewise, in cases where the Bureau determines to exercise its supervisory authorities with respect to a supervised nonbank required to submit written statements under the proposal, the Bureau would expect those written statements to provide important information relevant to conducting examination work. For example, the Bureau may use the written statements in determining what information to require from a supervised nonbank, in determining the content of supervisory communications and recommendations, or in making other decisions regarding the use of its supervisory authority.[198]

Second, the Bureau has authority to require preparation of the written statements under CFPA section 1024(b)(7)(C) because the written statements will help ensure that supervised registered entities ''are legitimate entities and are able to perform their obligations to consumers.'' [199] As explained above in section III(C), the Bureau interprets CFPA section 1024(b)(7)(C) as authorizing it to prescribe substantive rules to ensure that supervised entities are willing and able to comply with their legal obligations to consumers, including those imposed by Federal consumer financial law. As discussed in more detail above in section IV(D), the Bureau believes that the proposed requirement to submit an annual written statement will help ensure that the supervised registered entity takes its legal duties seriously, and that it is not treating the risk of enforcement actions for violations of legal obligations as a mere cost of doing business. If an entity reports under proposed § 1092.203(d)(2) that it has violated its obligations under covered orders, that may indicate that the entity lacks the willingness or ability more generally to comply with its legal obligations, including its obligations under the Federal consumer financial laws that the Bureau enforces. That would especially be the case if an entity reports violations under proposed § 1092.203(d)(2) in multiple years or with respect to multiple covered orders, or if the violation amounts to a repeat of the conduct that initially gave rise to the covered order. Under CFPA section 1024(b)(2),[200] the Bureau may prioritize such an entity for supervisory examination to determine whether the entity has worked in good faith to maintain protocols aimed at ensuring compliance with its legal obligations and detecting and appropriately addressing any legal violations that the entity may commit. In this way, the written statement required by § 1092.203(d)(2) would assist the Bureau in ensuring that supervised registered entities are legitimate entities and are able to perform their obligations to consumers.

[194] As discussed above in section IV(D), the Bureau expects that some supervised registered entities may bolster their compliance efforts in response to the proposal.

[195] *See* 18 U.S.C. 1001.

[196] 12 U.S.C. 5514(b)(7)(A)–(C).

[197] As explained in the ''legal authority'' section above, 12 U.S.C. 5514(b)(7)(A) and (B) provide independent sources of rulemaking authority. Also, for the reasons explained in the ''legal authority'' section, 12 U.S.C. 5514(b)(7)(B) authorizes the Bureau to require supervised registered entities to ''generate''—*i.e.*, create—the written statement and then ''provide'' it to the Bureau.

[198] The Bureau would anticipate that the proposed requirements in § 1092.203 would promote these objectives with respect to entities subject to Bureau supervision even in the event the Bureau did not require registration and publication of identifying information regarding covered nonbanks as described in proposed §§ 1092.202 and 1092.204.

[199] 12 U.S.C. 5514(b)(7)(C).

[200] 12 U.S.C. 5514(b)(2).

The Bureau seeks comment on all aspects of proposed § 1092.203(d), including whether to provide for increased frequency of reporting in the event of certain violations or other instances of noncompliance, such as instances of noncompliance that the Bureau believes may have resulted in more significant harm to consumers.

The Bureau also seeks comment on whether the proposal should include other requirements for a supervised registered entity to submit information related to its compliance with covered orders. The Bureau considered proposing additional requirements that would require a supervised registered entity to submit more detailed information regarding compliance with each covered order. In particular, the Bureau considered adopting a requirement that the written statement contain a written description of the instances of noncompliance that have been identified. This information would enable the Bureau to identify and assess the nature and extent of such noncompliance and related risks to consumers as part of its risk-based supervision program.

The Bureau is also considering adopting a requirement that the written statement contain a short description of the entity's compliance systems and procedures relating to the covered order, including a description of the processes for notifying the attesting executive regarding violations or other instances of noncompliance with the order. The Bureau expects that many executives may choose to provide such information in the summary narrative portion of the written statement required in proposed § 1092.203(d)(1), as part of describing the steps that the attesting executive has undertaken to review and oversee the supervised registered entity's activities subject to the applicable covered order, but seeks comment on whether to expressly require submission of such information in the final rule. The Bureau is also considering adopting a requirement that the attesting executive attest that, in the executive's professional judgment, the entity's compliance systems and procedures are reasonably designed to detect violations of the applicable covered order and ensure that such violations are reported to the attesting executive. Such a requirement would provide the Bureau with information regarding the adequacy of the entity's compliance management system and would enable the Bureau to better assess the reliability of the written statement.

Like the requirements in proposed § 1092.203(d) previously discussed, these additional requirements would help ensure that the entity has reasonable measures in place to inform the attesting executive about violations of covered orders and would thus help ensure that the written statement is useful to the Bureau. These requirements would also provide an incentive for those entities that do not take their legal obligations seriously to take additional steps to enhance compliance. Notwithstanding these benefits, the Bureau has not included these additional requirements in the current proposal because it preliminarily concludes that the proposed written statement should provide sufficient information to permit the Bureau to determine on a case-by-case basis whether to request such additional information from filers. That is, rather than automatically requiring submission of such information by all supervised registered entities, the Bureau anticipates that the proposed written statement will position the Bureau to inquire further about such submissions to the registry as needed on a case-by-case basis in the normal course of its supervision of supervised registered entities. However, the Bureau seeks comment on whether it should adopt any of these additional requirements for the written statement in the ordinary course.

203(e) Requirement To Maintain and Make Available Related Records

Proposed § 1092.203(e) would impose recordkeeping requirements with respect to the preparation of the written statement. These requirements are designed to promote effective and efficient enforcement and supervision of proposed § 1092.203. The Bureau would rely on its rulemaking authorities under CFPA section 1024(b)(7)(A)–(C) in imposing proposed § 1092.203(e)'s recordkeeping requirements.

Proposed § 1092.203(e) would require a supervised registered entity to maintain documents and other records sufficient to document the entity's preparation of the written statement, to provide reasonable support for the written statement, and to otherwise demonstrate compliance with the requirements of proposed § 1092.203 with respect to any submission under that section. The proposed section would require the supervised registered entity to maintain those documents and records for five years after such submission is required. The proposal would also require the supervised registered entity to make such documents and other records available to the Bureau upon the Bureau's request. The purpose of this requirement would be to enable the Bureau to assess, as part of its normal supervisory process, the supervised registered entity's compliance with proposed § 1092.203. The Bureau would expect such documents and other records to be in a form sufficient to enable the Bureau to conduct this assessment. The Bureau believes that the five-year time period would appropriately facilitate the Bureau's examination and enforcement capabilities with respect to compliance with proposed § 1092.203's requirements.

The Bureau requests comment on all aspects of proposed § 1092.203(e). In particular, the Bureau requests comment as to whether the proposed recordkeeping requirements ensure adequate support for the written statement and whether the Bureau should impose additional or alternative recordkeeping requirements—for example, by specifying additional requirements for the records' contents or requiring that the records be memorialized in written memoranda or reports. The Bureau also seeks comment on whether it should consider requiring records to be maintained for a different period of time.

203(f) Notification of Entity's Good Faith Belief That Requirements Do Not Apply

Proposed § 1092.203(f) would provide that a person may submit a notice to the NBR system stating that it is neither designating an attesting executive nor submitting a written statement pursuant to § 1092.203 because it has a good faith basis to believe that it is not a supervised registered entity or that an order in question is not a covered order. Such a filing may be combined with any similar filing under proposed § 1092.202(g).[201] Proposed § 1092.203(f) would also require the person to promptly comply with § 1092.203 upon becoming aware of facts or circumstances that would not permit it to continue representing that it has a good faith basis to believe that it is not a supervised registered entity or that an order in question is not a covered order. The Bureau is proposing to treat information submitted under § 1092.203(f) as ''administrative information'' as defined by proposed § 1092.201(a).

The Bureau is proposing § 1092.203(f) for several reasons. First, while determining whether a company qualifies as a ''supervised registered entity'' (or whether an order is a covered

[201] *See also* the section-by-section discussion of proposed § 1092.202(g), which would provide a similar option with respect to proposed § 1092.202.

order) should be straightforward in most cases, some persons may be uncertain about whether they are a supervised registered entity (or whether an order is a covered order). Even when they have a good faith basis to believe they are not a supervised registered entity (or an order is not a covered order), they could annually designate an attesting executive and file annual written statements if they did not want to incur the risk of violating the requirements of proposed § 1092.203. But that approach could impose burden on persons who ultimately are not supervised registered entities (or whose orders are not covered orders). The Bureau therefore proposes an alternative option for these persons. Rather than facing the burden of designating an attesting executive and filing written statements, such an entity could elect to file a notice under proposed § 1092.203(f). When a person makes a non-frivolous filing under proposed § 1092.203(f) stating that it has a good faith basis to believe that it is not a supervised registered entity (or an order is not a covered order), the Bureau would not bring an enforcement action against that person based on the person's failure to comply with proposed § 1092.203 unless the Bureau has first notified the person that the Bureau believes the person does in fact qualify as a supervised registered entity (or the order in question qualifies as a covered order) and has subsequently provided the person with a reasonable opportunity to comply with proposed § 1092.203.[202]

The Bureau also believes that filings under proposed § 1092.203(f) may reduce uncertainty by the Bureau about why certain entities are not designating an attesting executive or providing a written statement under proposed § 1092.203. These notifications also may provide the Bureau with information about how market participants are interpreting the scope of proposed § 1092.203, about the potential need for the Bureau to instruct certain persons to designate an attesting executive and provide written statements, and about the potential need for guidance or rulemaking clarifying the scope of proposed § 1092.203.

As in the case of proposed § 1092.202(g), the Bureau has considered an alternative to proposed § 1092.203(f) under which entities would *not* file a notice with the Bureau, but they could avoid penalties for non-compliance with § 1092.203 if in fact they could establish a good faith belief that they did not qualify as supervised registered entities subject to § 1092.203 (or their order was not a covered order). Under this alternative, entities would maintain such good faith belief so long as the Bureau had not made clear that § 1092.203 would apply to them. Although the Bureau preliminarily concludes that this alternative is not preferable to requiring entities to actually file notices under proposed § 1092.203(f), the Bureau seeks comment on whether it should finalize this alternative instead. It also seeks comment on whether, if it finalized this alternative, entities would require additional guidance on the circumstances pursuant to which an entity could no longer legitimately assert a good faith belief that § 1092.203 would not apply to its conduct. While the Bureau anticipates that such circumstances would certainly include entity-specific notice from the Bureau that § 1092.203 applies, the Bureau does not believe such notice should be required to terminate a good faith defense to registration. Among other circumstances, the Bureau anticipates that at least formal Bureau interpretations of (for example) the provisions of CFPA section 1024(a)(1) would generally suffice to terminate such belief.[203]

The Bureau also seeks comment on whether it should not finalize proposed § 1092.203(f) or the potential alternative to that provision.

Section 1092.204 Publication and Correction of Registration Information

204(a) Internet Posting of Registration Information

Proposed § 1092.204(a) would require the Bureau to make available to the public the information submitted to it by persons pursuant to proposed § 1092.202, except that the Bureau may choose not to publish certain administrative information or other information that the Bureau determines may be inaccurate, not required to be submitted under subpart B, or otherwise not in compliance with part 1092 and any accompanying guidance. Proposed § 1092.204(a) would further provide that the Bureau may make registration information available to the public by means that include publishing it on the Bureau's publicly available Internet site within a timeframe determined by the Bureau in its discretion. However, as discussed below regarding proposed § 1092.204(b), the proposal would specifically provide that the Bureau would not disclose the written statement submitted under proposed § 1092.203.

Publication of registered entities' identifying information would facilitate the ability of consumers to identify covered persons that are registered with the Bureau.[204] And the Bureau believes that publication of additional information about registered entities and covered orders would be in the public interest.[205] Namely, as discussed in more detail in section IV(E) above, proposed § 1092.204(a) would provide information of use to consumers, other regulators, industry, nongovernment organizations, and the general public. Proposed § 1092.204(a) also would formally align the proposed NBR system with Federal government emphasis on making government data available to and usable by the public, by default, to the greatest extent possible.[206]

As discussed in more detail in section IV(E) above, making the data collected publicly available would further the rationale of the proposal—that is, enhancing oversight and awareness of covered orders and the covered nonbanks that are subject to them. Regulators and other agencies at all levels of government (not just the Bureau) could use the information the Bureau makes publicly available to set priorities. The Bureau believes publication is also in the public interest because researchers could analyze the information the Bureau makes publicly available to gain valuable insight into the issues addressed in the nonbank registry system. For example, they could produce reports that may inform consumers and the public more broadly of potential risks related to covered orders, or otherwise use the public data to promote private innovation. Organizations representing consumer interests could also use the information to assist with their consumer protection efforts. Publication can also help inform the public, including industry actors, about how regulators are enforcing Federal consumer financial laws and other similar laws. For example, industry actors could use the registry as a convenient source of information regarding regulator actions and trends across jurisdictions, helping them to better understand legal risks and compliance obligations. At least in

[202] Under proposed § 1092.102(c), the filing of a notification under § 1092.203(f) would not affect the entity's ability to dispute more generally that it qualifies as a person subject to Bureau authority.

[203] 12 U.S.C. 5514(a)(1).

[204] 12 U.S.C. 5512(c)(7)(B).

[205] 12 U.S.C. 5512(c)(3)(B).

[206] *See, e.g.,* Open, Public, Electronic, and Necessary Government Data Act, in title II of Public Law 115–435 (Jan. 14, 2019); Office of Management and Budget, M–19–18, *Federal Data Strategy—A Framework for Consistency* (June 4, 2019), *https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-18.pdf*.

certain cases, consumers may be able to use the information in the registry to make informed choices regarding consumer financial products and services, including potentially using the information to assist with the assertion of private rights of action that might be available under the Federal consumer financial laws. Finally, publication would help promote Bureau accountability by helping the public better see and understand the results of the nonbank registry initiative, and to help the public gain greater insight into Bureau decision-making. As discussed above in section IV(E), the Bureau believes that identifying the executive who has knowledge and control of the supervised entity's efforts to comply with the covered order would provide particular benefits to the Bureau, the public, and other users of the system.

The Bureau seeks comment on potential costs and benefits of making data from the nonbank registry system publicly available. In particular, the Bureau seeks comment on whether it should decline to finalize the provisions in proposed § 1092.204, and whether it should not publicize some of the information collected pursuant to proposed § 1092.202. The Bureau appreciates that there may be some risk that publication would deter some entities from consenting to agency and court orders that they might otherwise agree to, due to the potential for additional attention created by the registry, any additional burden that may be imposed by the requirement to submit annual written statements, and any other deleterious effects that the entities may perceive related to registration requirements. This effect in turn may impact the Bureau's enforcement efforts and those of other Federal, State, and local agencies. The Bureau seeks comment on such potential effects, on how those effects might weigh against the benefits of publication, and on whether the Bureau might adopt any mechanisms to help prevent or minimize any concerns relating to the enforcement activities of the Bureau or other agencies.

In addition, there may be some uncertainty over the degree to which consumers would use the publicized information and, when they do, over how consumers could interpret such information. For example, consumers may misunderstand registration to mean that registered entities are ''legitimate,'' that registration itself serves as an endorsement by the Bureau, or that all registered entities are supervised, or regularly supervised, by the Bureau. Registration would not in and of itself establish the entity's legitimacy or serve as a Bureau endorsement in any way. Moreover, proposed subpart B would not constitute a licensing system or an authorization by the Bureau for covered nonbanks to engage in offering or providing consumer financial products or services. For these reasons, the Bureau continues to evaluate the possibility that publishing information collected under subpart B has the potential to create confusion, which, to the extent it occurs, is unlikely to serve the public interest. If the Bureau finalizes proposed § 1092.204, it would consider options for publishing the information in a manner that mitigates this risk.

Proposed § 1092.204(a) would provide that the Bureau may choose not to publish certain administrative information or other information that the Bureau determines may be inaccurate, not required to be submitted under subpart B, or otherwise not in compliance with part 1092 and any accompanying guidance. The Bureau proposes to exclude administrative information, as defined at proposed § 1092.201(a), from the proposed publication requirement because it believes the publication of such information may not in all instances be especially useful to external users of the system. Administrative information is likely to include information such as time and date stamps, contact information, and administrative questions. The Bureau anticipates that it may need such information to work with personnel at nonbanks and in order to administer the NBR system. The Bureau believes that publishing such information would not be in the public interest because publication would be unnecessary and likely would be counterproductive to the goals of ensuring compliance with the proposal and publishing usable information.

The Bureau would also reserve the right not to publish any information that it determines may be inaccurate, not required to be submitted under subpart B, or otherwise not in compliance with part 1092 and any accompanying guidance. For example, persons may submit unauthorized or inadvertent filings, or filings regarding orders that would not require registration under the proposal, or other inaccurate or inappropriate filings. The Bureau believes it would require flexibility not to publish such information in order to maintain the accuracy and integrity of the NBR system and the data that would be published by the Bureau. And publication of information that the Bureau determines is, or may be, inaccurate, not required to be submitted under subpart B, or that is otherwise not appropriately submitted under the proposal and accompanying guidance, would not further the goals of the proposal. The Bureau seeks comment on this approach and whether it should provide any additional flexibility, or add any restrictions, with respect to the publication required by this section.

Furthermore, consistent with CFPA section 1022(c)(8),[207] the Bureau would not publish information protected from public disclosure under 5 U.S.C. 552(b) or 552a of title 5, United States Code, or any other provision of law. The Bureau, however, does not believe that any of the information proposed to be collected under proposed § 1092.202 would be protected from public disclosure by law. The Bureau requests comments on this question, and whether any other steps should be taken to protect this information from public disclosure.

The Bureau recognizes that by relying in part on its supervisory authority in section 1024 of the CFPA to require submission of information to the nonbank registry, registry information could be construed to be ''confidential supervisory information'' as defined in the Bureau's confidentiality rules at 12 CFR 1070.2(i). Public release of information pursuant to § 1092.204(a) would be authorized by the Bureau's confidentiality rules at 12 CFR 1070.45(a)(7), which permits the Bureau to disclose confidential information ''[a]s required under any other applicable law.'' The Bureau does not believe that the information proposed to be published under § 1092.204(a) would raise the concerns generally addressed by the Bureau's restrictions on disclosure of confidential supervisory information. For example, the Bureau anticipates that the information collected pursuant to § 1092.202 would otherwise be subject to disclosure under the Freedom of Information Act and would not be particularly sensitive to financial institutions or compromise any substantial privacy interest; that disclosure of the information would not impede the confidential supervisory process; and that disclosure would not present risks to the financial system writ large.

204(b) Exclusion of Written Statement

Proposed § 1092.204(b) would provide that the publication described

[207] 12 U.S.C. 5512(c)(8) (''In . . . publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under [the FOIA] or [the Privacy Act of 1974, 5 U.S.C. 552a,] or any other provision of law, is not made public under [the CFPA].'').

in proposed § 1092.204(a) would not include the written statement submitted under proposed § 1092.203, and that such information would be treated as confidential supervisory information subject to the provisions of part 1070. The Bureau proposes to require the submission of the written statement pursuant to CFPA section 1024(b)(7), which authorizes the Bureau to prescribe rules regarding registration, recordkeeping, and other requirements for covered persons subject to its supervisory authority under CFPA section 1024. The Bureau believes that treating the written statements that it receives under proposed § 1092.203 as confidential, and not publishing them under proposed § 1092.204, would facilitate the Bureau's supervision of supervised registered entities by enabling the Bureau to obtain frank and candid assessments and other information from supervised registered entities regarding violations and noncompliance in connection with covered orders. This information in turn would better enable the Bureau to spot emerging risks, focus its supervisory efforts, and address underlying issues regarding noncompliance, compliance systems and processes, and risks to consumers.

There may be some benefit to other users of the NBR system from publishing the written statements that it receives under proposed § 1092.203, including enhancing the ability of other agencies and affected consumers to monitor compliance. However, the Bureau believes that these potential benefits are likely to be outweighed by increased candor and compliance with proposed § 1092.203. The Bureau's supervision program depends upon the full and frank exchange of information with the institutions it supervises. Consistent with the policies of the prudential regulators, the Bureau's policy is to treat information obtained in the supervisory process as confidential and privileged.[208] For example, the Bureau will treat all such information as exempt from disclosure under exemption 8 of the Freedom of Information Act.[209] The Bureau believes that these considerations would also underlie supervisory communications with supervised registered entities under proposed § 1092.203, and that the proposed approach would enhance the usefulness of submissions under proposed § 1092.203, increase the Bureau's ability to detect and assess potential noncompliance and emerging risks to consumers, and promote compliance with the law.[210]

The Bureau seeks comment on the proposed approach, whether treatment of such submissions as Bureau confidential supervisory information is warranted, and whether the Bureau should consider taking other steps to facilitate the submission of written statements.

204(c) Other Publications of Information

Proposed § 1092.204(c) would provide that the Bureau may, at its discretion, compile and aggregate data submitted by persons under proposed subpart B and may publish such compilations or aggregations (in addition to any other publication under proposed § 1092.204(a)). Any such publication that relates to annual written statements submitted under proposed § 1092.203 would be in a form that is consistent with the Bureau's treatment of those annual written statements as Bureau confidential supervisory information.[211]

204(d) Correction of Submissions to the NBR System

Proposed § 1092.204(d) would clarify that a covered nonbank must correct an information submission within 30 days of when it becomes aware or has reason to know the submitted information was and remains inaccurate. Proposed § 1092.204(d) would clarify that the process for making corrections will be described in the filing instructions the Bureau issues pursuant to proposed § 1092.102(a). Proposed § 1092.204(d) also would clarify that the Bureau may direct a covered nonbank to correct errors or other non-compliant submissions to the NBR system. Under proposed § 1092.204(d), the Bureau could direct corrections at any time and in its sole discretion.

Subpart C—Reserved

Subpart C of part 1092 would be reserved for rules that may be proposed in a separate notice of proposed rulemaking.

VI. Proposed Effective Date of Final Rule

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.[212] The Bureau proposes that, once issued, the final rule for this proposal would be effective 30 days after it is published in the **Federal Register**. However, as described in more detail in the section-by-section discussion of proposed §§ 1092.202(b) and 1092.203(a), registrants will only need to submit information once the Bureau launches and announces a registration system, which is likely to be no earlier than January 2024.

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered the proposed rule's potential benefits, costs, and impacts.[213] The Bureau requests comment on the preliminary analysis presented below, as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. In developing the proposed rule, the Bureau has consulted with, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies. Under CFPA sections 1022(c)(7)(C) and 1024(b)(7)(D), the Bureau has also consulted with State agencies regarding the proposed rule's requirements and registration system.[214]

The Bureau is issuing this proposal to require nonbanks to report certain

[208] *See* CFPB Compliance Bulletin 2015–01 (Jan. 27, 2015), *https://files.consumerfinance.gov/f/201501_cfpb_compliance-bulletin_treatment-of-confidential-supervisory-information.pdf;* CFPB Bulletin 2012–01 (Jan. 4, 2012), *https://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.* Also consistent with the policies of the prudential regulators, the Bureau recognizes that the sharing of confidential supervisory information with other government agencies may in some circumstances be appropriate, and in some cases, required. *See id.* For example, in accordance with the scheme of coordinated supervision established by Congress, the Bureau's policy is to share confidential supervisory information with the prudential regulators and State regulators that share supervisory jurisdiction over an institution supervised by the Bureau. *See id.*

[209] *See* 5 U.S.C. 552(b)(8).

[210] Proposed § 1092.102(c) would provide that proposed part 1092 would not alter applicable processes whereby a person may dispute that it qualifies as a person subject to Bureau authority. The Bureau believes written statements submitted to the NBR system under proposed § 1092.204 would constitute Bureau confidential supervisory information under the regulatory definition of that term even if the submitter later disputes that it qualifies as a person subject to the Bureau's supervisory authority. *See* 12 CFR 1070.2(i) (defining Bureau confidential supervisory information), (q) (''Supervised financial institution means a financial institution that is or that may become subject to the Bureau's supervisory authority.'').

[211] *See, e.g.,* 12 CFR 1070.41(c).

[212] 5 U.S.C. 553(d).

[213] Specifically, section 1022(b)(2)(A) of the CFPA requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of the proposed rule on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the CFPA; and the impact on consumers in rural areas. 12 U.S.C. 5512(b)(2)(A).

[214] 12 U.S.C. 5512(c)(7)(C), 5514(b)(7)(D).

public agency and court orders imposing obligations based on violations of consumer protection laws because the Bureau believes that the Bureau would benefit from the creation and maintenance of a central repository for information regarding such public orders that have been imposed upon nonbank covered persons. The Bureau also believes that consumers, the public, and other potential users of the proposed registration system would benefit from publication of certain information in the registry. In addition, the Bureau would also benefit from receiving annual supervisory reports from its supervised nonbanks regarding their compliance with such orders.

The proposed rule has three provisions, which are separately analyzed below. The first proposed provision (hereinafter referred to as the ''Registration Provision'') would require nonbank covered persons that are subject to certain public orders to register with the Bureau and to submit copies of each such public order to the Bureau. The second proposed provision (hereinafter referred to as the ''Supervisory Reports Provision'') would require nonbank covered persons that are subject to supervision and examination by the Bureau to prepare and submit an annual written statement, signed by a designated individual, regarding compliance with each covered public order. The third proposed provision (hereinafter referred to as the ''Publication Provision'') describes the registration information the Bureau would make publicly available.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies in part on information that the Bureau has obtained from other regulatory agencies and publicly available sources. The Bureau has performed outreach with other regulatory agencies on many of the issues addressed by the proposed rule. However, as discussed further below, the data are generally limited with which to quantify the potential costs, benefits, and impacts of the proposed provisions. In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed provisions. General economic principles and the Bureau's experience and expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed provisions.

C. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the proposed rule, the Bureau takes as a baseline the current legal framework regarding orders that would be covered under the proposed rule. Therefore, the baseline for the analysis of the proposed rule is that nonbank covered persons are not required to register with the Bureau, nonbank covered persons subject to Bureau supervision and examination generally are not required to prepare and submit annual reports regarding compliance with public orders enforcing the law, and information on the nonbank covered persons and most corresponding covered orders is generally not published by the Bureau in the manner contemplated by the proposed rule.

If finalized as proposed, the rule should affect the market as described below for as long as it is in effect. However, the costs, benefits, and impacts of any rule are difficult to predict far into the future. Therefore, the analysis below of the benefits, costs, and impacts of the proposed rule is most likely to be accurate for the first several years following implementation of the proposed rule.

D. Potential Benefits and Costs of the Proposed Rule to Consumers and Covered Persons

With certain exceptions, the proposed rule would apply to covered persons as defined in the CFPA, including persons that engage in offering or providing a consumer financial product or service.[215] Among others,[216] these products and services would generally include those listed below, at least to the extent they are offered or provided for use by consumers primarily for personal, family, or household purposes:

- Extending credit and servicing loans;
- Extending or brokering certain leases of personal or real property;
- Providing real estate settlement services;
- Engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds;
- Selling, providing, or issuing stored value or payment instruments;
- Providing check cashing, check collection, or check guaranty services;
- Providing payments or other financial data processing products or services to a consumer by any technological means;
- Providing financial advisory services;
- Collecting, analyzing, maintaining, or providing consumer report information or certain other account information; and
- Collecting debt related to any consumer financial product or service.[217]

The Registration and Publication Provisions would affect such covered persons (as that term is defined in 12 U.S.C. 5481(6)) that (1) are not insured depository institutions, insured credit unions, or related persons (as that term is defined in 12 U.S.C. 5481(25)), and (2) have had covered orders issued against them, unless such covered persons are subject to certain exclusions. The Supervisory Reports Provision would affect such covered persons that (1) are subject to supervision and examination by the Bureau pursuant to CFPA section 1024(a),[218] (2) have had covered orders issued against them, and (3) are at or above the $1 million annual receipt threshold, unless such covered persons are subject to certain exclusions.

A major benefit of the proposed rule would be that it would give the Bureau higher-quality data on the number and type of covered orders. Currently, the Bureau does not have high-quality data on the number of covered orders, nor does it have high-quality data on the number of nonbank covered persons that are subject to covered orders.

To derive an estimate of the number of affected entities under the proposed rule using publicly available data, the Bureau used data from the most recent Economic Census. Table 1 below presents entity counts for the North American Industry Classification System (NAICS) codes that generally align with the financial services and products listed above. The markets defined by NAICS codes in some cases include entities that would not qualify as covered nonbanks under the proposed rule. It is also possible that some covered nonbanks may not be counted in the table below, because, *e.g.,* the financial services they provide are not their primary line of business. The Bureau seeks comment on NAICS codes not included in Table 1 that include a significant number of entities that could be affected by the proposed rule.

[215] For the full scope of the term ''covered person,'' *see* 12 U.S.C. 5481(6).

[216] For the full scope of the term ''consumer financial product or service,'' *see* 12 U.S.C. 5481(5).

[217] *See* 12 U.S.C. 5481(15) (defining term ''financial product or service'').

[218] 12 U.S.C. 5514(a).

TABLE 1—POTENTIAL SCOPE OF PROPOSED RULE

NAICS name(s)	NAICS code(s)	Number of NAICS entities
Nondepository Credit Intermediation	5222	14,330
Activities Related to Credit Intermediation	5223	13,618
Portfolio Management	523920	24,430
Investment Advice	523930	17,510
Passenger Car Leasing	532112	449
Truck, Utility Trailer, and Recreational Vehicle Rental and Leasing	532120	1,612
Activities Related to Real Estate	5313	79,563
Consumer Reporting	561450	307
Debt Collection	561440	3,224
Total	.....	155,043

Therefore, for purposes of its analysis of the proposed rule, the Bureau estimates that there are roughly 155,043 covered nonbanks. As noted above, covered nonbanks would only be affected by the rule if they are subject to covered orders. Based on its experience and expertise, the Bureau estimates that perhaps one percent, and at most five percent, of covered nonbanks are subject to covered orders. Therefore, the Bureau estimates that the rule would likely affect between 1,550 and 7,752 covered nonbanks.

The Bureau seeks comment and submissions of data concerning the number and characteristics (such as annual revenues, number of employees, and main area of business) of covered nonbanks subject to covered orders. In light of the currently limited data available to the Bureau on the number of covered nonbanks subject to covered orders, the analysis below focuses on the potential benefits and costs of the proposed rule for affected consumers and covered nonbanks.

1. Registration Provision

Under this proposed provision, affected entities would have to provide: (1) identifying information and administrative information and (2) information regarding covered orders. The Bureau believes this information should be readily available to affected firms. Therefore, the cost of complying with the Registration Provision for most affected firms should be on the order of a few hours of an employee's time. The cost may be higher for firms with several covered orders, or with covered orders that are frequently modified.

Some firms may be unsure whether they are covered persons not otherwise excluded from the rule, or whether they are subject to covered orders. For firms unsure of their obligations under the proposed provision, one option would be to hire outside legal counsel to advise them on these issues, which could be costly for small firms. However, another option for such firms would be to register using the NBR system, even if doing so is not legally required. As explained above, the cost associated with registering an order is likely minimal—a few hours of an employee's time. In addition, if firms have a good faith basis to believe they are not covered nonbanks (or that their orders are not covered orders), they may submit a notice to the nonbank registration system stating as such under proposed § 1092.202(g). Preparing and submitting such notices would take at most a few hours of an employee's time. The Bureau further notes that the mere act of registering an order or submitting a § 1092.202(g) notice is unlikely to have significant indirect costs because proposed § 1092.102(c) would provide that the rule ''does not alter any applicable process whereby a person may dispute that it qualifies as a person subject to Bureau authority.'' Firms should generally choose the lowest cost option available to them, and low-cost options—either registering under the NBR system or filing a notice under proposed § 1092.202(g)—are options available to firms.

To obtain a quantitative estimate of the cost of this proposed provision, the Bureau assesses the average hourly base wage rate for the reporting requirement at $43.60 per hour. This is the mean hourly wage for employees in four major occupational groups assessed to be most likely responsible for the registration process: Management ($59.31/hr); Legal Occupations ($54.38/hr); Business and Financial Operations ($39.82/hr); and Office and Administrative Support ($20.88/hr).[219] We multiply the average hourly wage of $43.60 by the private industry benefits factor of 1.42 to get a fully loaded wage rate of $61.90/hr.[220] The Bureau includes these four occupational groups in order to account for the mix of specialized employees that may assist in the registration process. The Bureau assesses that the registration process will generally be completed by office and administrative support employees that are generally responsible for the registrant's paperwork and other administrative tasks. Employees specialized in business and financial operations or in legal occupations are likely to provide information and assistance with the registration process. Senior officers and other managers are likely to review the registration information before it is submitted and may provide additional information. The Bureau requests any information that would inform its estimate of the average hourly compensation of employees required to register under the proposed rule. Assuming as outlined above a fully loaded wage rate of roughly $60, and that complying with this proposed provision would take around five hours of employees' time, yields a cost impact of around $300 per firm. Therefore, the impact of this proposed provision on affected firms would be limited.

This proposed provision would likely not provide any benefits for affected firms.

This proposed provision would give the CFPB high-quality information on outstanding covered orders and the entities subject to those orders. That information would assist the Bureau in monitoring for risks to consumers in the offering or provision of consumer financial products or services. The proposed registry would allow the Bureau to more effectively monitor for potential risks to consumers arising from both individual violations of consumer protection laws and broader

[219] *See* U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates United States (May 2021), *https://www.bls.gov/oes/current/oes_nat.htm.*

[220] As of March 2022, the ratio between total compensation and wages for private industry workers is 1.42. *See* U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation: Private industry dataset (March 2022), *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

patterns in such violations and enforcement actions intended to address them. Such monitoring, in turn, would help inform the Bureau's exercise of its other authorities. It would assist the Bureau in determining whether to prioritize certain entities for risk-based supervision, or to investigate whether certain entities have committed violations that warrant Bureau enforcement actions. The Bureau also anticipates that the Registration Provision would give it more information on important gaps in existing consumer financial protection laws and would therefore improve future Bureau regulations. In addition, by providing the Bureau with more information on consumer harms in various markets, the Registration Provision would improve the Bureau's consumer education efforts. All of these effects would benefit consumers. The Bureau does not have any data to quantify these benefits.

This proposed provision would likely not impose any significant costs on consumers. As noted above, this proposed provision could impose some costs on some firms, and it is possible that those firms would respond to these increased costs by increasing prices for consumers. But as discussed above, the costs of this proposed provision would be limited, so any price increases caused by the rule would also be limited. Moreover, many firms would not be affected at all by this proposed provision and so would not raise prices because of this proposed provision.

2. Supervisory Reports Provision

This proposed provision would only affect covered nonbanks subject to Bureau supervision and examination. Therefore, it would affect fewer covered nonbanks and fewer consumers than the first provision analyzed above.

Some firms may be unsure whether they are supervised covered persons not otherwise excluded from the rule, or whether they are subject to covered orders, so they may be unsure whether they would have to comply with this proposed provision. The Bureau notes that complying with this proposed provision if it is legally unnecessary is unlikely to have greater costs than if it is legally necessary, because proposed § 1092.102(c) would provide that the rule does not alter applicable processes whereby a person may dispute that it qualifies as a person subject to Bureau authority. Also, under proposed § 1092.203(f), if a firm has a good faith basis to believe that it is not a supervised registered entity subject to the Supervisory Reports Provision (or that its order is not a covered order), it may submit a notice to the nonbank registration system stating as such. Preparing and submitting such a notice would take at most a few hours of an employee's time. Firms should generally choose the lowest cost option available to them. Therefore, firms are unlikely to spend more to determine whether they need to comply with the Supervisory Reports Provision than the cost to the firm of complying with the provision or, for firms with a good faith basis to believe they are not supervised registered entities, of filing a § 1092.203(f) notice.

This provision would require that affected supervised entities designate an attesting executive. The attesting executive would be a duly appointed senior executive officer (or, if no such officer exists, the highest-ranking individual at the entity charged with managerial or oversight responsibilities) (i) whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, (ii) who possesses knowledge of the supervised entity's systems and procedures for achieving compliance with the covered order, and (iii) who has control over the supervised entity's efforts to comply with the covered order. The Bureau believes that, even under the baseline scenario, most supervised entities would be taking active steps to comply with covered orders, and therefore would already have such an officer or individual in place to oversee the entity's compliance with its obligations under the covered order. Therefore, the Bureau anticipates that this designation requirement would impose little or no additional cost on most supervised registered entities. The Bureau notes that the cost may be higher for supervised entities that lack a high-ranking officer or other employee with the requisite qualifications to serve as an attesting executive. But the Bureau believes that there would be few such entities. The Bureau seeks comment on whether proposed § 1092.203(b)'s designation requirement is likely to impose material additional costs on supervised registered entities, beyond the costs those entities are already likely to incur as part of fulfilling their obligations under the covered orders to which they are subject.

The Supervisory Reports Provision would also require that the supervised registered entity submit a written statement signed by the applicable attesting executive for each covered order to which it is subject. In the written statement, the attesting executive would: (i) generally describe the steps that the attesting executive has undertaken to review and oversee the supervised registered entity's activities subject to the applicable covered order for the preceding calendar year; and (ii) attest whether, to the attesting executive's knowledge, the supervised registered entity during the preceding calendar year identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law.

The Bureau cannot precisely quantify the impact of the written-statement requirement on impacted firms, but based on its experience and expertise, the Bureau believes that most entities subject to covered orders endeavor in good faith to comply with them and will already have in place some manner of systems and procedures to help achieve such compliance. For these entities, the proposed written-statement requirement would require little more than submitting a written statement from the attesting executive that describes the steps the executive took consistent with the established systems and procedures to reach conclusions regarding entity compliance with the orders. Thus, relative to the baseline, the written-statement requirement should impose only modest costs on most covered entities, related primarily to the time and effort needed to (i) memorialize the attesting executive's existing oversight of compliance and (ii) determine whether the supervised registered entity during the preceding calendar year identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law. While the attesting executive would sign the written statement, the Bureau expects that other employees in other major occupational groups (Legal Occupations, Business and Financial Operations, and Office and Administrative Support) would support the attesting executive in preparing the statement. Assuming that satisfying the written-statement requirement would take twenty hours of employees' time, and that the average cost to entities of an employee's time is roughly $60 an hour as discussed above, yields an estimate that the cost of this requirement on covered entities would be roughly $1200 per firm.

The Bureau acknowledges that, under the baseline, some supervised registered entities may not have in place systems and procedures to allow them to confidently identify violations or other instances of noncompliance with any

obligations that were imposed in a public provision of the covered order. As discussed elsewhere in this preamble, the Supervisory Reports Provision would likely prompt some such entities to adopt new or additional compliance systems and procedures, imposing a greater cost on them. However, as noted above, based on its experience and expertise, the Bureau believes that most entities subject to covered orders endeavor in good faith to comply with them and will already have in place some manner of systems and procedures to help achieve such compliance. Therefore, the Bureau believes that the number of supervised registered entities that would put in place significant new compliance systems and procedures as a result of the rule would be relatively small.

In addition, the Supervisory Reports Provision would require entities to maintain records related to the written statement for five years. Conservatively assuming that ensuring the necessary documents are properly stored also requires ten hours of employee time adds $600 to the costs to affected entities of this proposed provision.

Note that, for the purposes of this proposed rule, the term ''supervised registered entity'' excludes persons with less than $1 million in annual receipts resulting from offering or providing consumer financial products and services described in CFPA section 1024(a).[221] Therefore, the combined costs of around $1800 imposed by the Supervisory Reports Provision on the majority of affected entities should be roughly 0.2 percent or less of annual receipts. The costs may be higher at larger entities because identifying instances of noncompliance with obligations imposed in a public provision of a covered order may be more complex at larger entities. The costs would also likely be higher at entities with multiple instances of noncompliance with public provisions of covered orders, or with multiple covered orders.

As explained in greater detail in section V(D) above, the Supervisory Reports Provision would facilitate the Bureau's risk-based supervision efforts, including its efforts to assess compliance with the requirements of Federal consumer financial law, obtain information about the supervised entities' activities and compliance systems or procedures, and detect and assess risks to consumers and to markets for consumer financial products and services. All of these effects would benefit consumers. Moreover, while as noted above the Bureau believes that most entities subject to covered orders endeavor in good faith to comply with them and will already have in place some manner of systems and procedures to help achieve such compliance, it is also likely that this proposed provision would cause a few entities without such systems and procedures to develop them. This would also benefit consumers. The Bureau does not have any data to quantify this benefit. The Bureau requests comments and information on ways to quantify these benefits.

3. Publication Provision

For affected covered nonbanks, the main effect of this provision would be that (1) their identifying information and administrative information, (2) information regarding covered orders that they provide to the Bureau, and (3) for supervised registered entities, the name and title of the attesting executive, could be posted on the Internet by the Bureau. Much of this information would be public even under the baseline, so the additional direct effect of this information being posted on the Bureau's website should be small.

However, because covered nonbanks would provide this information only if they are subject to covered orders, consumers might interpret the presence of a covered nonbank on the Bureau's website as negative information about that covered nonbank. Therefore, this proposed provision may have negative reputational costs for the covered nonbank whose information is published on the Bureau website. Yet, covered orders would be public information even under the baseline with no rule. Therefore, this proposed provision would not make public any non-public orders. This would limit the likely costs on covered nonbanks of the proposed provision.

This proposed provision would allow information related to covered orders that is already available to the general public to be centralized on the Bureau's website. This could make the information more readily accessible than it would otherwise be. A large body of research has studied the circumstances under which providing consumers better access to information does, and does not, improve consumer outcomes.[222] One consensus from this research is that well-designed information disclosures can be effective at directing consumer attention. For example, one study found that providing payday loan borrowers with information about the costs of payday loans reduced payday loan borrowing.[223] However, another consensus from this research is that information disclosures do not always materially affect consumer decision-making, and that the impact of information disclosures on consumer decision-making depends on their design and implementation. Impactful information disclosures are typically more direct (*e.g.*, disclosing the costs of payday loans to payday loan borrowers) and more timely (*e.g.*, disclosed to payday loan borrowers at the time they are obtaining a payday loan) than the information that would be centralized and published under this proposed provision. Therefore, the Bureau believes that most consumers would not change their behavior due to this proposed provision, so the impact of this proposed provision on most affected entities would likely not be significant. The Bureau acknowledges that the issues disclosed by a few covered orders may be so controversial among consumers that their publication on the Bureau website could impose a substantial impact on the firms affected by those orders. However, as noted above, covered orders would be public information even under the baseline with no rule. Therefore, covered orders that disclose particularly controversial practices would likely be well-known among consumers even under the baseline.

This proposed provision could benefit firms in affected markets, even those without covered orders, by centralizing information on covered orders. This could give firms a clearer picture of how consumer financial protection laws are enforced across agencies and jurisdictions, and could reduce costs for firms that would conduct research into this question under the baseline. The Bureau does not have any data with which to quantify these benefits.

For consumers, one effect of the proposed provision would be improved access to information about covered nonbanks with covered orders. However, as noted above, this information would be public even under the baseline. Moreover, as discussed in more detail above, impactful information disclosures are typically more direct and more timely than the information that would be centralized and published under this proposed

[221] 12 U.S.C. 5514(a).

[222] For one review of this research, *see* Thomas A. Durkin and Gregory Elliehausen, *Truth in Lending: Theory, History, and a Way Forward* (2011).

[223] *See* Marianne Bertrand and Adair Morse, *Information Disclosure, Cognitive Biases, and Payday Borrowing,* 66 The Journal of Finance 1865, 1865–93 (2011).

provision. Therefore, the Bureau believes that most consumers would not change their behavior due to this proposed provision. The Bureau acknowledges that the issues disclosed by a few covered orders may be so controversial among consumers that their publication on the Bureau website could impose a substantial impact on the firms affected by those orders. However, as noted above, covered orders would be public information even under the baseline with no rule. Therefore, covered orders that disclose particularly controversial practices would likely be well-known among consumers even under the baseline.

By centralizing information on covered orders, another effect of the proposed provision would be to improve the ability of regulatory agencies besides the Bureau to conduct their activities, including supervision, enforcement, regulation, market monitoring, research, and consumer education. This would benefit consumers. The Bureau does not have any data to quantify this benefit.

This proposed provision would likely not impose any significant costs on consumers. As noted above, this proposed provision could impose some costs on some firms, and it is possible that those firms would respond to these increased costs by increasing prices for consumers. But as discussed above, the costs of this proposed provision on affected firms would be limited, so any cost increases caused by the rule would be limited at affected firms. Moreover, many firms would not be affected at all by this proposed provision and so would not raise prices because of this proposed provision.

E. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026

This proposed rule would only apply to nonbanks. Therefore, it would have no direct impacts on any insured depository institutions or insured credit unions. The rule might have some indirect effects on some insured depository institutions and insured credit unions with $10 billion or less in total assets. For example, insured depository institutions and insured credit unions that are affiliated with affected entities might experience indirect costs, because the proposed rule could impose some costs on their nonbank affiliates. Insured depository institutions and insured credit unions that compete with affected entities might experience indirect benefits because of the proposed rule, because the proposed rule would impose some costs on their competitors. But as noted above, even for nonbanks that are directly affected by the proposed rule, the Bureau does not anticipate that the rule's impact will be significant in most cases. Therefore, the Bureau anticipates that any indirect effects on insured depository institutions or insured credit unions with $10 billion or less in total assets would be even less significant.

2. Impact of the Proposed Rule on Access to Consumer Financial Products and Services and on Consumers in Rural Areas

By imposing some costs on affected covered nonbanks, the proposed rule could cause affected covered nonbanks to provide fewer financial products and services (or financial products and services at higher cost) to consumers. However, as noted above, the proposed rule would likely impose only limited costs on a limited number of covered nonbanks. Therefore, the impact of the proposed rule on consumer access to financial products and services would be limited even at affected covered nonbanks. Moreover, bank and nonbank entities that would not be directly affected by the proposed rule could provide financial products and services to consumers that would otherwise obtain these financial products and services from affected covered nonbanks. Therefore, the negative impact of the proposed rule on consumer access to financial products and services would be limited. By improving the ability of the CFPB to conduct its activities, including supervision, enforcement, regulation, market monitoring, and consumer education, the proposed rule would likely improve the functioning of the broader market and so may also have positive effects on consumer access to consumer financial products or services provided in conformity with applicable legal obligations designed to protect consumers.

Broadly, the Bureau believes that the analysis above of the impact of the proposed rule on consumers in general provides an accurate analysis of the impact of the proposed rule on consumers in rural areas. The impact of the proposed rule on consumers in rural areas would likely be relatively smaller if the proposed rule would affect fewer entities in rural areas. High-quality data on the rural market share of entities that would be affected by the proposed rule does not exist, so the Bureau cannot judge with certainty the relative impact of the rule on rural areas. However, for certain large and well-studied markets, there is evidence that nonbanks have larger market shares in urban areas and smaller market shares in rural areas.[224] Based on this limited evidence, the Bureau expects that the impact of the proposed rule would be smaller in rural areas.

VIII. Regulatory Flexibility Act Analysis

A. Overview

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final 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.[225] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[226]

An IRFA is not required for this proposed rule because for the reasons explained below the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Impact of Proposed Provisions on Small Entities

The proposed rule has three provisions, which are separately analyzed below. The first proposed provision (hereinafter referred to as the ''Registration Provision'') would require nonbank covered persons that are subject to certain public agency and court orders enforcing the law to register with the Bureau and to submit copies of such public orders to the Bureau. The second proposed provision (hereinafter referred to as the ''Supervisory Reports Provision'') would require nonbank covered persons that are supervised by the Bureau to prepare and submit an annual written statement, signed by a designated individual, regarding compliance with each covered public order. The third proposed provision (hereinafter referred to as the ''Publication Provision'') describes the registration information the Bureau would make publicly available.

[224] For evidence on the mortgage market, *see* Julapa Jagtiani, Lauren Lambie-Hanson, and Timothy Lambie-Hanson, *Fintech Lending and Mortgage Credit Access,* 1 The Journal of FinTech (2021). For evidence on the auto loan market, *see* Donghoon Lee, Michael Lee, and Reed Orchinik, *Market Structure and the Availability of Credit: Evidence from Auto Credit,* MIT Sloan Research Paper (2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3966710.*

[225] 5 U.S.C. 601 *et seq.*

[226] 5 U.S.C. 609.

The analysis below evaluates the potential economic impact of the proposed provisions on small entities as defined by the RFA.[227] The RFA's definition of ''small'' varies by type of entity.[228]

With certain exceptions, the proposed rule would apply to covered persons as defined in the CFPA, including persons that engage in offering or providing a consumer financial product or service.[229] Among others,[230] these products and services would generally include those listed below, at least to the extent they are offered or provided for use by consumers primarily for personal, family, or household purposes.

- Extending credit and servicing loans;
- Extending or brokering certain leases of personal or real property;
- Providing real estate settlement services;
- Engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds;
- Selling, providing, or issuing stored value or payment instruments;
- Providing check cashing, check collection, or check guaranty services;
- Providing payments or other financial data processing products or services to a consumer by any technological means;
- Providing financial advisory services;
- Collecting, analyzing, maintaining, or providing consumer report information or certain other account information; and
- Collecting debt related to any consumer financial product or service.[231]

The Registration and Publication Provisions would affect such covered persons (as that term is defined in 12 U.S.C. 5481(6)) that (1) are not insured depository institutions, insured credit unions, or related persons (as that term is defined in 12 U.S.C. 5481(25)), and (2) have had covered orders issued against them, unless such covered persons are subject to certain exclusions. The Supervisory Reports Provision would affect such covered persons that (1) are subject to supervision and examination by the Bureau pursuant to CFPA section 1024(a),[232] (2) have had covered orders issued against them, and (3) are at or above the $1 million annual receipt threshold, unless such covered persons are subject to certain exclusions.

A major benefit of the proposed rule would be that it would give the Bureau higher-quality data on covered orders. Currently, the Bureau does not have high-quality data on the number of covered orders, nor does it have reliable information on the number of small, covered firms that are subject to covered orders. Therefore, the Bureau cannot reliably estimate the number of small entities that would be impacted by the proposed rule.

1. Registration Provision

The first proposed provision would require covered firms to register using the NBR system and submit certain required information. Required information includes identifying and administrative information, as well as information regarding covered orders. This information should be readily accessible to almost all entities affected and providing it through the NBR system should be straightforward. Firms would not have to purchase new hardware or software, or train specialized personnel, to comply with this proposed provision.

To obtain a quantitative estimate of the cost of this proposed provision, the Bureau assesses the average hourly base wage rate for the reporting requirement at $43.60 per hour. This is the mean hourly wage for employees in four major occupational groups assessed to be most likely responsible for the registration process: Management ($59.31/hr); Legal Occupations ($54.38/hr); Business and Financial Operations ($39.82/hr); and Office and Administrative Support ($20.88/hr).[233] We multiply the average hourly wage of $43.60 by the private industry benefits factor of 1.42 to get a fully loaded wage rate of $61.90/hr.[234] The Bureau includes these four occupational groups in order to account for the mix of specialized employees that may assist in the registration process. The Bureau assesses that the registration process will generally be completed by office and administrative support employees that are generally responsible for the registrant's paperwork and other administrative tasks. Employees specialized in business and financial operations or in legal occupations are likely to provide information and assistance with the registration process. Senior officers and other managers are likely to review the registration information before it is submitted and may provide additional information. The Bureau requests any information that would inform its estimate of the average hourly compensation of employees required to register under the proposed rule. Assuming as outlined above a fully loaded wage rate of roughly $60, and that complying with this proposed provision would take around five hours of employees' time, yields a cost impact of around $300 per firm. Therefore, the impact of this proposed provision on affected firms would be limited.

2. Supervisory Reports Provision

This second provision would require that affected supervised entities designate an attesting executive. The attesting executive would be a duly appointed senior executive officer (or, if no such officer exists, the highest-ranking individual at the entity charged with managerial or oversight responsibilities) (i) whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, (ii) who possesses knowledge of the supervised entity's systems and procedures for achieving compliance with the covered order, and (iii) who has control over the supervised entity's efforts to comply with the covered order. The Bureau believes that, even under the baseline scenario, most supervised entities would be taking active steps to comply with covered orders, and therefore

[227] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[228] U. S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, https://www.sba.gov/sites/default/files/2022-09/Table%20of%20Size%20Standards_NAICS%202022%20Final%20Rule_Effective%20October%201%2C%202022.pdf* (current SBA size standards).

[229] For the full scope of the term ''covered person,'' *see* 12 U.S.C. 5481(6).

[230] For the full scope of the term ''consumer financial product or service,'' *see* 12 U.S.C. 5481(5).

[231] *See* 12 U.S.C. 5481(15) (defining term ''financial product or service'').

[232] 12 U.S.C. 5514(a).

[233] *See* U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates Statistics for May 2021, *https://www.bls.gov/oes/current/oes_nat.htm.*

[234] As of March 2022, the ratio between total compensation and wages for private industry workers is 1.42. *See* U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation: Private industry dataset (March 2022), *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

would already have such an officer or individual in place to oversee the entity's compliance with its obligations under the covered order. Therefore, the Bureau anticipates that this designation requirement would impose little or no additional impact on most supervised registered entities. The Bureau notes that the impacts may be higher for supervised entities that lack a high-ranking officer or other employee with the requisite qualifications to serve as an attesting executive, but the Bureau believes that there would be few such entities. The Bureau seeks comment on whether proposed section 203(b)'s designation requirement is likely to impose material additional impacts on supervised registered entities, beyond the impacts those entities are already likely to incur as part of fulfilling their obligations under the covered orders to which they are subject.

The Supervisory Reports Provision would also require that the supervised registered entity submit a written statement signed by the applicable attesting executive for each covered order to which it is subject. In the written statement, the attesting executive would: (i) generally describe the steps that the attesting executive has undertaken to review and oversee the supervised registered entity's activities subject to the applicable covered order for the preceding calendar year; and (ii) attest whether, to the attesting executive's knowledge, the supervised registered entity during the preceding calendar year identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law.

The Bureau cannot precisely quantify the impact of the written-statement requirement on impacted firms but based on its experience and expertise, the Bureau believes that most entities subject to covered orders endeavor in good faith to comply with them and will already have in place some manner of systems and procedures to help achieve such compliance. For these entities, the proposed written-statement requirement would require little more than submitting a written statement from the attesting executive that describes the steps the executive took consistent with the established systems and procedures to reach conclusions regarding entity compliance with the orders. Thus, relative to the baseline, the written-statement requirement should impose only modest costs on most covered entities, related primarily to the time and effort needed to (i) memorialize the attesting executive's existing oversight of compliance and (ii) determine whether the supervised registered entity during the preceding calendar year identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law. While the attesting executive would sign the written statement, the Bureau expects that other employees in other major occupational groups (Legal Occupations, Business and Financial Operations, and Office and Administrative Support) would support the attesting executive in preparing the statement. Assuming that satisfying the written-statement requirement would take twenty hours of employees' time, and that the average cost to entities of an employee's time is roughly $60 an hour as discussed above, yields an estimate that the cost of this requirement on covered entities would be roughly $1200 per entity.

The Bureau acknowledges that, under the baseline, some supervised registered entities firms may not have in place systems and procedures to allow them to confidently identify violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order. As discussed elsewhere in this preamble, the Supervisory Reports Provision would likely prompt some such entities to adopt new or additional compliance systems and procedures, imposing a greater cost on them. However, as noted above, based on its experience and expertise, the Bureau believes that most entities subject to covered orders endeavor in good faith to comply with them and will already have in place some manner of systems and procedures to help achieve such compliance. Therefore, the Bureau believes that the number of supervised registered entities that would put in place significant new compliance systems and procedures as a result of the rule would be relatively small.

In addition, the Supervisory Reports Provision would require entities to maintain records related to the written statement for five years. Conservatively assuming that ensuring the necessary documents are properly stored also requires ten hours of employee time adds $600 to the costs to affected entities of this proposed provision.

Note that, for the purposes of this proposed rule, the term ''supervised registered entity'' excludes persons with less than $1 million in annual receipts resulting from offering or providing consumer financial products and services described in CFPA section 1024(a). Therefore, the combined costs of around $1800 imposed by the Supervisory Reports Provision on the majority of affected entities should be roughly 0.2 percent of annual receipts. Therefore, the impact of this proposed provision on most affected small entities would be limited. The costs may be higher at larger entities because identifying instances of noncompliance with obligations imposed in a public provision of a covered order may be more complex at larger entities. The costs would also likely be higher at entities with multiple instances of noncompliance with public provisions of covered orders, or with multiple covered orders.

3. Publication Provision

For affected covered nonbanks, the main effect of the third proposed provision would be that (1) their identifying information and administrative information, (2) information regarding covered orders that they provide to the Bureau, and (3) for supervised registered entities, the name and title of the attesting executive, could be posted on the Internet by the Bureau. Much of this information would be public even under the baseline, so the additional direct effect of this information being posted on the Bureau's website should be small.

However, because covered nonbanks would provide this information only if they are subject to covered orders, consumers might interpret the presence of a covered nonbank on the Bureau's website as negative information about that covered nonbank. Therefore, this proposed provision may have negative reputational costs for the covered nonbanks whose information is published on the Bureau's website. Yet covered orders would be public information even under the baseline with no rule. Therefore, this proposed provision would not make public any non-public orders. This would limit the likely costs on covered nonbanks of the proposed provision.

This proposed provision would allow information related to covered orders that is already available to the general public to be centralized on the Bureau's website. This could make the information more readily accessible than it would otherwise be. A large body of research has studied the circumstances under which providing consumers better access to information does, and does not, improve consumer outcomes.[235] One consensus from this

[235] For one review of this research, see Thomas A. Durkin and Gregory Elliehausen, *Truth in*

research is that well-designed information disclosures can be effective at directing consumer attention. For example, one study found that providing payday loan borrowers with information about the costs of payday loans reduced payday loan borrowing.[236] However, another consensus from this research is that information disclosures do not always materially affect consumer decision-making, and that the impact of information disclosures on consumer decision-making depends on their design and implementation. Impactful information disclosures are typically more direct (*e.g.,* disclosing the costs of payday loans to payday loan borrowers) and more timely (*e.g.,* disclosed to payday loan borrowers at the time they are obtaining a payday loan) than the information that would be centralized and published under this proposed provision. Therefore, the Bureau believes that most consumers would not change their behavior due to this proposed provision, so the impact of this proposed provision on most affected entities would likely not be significant. The Bureau acknowledges that the issues disclosed by a few covered orders may be so controversial among consumers that their publication on the Bureau website could impose a substantial impact on the firms affected by those orders. However, as noted above, covered orders would be public information even under the baseline with no rule. Therefore, covered orders that disclose particularly controversial practices would likely be well-known among consumers even under the baseline. As a result, the Bureau believes that this proposed provision is unlikely to have a significant economic impact on a substantial number of small entities.

For the reasons described above, the Bureau believes that no provision of the proposed rule would have a significant economic impact on a substantial number of small entities. Moreover, the impact of each provision is sufficiently small that the three provisions together would not have a significant economic impact on a substantial number of small entities.

Accordingly, the Director hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comment on the analysis above and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct nor sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB. The information collection requirements in this proposed rule would be mandatory. Certain information collected under this requirement would not be made available to the public, in accordance with applicable law.

The collections of information contained in this proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements (including the burden estimate methods) is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to 202–395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the **ADDRESSES** section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as on OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Nonbank Registration—Agency and Court Orders Registration.

OMB Control Number: 3170–00XX.

Type of Review: Request for approval of a new information collection.

Affected Public: Private sector.

Estimated Number of Respondents: 7,752.

Estimated Total Annual Burden Hours: 35 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposal will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, the notice of final rule will display the control number assigned by OMB to any information collection requirements proposed herein and adopted in the final rule.

List of Subjects

Administrative practice and procedure, Consumer protection, Credit, Intergovernmental relations, Law enforcement, Nonbank registration, Registration, Reporting and recordkeeping requirements, Trade practices.

Authority and Issuance

■ For the reasons set forth above, the Bureau proposes to add part 1092 to chapter X in title 12 of the Code of Federal Regulations, to read as follows.

PART 1092—NONBANK REGISTRATION

Subpart A—General

Sec.

Subpart B—Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders

Subpart C—[Reserved]

Authority: 12 U.S.C. 5512(b) and (c); 12 U.S.C. 5514(b).

Lending: Theory, History, and a Way Forward (2011).

[236] *See* Marianne Bertrand and Adair Morse, *Information Disclosure, Cognitive Biases, and Payday Borrowing,* 66 The Journal of Finance 1865, 1865–93 (2011).

Subpart A—General

§ 1092.100 Authority and purpose.

(a) *Authority.* The regulation in this part is issued by the Bureau pursuant to section 1022(b) and (c) and section 1024(b) of the Consumer Financial Protection Act of 2010 (CFPA), codified at 12 U.S.C. 5512(b) and (c), and 12 U.S.C. 5514(b).

(b) *Purpose.* The purpose of this part is to prescribe rules governing the registration of nonbanks, and the collection and submission of registration information by such persons, and for public release of the collected information as appropriate.

(1) Subpart A contains general provisions and definitions used in this part.

(2) Subpart B sets forth requirements regarding the registration of nonbanks subject to certain agency and court orders.

(3) Subpart C is reserved.

§ 1092.101 General definitions.

For the purposes of this part, unless the context indicates otherwise, the following definitions apply:

(a) *Affiliate, consumer, consumer financial product or service, covered person, Federal consumer financial law, insured credit union, person, related person, service provider,* and *State* have the same meanings as in 12 U.S.C. 5481.

(b) *Bureau* means the Consumer Financial Protection Bureau.

(c) *Include, includes,* and *including* mean that the items named may not encompass all possible items that are covered, whether like or unlike the items named.

(d) *Nonbank registration system* means the Bureau's electronic registration system identified and maintained by the Bureau for the purposes of this part.

(e) *Nonbank registration system implementation date* means, for a given requirement or subpart of this part, the date(s) determined by the Bureau to commence the operations of the nonbank registration system in connection with that requirement or subpart.

§ 1092.102 Submission and use of registration information.

(a) *Filing instructions.* The Bureau shall specify the form and manner for electronic filings and submissions to the nonbank registration system that are required or made voluntarily under this part. The Bureau also may provide for extensions of deadlines or time periods prescribed by this part for persons affected by declared disasters or other emergency situations.

(b) *Coordination or combination of systems.* In administering the nonbank registration system, the Bureau may rely on information a person previously submitted to the nonbank registration system under this part and may coordinate or combine systems in consultation with State agencies as described in 12 U.S.C. 5512(c)(7)(C) and 12 U.S.C. 5514(b)(7)(D).

(c) *Bureau use of registration information.* The Bureau may use the information submitted to the nonbank registration system under this part to support its objectives and functions, including in determining when to exercise its authority under 12 U.S.C. 5514 to conduct examinations and when to exercise its enforcement powers under subtitle E of the CFPA. However, this part does not alter any applicable process whereby a person may dispute that it qualifies as a person subject to Bureau authority.

§ 1092.103 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

Subpart B—Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders

§ 1092.200 Scope and purpose.

(a) *Scope.* This subpart requires nonbank covered persons that are subject to certain public agency and court orders to register with the Bureau and to submit a copy of each such public order to the Bureau. This subpart also requires certain nonbank covered persons that are supervised by the Bureau to prepare and submit an annual written statement, signed by a designated individual, regarding compliance with each such public order. Finally, this subpart also describes the registration information the Bureau will make publicly available.

(b) *Purpose.* The purposes of the information collection requirements contained in this subpart are:

(1) To support Bureau functions by monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services, pursuant to 12 U.S.C. 5512(c)(1);

(2) To prescribe rules regarding registration requirements applicable to nonbank covered persons, pursuant to 12 U.S.C. 5512(c)(7);

(3) To facilitate the supervision of persons described in 12 U.S.C. 5514(a)(1), pursuant to 12 U.S.C. 5514(b);

(4) To assess and detect risks to consumers, pursuant to 12 U.S.C. 5514(b); and

(5) To ensure that persons described in 12 U.S.C. 5514(a)(1) are legitimate entities and are able to perform their obligations to consumers, pursuant to 12 U.S.C. 5514(b).

§ 1092.201 Definitions.

For the purposes of this subpart, unless the context indicates otherwise, the following definitions apply:

(a) *Administrative information* means contact information regarding persons subject to this subpart and other information submitted or collected to facilitate the administration of the nonbank registration system.

(b) *Attesting executive* means, with respect to any covered order regarding a supervised registered entity, the individual designated by the supervised registered entity to perform the supervised registered entity's duties with respect to the covered order under § 203 of this part.

(c) *Covered law* means a law listed in paragraphs (1) through (6) of this paragraph (c), to the extent that the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service:

(1) A Federal consumer financial law;

(2) Any other law as to which the Bureau may exercise enforcement authority;

(3) The prohibition on unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45, or any rule or order issued for the purpose of implementing that prohibition;

(4) A State law prohibiting unfair, deceptive, or abusive acts or practices that is identified in appendix A to this part;

(5) A State law amending or otherwise succeeding a law identified in appendix A to this part, to the extent that such law is materially similar to its predecessor; or

(6) A rule or order issued by a State agency for the purpose of implementing a prohibition on unfair, deceptive, or abusive acts or practices contained in a State law described in paragraph (4) or (5) of this paragraph (c).

(d) *Covered nonbank* means a covered person that is not any of the following:

(1) An insured depository institution, insured credit union, or related person;

(2) A State;

(3) A natural person;

(4) A motor vehicle dealer that is predominantly engaged in the sale and

servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, within the meaning of 12 U.S.C. 5519(a), except to the extent such a person engages in functions that are excepted from the application of 12 U.S.C. 5519(a) as described in 12 U.S.C. 5519(b); or

(5) A person that qualifies as a covered person based solely on conduct that is the subject of, and that is not otherwise exempted from, an exclusion from the Bureau's rulemaking authority under 12 U.S.C. 5517.

(e) *Covered order* means a final, public order issued by an agency or court, whether or not issued upon consent, that:

(1) Identifies a covered nonbank by name as a party subject to the order;

(2) Was issued at least in part in any action or proceeding brought by any Federal agency, State agency, or local agency;

(3) Contains public provisions that impose obligations on the covered nonbank to take certain actions or to refrain from taking certain actions;

(4) Imposes such obligations on the covered nonbank based on an alleged violation of a covered law; and

(5) Has an effective date on or later than January 1, 2017.

The term ''covered order'' does not include an order issued to a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, within the meaning of 12 U.S.C. 5519(a), except to the extent such order is in connection with the functions that are excepted from the application of 12 U.S.C. 5519(a) as described in 12 U.S.C. 5519(b).

(f) *Effective date* means, in connection with a covered order, the effective date as identified in the covered order; provided that if no other effective date is specified, then the date on which the covered order was issued shall be treated as the effective date for purposes of this subpart. If the issuing agency or a court stays or otherwise suspends the effectiveness of the covered order, the effective date shall be delayed until such time as the stay or suspension of effectiveness is lifted.

(g) *Identifying information* means existing information available to the covered nonbank that uniquely identifies the covered nonbank, including the entity's legal name, State of incorporation or organization, principal place of business address, and any unique identifiers issued by a government agency or standards organization.

(h) *Insured depository institution* has the same meaning as in 12 U.S.C. 5301(18)(A).

(i) *Local agency* means a regulatory or enforcement agency or authority of a county, city (whether general law or chartered), city and county, municipal corporation, district, or other political subdivision of a State, other than a State agency.

(j) *Order* includes any written order or judgment issued by an agency or court in an investigation, matter, or proceeding.

(k) *Public* means, with respect to a covered order or any portion thereof, published by the issuing agency or court, or required by any provision of Federal or State law, rule, or order to be published by the issuing agency or court. The term does not include orders or portions of orders that constitute confidential supervisory information of any Federal or State agency.

(l) *Registered entity* means any person registered or required to be registered under this subpart.

(m) *Remain(s) in effect* means, with respect to any covered order, that the covered nonbank remains subject to public provisions that impose obligations on the covered nonbank to take certain actions or to refrain from taking certain actions based on an alleged violation of a covered law.

(n) *State agency* means the attorney general (or the equivalent thereof) of any State and any other State regulatory or enforcement agency or authority.

(o) *Supervised registered entity* means a registered entity that is subject to supervision and examination by the Bureau pursuant to 12 U.S.C. 5514(a) except as provided in paragraphs (o)(1) through (4) of this section. For purposes of this definition, the term ''subject to supervision and examination by the Bureau pursuant to 12 U.S.C. 5514(a)'' includes an entity that qualifies as a larger participant of a market for consumer financial products or services under any rule issued by the Bureau pursuant to 12 U.S.C. 5514(a)(1)(B) and (a)(2), or that is subject to an order issued by the Bureau pursuant to 12 U.S.C. 5514(a)(1)(C). The term ''supervised registered entity'' does not include:

(1) A service provider that is subject to Bureau examination and supervision solely in its capacity as a service provider and that is not otherwise subject to Bureau supervision and examination;

(2) A motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, within the meaning of 12 U.S.C. 5519(a), except to the extent such a person engages in functions that are excepted from the application of 12 U.S.C. 5519(a) as described in 12 U.S.C. 5519(b);

(3) A person that qualifies as a covered person based solely on conduct that is the subject of, and that is not otherwise exempted from, an exclusion from the Bureau's supervisory authority under 12 U.S.C. 5517; or

(4) A person with less than $1 million in annual receipts resulting from offering or providing all consumer financial products and services described in 12 U.S.C. 5514(a). For purposes of this exclusion, the term ''annual receipts'' has the same meaning as that term has in 12 CFR 1090.104(a), including 12 CFR 1090.104(a)(i) through (iii).

§ 1092.202 Registration and submission of information regarding covered orders.

(a) *Scope of registration requirement.* This section shall apply only with respect to covered orders with an effective date on or after the effective date of this subpart, or that remain in effect as of the effective date of this subpart.

(b) *Requirement to register and submit information regarding covered orders.*

(1) Each covered nonbank that is identified by name as a party subject to a covered order described in paragraph (a) of this section shall register as a registered entity with the nonbank registration system in accordance with this section if it is not already so registered, and shall provide or update, as applicable, the information described in this subpart in the form and manner specified by the Bureau.

(2) Each covered nonbank required to register under this section shall:

(i) Submit a filing containing the information described in paragraphs (c) and (d) of this section to the nonbank registration system within the later of 90 days after the applicable nonbank registration system implementation date or 90 days after the effective date of any applicable covered order; and

(ii) Submit a revised filing amending any information described in paragraphs (c) and (d) of this section to the nonbank registration system within 90 days after any amendments are made to the covered order or any of the information described in paragraph (c) or (d) of this section changes.

(c) *Required identifying information and administrative information.* A registered entity shall provide all identifying information and administrative information required by the nonbank registration system. In filing instructions issued pursuant to

§ 1092.102(a), the Bureau may require that covered nonbanks that are affiliates make joint or combined submissions under this section.

(d) *Information regarding covered orders.* A registered entity shall provide the following information for each covered order subject to this section:

(1) A fully executed, accurate, and complete copy of the covered order, in a format specified by the Bureau; provided that any portions of a covered order that are not public shall not be submitted, and these portions shall be clearly marked on the copy submitted;

(2) In connection with each applicable covered order, information identifying:

(i) The government entity that issued the covered order;

(ii) The effective date of the covered order;

(iii) The date of expiration, if any, of the covered order, or a statement that there is none;

(iv) All covered laws found to have been violated or, for orders issued upon the parties' consent, alleged to have been violated; and

(v) The names of any of the registered entity's affiliates registered under this subpart with respect to the same covered order; and

(3) If the registered entity is a supervised registered entity, the name and title of its attesting executive for purposes of § 1092.203 with respect to the covered order.

(e) *Expiration of covered order status.* A covered order shall cease to be a covered order for purposes of this subpart as of the later of:

(1) Ten years after its effective date; or

(2) If the covered order expressly provides for a termination date more than ten years after its effective date, the expressly provided termination date.

(f) *Requirement to submit revised and final filings with respect to certain covered orders.*

(1) If a covered order is terminated, modified, or abrogated (whether by its own terms, by action of the applicable agency, or by a court), or if an order ceases to be a covered order for purposes of this subpart by operation of paragraph (e) of this section, the registered entity shall submit a revised filing to the nonbank registration system within 90 days after the effective date of such termination, modification, or abrogation, or the date such order ceases to be a covered order.

(2) If, due to such termination, modification, or abrogation of a covered order, or due to the application of paragraph (e) of this section, the order no longer remains in effect or is no longer a covered order, then, following its final filing under paragraph (f)(1) of this section with respect to such covered order, the registered entity will have no further obligation to update its filing or to file written statements with respect to such covered order under this subpart.

(g) *Notification by certain persons of non-registration under this section.* A person may submit a notice to the nonbank registration system stating that it is not registering pursuant to this section because it has a good faith basis to believe that it is not a covered nonbank or that an order in question does not qualify as a covered order. Such person shall promptly comply with this section upon becoming aware of facts or circumstances that would not permit it to continue representing that it has a good faith basis to believe that it is not a covered nonbank or that an order in question does not qualify as a covered order.

§ 1092.203 Annual reporting requirements for supervised registered entities.

(a) *Scope of annual reporting requirements.* This section shall apply only with respect to covered orders with an effective date on or after the nonbank registration system implementation date for this section.

(b) *Requirement to designate attesting executive.* A supervised registered entity subject to a covered order described in paragraph (a) of this section shall designate as its attesting executive for purposes of this subpart its highest-ranking duly appointed senior executive officer (or, if the supervised registered entity does not have any duly appointed officers, the highest-ranking individual charged with managerial or oversight responsibility for the supervised registered entity) whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, who has knowledge of the entity's systems and procedures for achieving compliance with the covered order, and who has control over the entity's efforts to comply with the covered order. The supervised registered entity shall annually designate one attesting executive for each such covered order to which it is subject and for all submissions and other purposes related to that covered order under this subpart. The supervised registered entity shall authorize the attesting executive to perform the duties of an attesting executive on behalf of the supervised registered entity with respect to the covered order as required in this section, including submitting the written statement described in paragraph (d) of this section.

(c) *Requirement to provide attesting executive(s) with access to documents and information.* A supervised registered entity subject to this section shall provide its attesting executive(s) with prompt access to all documents and information related to the supervised registered entity's compliance with all applicable covered order(s) as necessary to make the written statement(s) required in paragraph (d) of this section.

(d) *Annual requirement to submit written statement to the Bureau for each covered order.* On or before March 31 of each calendar year, the supervised registered entity shall, in the form and manner specified by the Bureau, submit to the nonbank registration system a written statement with respect to each covered order described in paragraph (a) of this section. The written statement shall be signed by the attesting executive on behalf of the supervised registered entity. In the written statement, the attesting executive shall:

(1) Generally describe the steps that the attesting executive has undertaken to review and oversee the supervised registered entity's activities subject to the applicable covered order for the preceding calendar year; and

(2) Attest whether, to the attesting executive's knowledge, the supervised registered entity during the preceding calendar year identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law.

(e) *Requirement to maintain and make available related records.* A supervised registered entity shall maintain documents and other records sufficient to provide reasonable support for its written statement under paragraph (d) of this section and to otherwise demonstrate compliance with the requirements of this section with respect to any submission under this section, for five years after such submission is required. The supervised registered entity shall make such documents and other records available to the Bureau upon request.

(f) *Notification of entity's good faith belief that requirements do not apply.* A person may submit a notice to the nonbank registration system stating that it is neither designating an attesting executive nor submitting a written statement pursuant to this section because it has a good faith basis to believe that it is not a supervised registered entity or that an order in question is not a covered order. Such person shall promptly comply with this section upon becoming aware of facts or

circumstances that would not permit it to continue representing that it has a good faith basis to believe that it is not a supervised registered entity or that an order in question is not a covered order.

§ 1092.204 Publication and correction of registration information.

(a) *Internet posting of registration information.* The Bureau shall make available to the public the information submitted to the nonbank registration system pursuant to § 1092.202, except that the Bureau may choose not to publish certain administrative information or other information that the Bureau determines may be inaccurate, not required to be submitted under this subpart, or otherwise not in compliance with this part and any accompanying guidance. The Bureau may make registration information available to the public by means that include publishing it on the Bureau's publicly available Internet site within a timeframe determined by the Bureau in its discretion.

(b) *Exclusion of written statement.* The publication described in paragraph (a) of this section will not include the written statement submitted under § 1092.203. Such information will be treated as Bureau confidential supervisory information subject to the provisions of part 1070 of this chapter.

(c) *Other publications of information.* In addition to the publication described in paragraph (a) of this section, the Bureau may, at its discretion, compile and aggregate information submitted by persons pursuant to this subpart and make any compilations or aggregations of such information publicly available as the Bureau deems appropriate.

(d) *Correction of submissions to the nonbank registration system.* If any information submitted to the nonbank registration system under this subpart was inaccurate when submitted and remains inaccurate, the covered nonbank shall file a corrected report in the form and manner specified by the Bureau within 30 calendar days after the date on which such covered nonbank becomes aware or has reason to know of the inaccuracy. In addition, the Bureau may at any time and in its sole discretion direct a covered nonbank to correct errors or other non-compliant submissions to the nonbank registration system made under this subpart.

Subpart C—[Reserved]

Appendix A to Part 1092 —List of State Covered laws

Alabama

- Ala. Code sec. 5–18A–13(j).
- Ala. Code sec. 8–19–5.

Alaska

- Alaska Stat. sec. 06.20.200.
- Alaska Stat. sec. 06.40.090.
- Alaska Stat. sec. 06.60.320.
- Alaska Stat. sec. 06.60.340.
- Alaska Stat. sec. 45.50.471.

Arizona

- Ariz. Rev. Stat. sec. 6–611.
- Ariz. Rev. Stat. sec. 6–710(8).
- Ariz. Rev. Stat. sec. 6–909(C).
- Ariz. Rev. Stat. sec. 6–947(D).
- Ariz. Rev. Stat. sec. 6–984(D).
- Ariz. Rev. Stat. sec. 6–1309(A).
- Ariz. Rev. Stat. sec. 44–1522(A).
- Ariz. Rev. Stat. sec. 44–1703(4).

Arkansas

- Ark. Code Ann. sec. 4–88–107.
- Ark. Code Ann. sec. 4–88–108(a)(1).
- Ark. Code Ann. sec. 4–90–705.
- Ark. Code Ann. sec. 4–107–203.
- Ark. Code Ann. sec. 4–115–102.
- Ark. Code Ann. sec. 23–39–405.

California

- Cal. Bus. & Prof. Code sec. 17200 to 17209.
- Cal. Bus. & Prof. Code sec. 17500.
- Cal. Civ. Code sec. 1770.
- Cal. Civ. Code sec. 1788.101(a), (b)(1), (7), (8), (9), (10).
- Cal. Fin. Code sec. 4995.3(b).
- Cal. Fin. Code sec. 22755(b), (i).
- Cal. Fin. Code sec. 90003.

Colorado

- Colo. Rev. Stat. sec. 5–3.1–121.
- Colo. Rev. Stat. sec. 5–20–109(b).
- Colo. Rev. Stat. sec. 6–1-105.

Connecticut

- Conn. Gen. Stat. sec. 36a–498(g)(2).
- Conn. Gen. Stat. sec. 36a–539(d)(2), (6).
- Conn. Gen. Stat. sec. 36a–561(3), (4).
- Conn. Gen. Stat. sec. 36a–586(d)(2), (5); (e)(2).
- Conn. Gen. Stat. sec. 36a–607(c)(2)(5).
- Conn. Gen. Stat. sec. 42–110b.

Delaware

- Del. Code Ann. tit. 5, sec. 2114.
- Del. Code Ann. tit. 5, sec. 2209(a)(3).
- Del. Code Ann. tit. 5, sec. 2315(a)(3).
- Del. Code Ann. tit. 5, sec. 2418(2), (9).
- Del. Code Ann. tit. 5, sec. 2904(a)(3).
- Del. Code Ann. tit. 6, sec. 2513.
- Del. Code Ann. tit. 6, sec. 2532, 2533.

District of Columbia

- D.C. Code sec. 26–1114(d)(2), (9).
- D.C. Code sec. 28–3904.

Florida

- Fla. Stat. sec. 501.204.
- Fla. Stat. sec. 560.114(1)(d).
- Fla. Stat. sec. 560.309(10).
- Fla. Stat. sec. 687.141(2), (3).

Georgia

- Ga. Code Ann. sec. 7–7–2(1), (3), (4).
- Ga. Code Ann. sec. 10–1–372.
- Ga. Code Ann. sec. 10–1–393.

Hawaii

- Haw. Rev. Stat. sec. 454F–17(2), (9), (14).
- Haw. Rev. Stat. sec. 480–2.
- Haw. Rev. Stat. sec. 480J–45(7), (10).
- Haw. Rev. Stat. sec. 481A–3.
- Haw. Rev. Stat. sec. 489D–23(2), (4).

Idaho

- Idaho Code sec. 26–31–317(2), (9).
- Idaho Code sec. 26–2505(2).
- Idaho Code sec. 28–46–413(8).
- Idaho Code sec. 48–603.
- Idaho Code sec. 48–603A.

Illinois

- 815 Ill. Comp. Stat. sec. 122/4–5(3), (8).
- 815 Ill. Comp. Stat. sec. 505/2 to 505/2AAAA.
- 815 Ill. Comp. Stat. sec. 510/2.
- 815 Ill. Comp. Stat. sec. 635/7–13(2), (9).

Indiana

- Ind. Code sec. 24–4.4–3–104.6(b), (i).
- Ind. Code sec. 24–4.5–7–410(c), (g).
- Ind. Code sec. 24–5–0.5–3.
- Ind. Code sec. 24–5–0.5–10.

Iowa

- Iowa Code sec. 535D.17(2), (9).
- Iowa Code sec. 537.3209(1).
- Iowa Code sec. 538A.3(4).
- Iowa Code sec. 714.16(2)(a).
- Iowa Code sec. 714H.3.

Kansas

- Kan. Stat. Ann. sec. 50–626.
- Kan. Stat. Ann. sec. 50–1017(2), (3).

Kentucky

- Ky. Rev. Stat. Ann. sec. 286.9–100(7).
- Ky. Rev. Stat. Ann. sec. 286.11–039(f).
- Ky. Rev. Stat. Ann. sec. 286.12–110(1)(a)(4).
- Ky. Rev. Stat. Ann. sec. 367.170.

Louisiana

- La. Rev. Stat. Ann. sec. 6:1092(D)(2), (9).
- La. Rev. Stat. Ann. sec. 6:1393(3)(b).
- La. Rev. Stat. Ann. sec. 6:1412(2).
- La. Rev. Stat. Ann. sec. 9:3574.3(2), (3).
- La. Rev. Stat. Ann. sec. 51:1405.
- La. Rev. Stat. Ann. sec. 51:1915.

Maine

- Me. Rev. Stat. tit. 5, sec. 207.
- Me. Rev. Stat. tit. 9–A, sec. 5–118(2), (3), (4).
- Me. Rev. Stat. tit. 10, sec. 1212.
- Me. Rev. Stat. tit. 32, sec. 6155(1).
- Me. Rev. Stat. tit. 32, sec. 6198(5).

Maryland

- Md. Code Ann., Com. Law sec. 12–1208(2).
- Md. Code Ann., Com. Law sec. 13–303.
- Md. Code Ann., Com. Law sec. 14–1302(b).
- Md. Code Ann., Com. Law sec. 14–1323.
- Md. Code Ann., Com. Law sec. 14–3807.
- Md. Code Ann., Educ. sec. 26–602(a)(2).

Massachusetts

- Mass. Gen. Laws ch. 93A, sec. 2.
- Mass. Gen. Laws ch. 93L, sec. 8.

Michigan

- Mich. Comp. Laws sec. 445.903.
- Mich. Comp. Laws sec. 445.1823(e).

Minnesota

- Minn. Stat. sec. 58B.07(2).

- Minn. Stat. sec. 325D.09.
- Minn. Stat. sec. 325D.44.
- Minn. Stat. sec. 325F.67.
- Minn. Stat. sec. 325F.69.
- Minn. Stat. sec. 332A.02–332A.19.

Mississippi

- Miss. Code Ann. sec. 75–24–5.
- Miss. Code Ann. sec. 75–67–109.
- Miss. Code Ann. sec. 75–67–445.
- Miss. Code Ann. sec. 75–67–516.
- Miss. Code Ann. sec. 75–67–617.
- Miss. Code Ann. sec. 81–18–27(h).
- Miss. Code Ann. sec. 81–19–23(b)(i).

Missouri

- Mo. Rev. Stat. sec. 407.020.
- Mo. Rev. Stat. sec. 443.737(2), (9).

Montana

- Mont. Code Ann. sec. 30–14–103.
- Mont. Code Ann. sec. 30–14–2001 to –15.
- Mont. Code Ann. sec. 31–1–723(5), (7), (18).
- Mont. Code Ann. sec. 31–1–724(2).

Nebraska

- Neb. Rev. Stat. sec. 45–804(5).
- Neb. Rev. Stat. sec. 45–812.
- Neb. Rev. Stat. sec. 59–1602.
- Neb. Rev. Stat. sec. 87–302.

Nevada

- Nev. Rev. Stat. sec. 598.746(5).
- Nev. Rev. Stat. sec. 598.787.
- Nev. Rev. Stat. sec. 598.0915 to .0925.
- Nev. Rev. Stat. sec. 604A.5021(5), (6).
- Nev. Rev. Stat. sec. 604A.5049(5), (6).
- Nev. Rev. Stat. sec. 604A.5072(5), (6).
- Nev. Rev. Stat. sec. 604A.582.
- Nev. Rev. Stat. sec. 604A.592.
- Nev. Rev. Stat. sec. 675.280.

New Hampshire

- N.H. Rev. Stat. Ann. sec. 358–A:2.
- N.H. Rev. Stat. Ann. sec. 397–A:14(g), (n).
- N.H. Rev. Stat. Ann. sec. 399–F:4(III).

New Jersey

- N.J. Stat. Ann. sec. 17:11C–41(g).
- N.J. Stat. Ann. sec. 17:16F–39(b).
- N.J. Stat. Ann. sec. 17:16ZZ–9(b).
- N.J. Stat. Ann. sec. 56:8–2.

New Mexico

- N.M. Stat. Ann. sec. 57–12–3.
- N.M. Stat. Ann. sec. 58–21–21.
- N.M. Stat. Ann. sec. 58–21A–12.
- N.M. Stat. Ann. sec. 58–21B–13(C)(2), (9).

New York

- N.Y. Banking Law sec. 719(2), (9).
- N.Y. Exec. Law sec. 63(12).
- N.Y. Fin. Serv. sec. 702(i).
- N.Y. Gen. Bus. Law sec. 349.
- N.Y. Gen. Bus. Law sec. 458–e.
- N.Y. Gen. Bus. Law sec. 458–h.
- N.Y. Gen. Bus. Law sec. 521–d.
- N.Y. Gen. Bus. Law sec. 741.
- N.Y. Real Prop. Law sec. 280–b(2).

North Carolina

- N.C. Gen. Stat. sec. 53–270(4).
- N.C. Gen. Stat. sec. 75–1.1.

North Dakota

- N.D. Cent. Code sec. 51–15–02.
- N.D. Cent. Code sec. 51–15–02.3.
- N.D. Cent. Code sec. 13–04.1–09(4), (10).
- N.D. Cent. Code sec. 13–09–25(4), (8).
- N.D. Cent. Code sec. 13–10–17(2).
- N.D. Cent. Code sec. 13–11–23(1)(p).

Ohio

- Ohio Rev. Code Ann. sec. 1321.11.
- Ohio Rev. Code Ann. sec. 1321.41.
- Ohio Rev. Code Ann. sec. 1321.44.
- Ohio Rev. Code Ann. sec. 1321.60(A).
- Ohio Rev. Code Ann. sec. 1321.651(B).
- Ohio Rev. Code Ann. sec. 1322.40(I).
- Ohio Rev. Code Ann. sec. 1345.02.
- Ohio Rev. Code Ann. sec. 4165.02.

Oklahoma

- Okla. Stat. Ann. tit. 15, sec. 753(20), (28).
- Okla. Stat. Ann. tit. 59, sec. 2095.18(2), (9).
- Okla. Stat. Ann. tit. 78, sec. 53.

Oregon

- Or. Rev. Stat. sec. 646.607.
- Or. Rev. Stat. sec. 86A.163.
- Or. Rev. Stat. sec. 86A.236(3), (5), (13).
- Or. Rev. Stat. sec. 646.608(1)(d), (u).
- Or. Rev. Stat. sec. 646A.720(10).
- Or. Rev. Stat. sec. 725.060.
- Or. Rev. Stat. sec. 725A.058.

Pennsylvania

- 7 PA. Cons. Stat. sec. 6123(a)(3).
- 73 PA. Cons. Stat. sec. 201–3.
- 73 PA. Cons. Stat. sec. 2183(4).
- 73 PA. Cons. Stat. sec. 2188(c)(2).

Rhode Island

- R.I. Gen. Laws sec. 5–80–8(5).
- R.I. Gen. Laws sec. 6–13.1–2.
- R.I. Gen. Laws sec. 6–13.1–30.
- R.I. Gen. Laws sec. 19–14–21.
- R.I. Gen. Laws sec. 19–14.3–3.8(8), (9).
- R.I. Gen. Laws sec. 19–14.8–28(a)(16).
- R.I. Gen. Laws sec. 19–14.10–17(2), (9).
- R.I. Gen. Laws sec. 19–14.11–4(2).
- R.I. Gen. Laws sec. 19–33–12(2), (4).

South Carolina

- S.C. Code Ann. sec. 34–29–120.
- S.C. Code Ann. sec. 34–36–10 to 80.
- S.C. Code Ann. sec. 34–39–200(3), (5).
- S.C. Code Ann. sec. 34–41–80(3), (5).
- S.C. Code Ann. sec. 37–2–304(1).
- S.C. Code Ann. sec. 37–3–304(1).
- S.C. Code Ann. sec. 37–7–116(3), (8), (10).
- S.C. Code Ann. sec. 39–5–20.

South Dakota

- S.D. Codified Laws sec. 37–24–6.
- S.D. Codified Laws sec. 37–25A–43.
- S.D. Codified Laws sec. 54–4–63.

Tennessee

- Tenn. Code Ann. sec. 45–13–401(8).
- Tenn. Code Ann. sec. 45–17–112(k).
- Tenn. Code Ann. sec. 45–18–121(g).
- Tenn. Code Ann. sec. 47–16–101 to 110.
- Tenn. Code Ann. sec. 47–18–104.
- Tenn. Code Ann. sec. 47–18–120.
- Tenn. Code Ann. sec. 47–18–1003(4).
- Tenn. Code Ann. sec. 47–18–5402(a)(1).

Texas

- Tex. Bus. & Com. Code Ann. sec. 17.46.
- Tex. Fin. Code Ann. sec. 180.153(2), (11).
- Tex. Fin. Code Ann. sec. 308.002.
- Tex. Fin. Code Ann. sec. 341.403.
- Tex. Fin. Code Ann. sec. 394.207.
- Tex. Fin. Code Ann. sec. 394.212(9).

Utah

- Utah Code Ann. sec. 13–11–4.
- Utah Code Ann. sec. 13–11–4.1.
- Utah Code Ann. sec. 13–11a–4.
- Utah Code Ann. sec. 13–21–3(1)(g).

Vermont

- Vt. Stat. Ann. tit. 8, sec. 2121.
- Vt. Stat. Ann. tit. 8, sec. 2241(2), (9).
- Vt. Stat. Ann. tit. 8, sec. 2760b(b).
- Vt. Stat. Ann. tit. 8, sec. 2922.
- Vt. Stat. Ann. tit. 9, sec. 2453.
- Vt. Stat. Ann. tit. 9, sec. 2481w(b), (c), (d).

Virginia

- Va. Code. Ann. sec. 6.2–1524(B).
- Va. Code. Ann. sec. 6.2–1614(8)(a).
- Va. Code. Ann. sec. 6.2–1629(A).
- Va. Code. Ann. sec. 6.2–1715(A)(1).
- Va. Code. Ann. sec. 6.2–1816(26).
- Va. Code. Ann. sec. 6.2–1819(A).
- Va. Code. Ann. sec. 6.2–2017.
- Va. Code. Ann. sec. 6.2–2107(3), (4).
- Va. Code. Ann. sec. 6.2–2610(A)(2), (C).
- Va. Code. Ann. sec. 59.1–200(A).
- Va. Code. Ann. sec. 59.1–335.5(4).

Washington

- Wash. Rev. Code. sec. 18.28.120(6).
- Wash. Rev. Code. sec. 18.44.301(2), (4).
- Wash. Rev. Code. sec. 19.86.020.
- Wash. Rev. Code. sec. 19.134.020(4).
- Wash. Rev. Code. sec. 19.144.080(1)(a).
- Wash. Rev. Code. sec. 19.146.0201(2), (7).
- Wash. Rev. Code. sec. 19.230.340(2), (4).
- Wash. Rev. Code. sec. 19.265.050(3).

West Virginia

- W. Va. Code sec. 31–17–10.
- W. Va. Code sec. 31–17A–16(2), (9).
- W. Va. Code sec. 46A–6–104.
- W. Va. Code sec. 46A–6C–3(4).

Wisconsin

- Wis. Stat. sec. 100.18.
- Wis. Stat. sec. 100.20.
- Wis. Stat. sec. 138.14(14)(e).
- Wis. Stat. sec. 224.77(1)(b), (c).
- Wis. Stat. sec. 422.503(c).
- Wis. Stat. sec. 423.301.

Wyoming

- Wyo. Stat. Ann. sec. 40–12–105.

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Director, Consumer Financial Protection Bureau.

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Federal Register

Vol. 88, No. 19

Monday, January 30, 2023

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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
2501–2794	17
2795–3282	18
2795–3282	18
3283–3628	19
3629–3910	20
3911–4078	23
4079–4718	24
4719–4890	25
4891–5244	26
5245–5720	27
5721–6142	30

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 2395

3 CFR

Proclamations:
10510 739
10511 741
10512 743
10513 3283
10514 3285
10515 4719
10516 4893

Administrative Orders:
Memorandoms:
Memorandom of January 6, 2023 2795
Memorandum of January 17, 2023 3909
Memorandum of January 19, 2023 4891
Memorandum of January 22, 2023 4895

5 CFR

185 5245
532 1133
1201 4079
2634 1139
2636 1139

6 CFR

5 2797
27 2175

Proposed Rules:
19 2395

7 CFR

9 1862
205 3548
701 1862
760 1862
920 5721
944 5721
1400 1862
1416 1862
1437 1862
1450 1862
1740 5724

Proposed Rules:
16 2395
905 2862
920 16
985 18
1005 5800
1006 5800
1007 5800
3555 5275
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

352 2798
354 2798
362 2798
412 2798

Proposed Rules:
1 1151
2 1151
3 1151
71 3320
77 3320
78 3320
86 3320

10 CFR

2 ..... 2187, 2188
13 2188
52 3287
72 949
207 2190
218 2190
429 ..... 2190, 3234
430 3234
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
34 5811
40 25
50 25
70 25
72 ..... 25, 1010
429 4091
430 ..... 790, 1638, 4091
431 1722
1021 2029

12 CFR

Ch. X 5727

19.....289
109.....289
201.....2194
204.....2195
253.....5204
263.....1497
622.....2197
747.....1323
1083.....1
1411.....2812
Proposed Rules:
652.....4107
1092.....6088
1610.....1154

14 CFR

13.....1114
21.....2813
23.....2813
25.....2813
29.....2813
33.....2813
36.....2813
39 .....1981, 1983, 1984, 2199, 2202, 2501, 3629, 3631, 4080, 4721, 5246
47.....2813, 2815
49.....2813
60.....2813
61.....2813
67.....2813
71 .....1987, 2204, 2205, 2503, 2504, 2506, 2815, 2816, 2818, 2820, 3911, 3913, 3914, 4081, 4899, 5249, 5250, 5251, 5730, 5731
73.....2813
91.....2813
95.....5733
97 .....1988, 2813, 3915, 3916
101.....2813
107.....2813
121.....2813
125.....2813
129.....2813
135.....2813
141.....2813
183.....2813
383.....1114
406.....1114
440.....2813
Proposed Rules:
5.....1932, 5812
21.....1932, 5812
39 .....1520, 2029, 2032, 2035, 2273, 2276, 2279, 2283, 2286, 2292, 2295, 2558, 3330, 3678, 4111, 4114, 4920, 5278, 5814, 5817, 5819
61.....34
63.....34
65.....34
71 .....2561, 2867, 2869, 2870, 3932, 3933, 3935, 3936, 5282, 5283, 5823
91.....1932, 5812
119.....1932, 5812
121.....1932, 5812
135.....1932, 5812
399.....4922

15 CFR

6.....3
734.....2821
736.....2821
740.....2507, 2821
742.....2507, 2821
744.....2821
762.....2821
772.....2821
774.....2507, 2821
922.....953
Proposed Rules:
922.....3334

16 CFR

Ch. II.....2206
1.....1499
305.....1135
801.....5748
803.....5748
Proposed Rules:
1.....2562
305.....4796
437.....4796
456.....248
464.....4796
910.....3482

17 CFR

143.....1501
232.....4083
Proposed Rules:
240.....5440
242.....3786, 5440

18 CFR

250.....1989
385.....1989
Proposed Rules:
50.....2770
240.....128
242.....128
380.....2770

19 CFR

Ch. I.....2517
4.....2175
361.....5775

20 CFR

10.....974
401.....1326
403.....1326
422.....1326
423.....1326
429.....1326
655.....2210
702.....2210
725.....2210
726.....2210
Proposed Rules:
726.....3349

21 CFR

1.....1503
73.....4085
101.....6
172.....745
316.....4086
862.....2518
870.....975
874.....977
876.....8, 3634
882.....749, 2222
886.....3636
888 .....751, 753, 979
890.....981, 983
1000.....3638
1002.....3638
1010.....3638
1020.....3638
1030.....3638
1050.....3638
Proposed Rules:
80.....4117
109.....4797

22 CFR

35.....1505
103.....1505
127.....1505
135.....4722
138.....1505
Proposed Rules:
205.....2395

24 CFR

5.....4727
200.....4727
Proposed Rules:
5.....321, 2395
214.....4923
1000.....4923
1003.....4923
1006.....328

25 CFR

Proposed Rules:
226.....2430

26 CFR

301.....755, 756
Proposed Rules:
1.....3938
602.....3938

27 CFR

5.....2224
16.....2228
Proposed Rules:
6.....1171
8.....1171
10.....1171
11.....1171

28 CFR

79.....3918
85.....5776
94.....3654
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
1400.....4727
1903.....2210
4071.....1991
4262.....4900
4302.....1991
Proposed Rules:
2.....2395

30 CFR

100.....2210
1241.....2520
Proposed Rules:
585.....5968

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, 2522
584.....2229
588.....2229
589.....2229
590.....2229
591.....1507
592.....2229
594.....2229
597.....2229
598.....2229
1010.....3311, 3919
Proposed Rules:
208.....1336
601.....2871

32 CFR

199.....1992
269.....2239

33 CFR

27.....2175
100.....291
147.....1511
165 .....756, 1141, 1145, 2002, 2241, 2523, 2829, 3657, 3926, 5782, 5784
277.....2525
328.....2878
401.....1114
Proposed Rules:
100.....3366, 5289
117.....5291, 5293
165 .....35, 1528, 3938, 5784
203.....1340
334.....1532, 3372

34 CFR

36.....5784
668.....5784
Proposed Rules:
75.....2395
76.....2395
685.....1894

36 CFR

7.....3659
294.....5252

Proposed Rules:
13 1176

37 CFR
11 4906

Proposed Rules
381 4928

38 CFR
17 ..... 2526, 3664
21 2831
36 ..... 985, 2537
42 985

Proposed Rules
17 2038
50 2395
61 2395
62 2395

39 CFR
111 ..... 758, 4728
233 1513
273 1513
3035 3313

Proposed Rules:
111 ..... 2046, 2047, 3944

40 CFR
2 4296
19 986
52 ..... 291, 773, 1515, 2243, 2245, 2538, 2541, 2834, 2839, 5787
59 4296
60 4296
62 2543
80 4296
81 ..... 775, 1515, 5787
85 4296
86 4296
120 2878
180 ..... 990, 3664, 4729, 4732
600 4296
721 5788
1027 4296
1030 4296
1031 4296
1033 4296
1036 4296
1037 4296
1039 4296
1042 4296
1043 4296
1045 4296
1048 4296
1051 4296
1054 4296
1060 4296
1065 4296
1066 4296
1068 4296
1090 4296

Proposed Rules:
49 2298
50 5558
52 ..... 1341, 1454, 1533, 1537, 2050, 2303, 2873, 2876, 4118, 4935, 5826, 5833, 5835, 5840
53 5558
58 5558
60 2563
61 2057
62 2564
63 ..... 805, 2057
70 4118
81 1543
180 38
261 ..... 3945, 4120
721 ..... 41, 4937

41 CFR
50-210 2210
105-70 2247
301 2843
302 2843
303 2843
304 2843
305 2843
306 2843
307 2843
308 2843
309 2843
310 2843
311 2843
312 2843
313 2843
314 2843
315 2843
316 2843
317 2843
318 2843
319 2843
320 2843
321 2843
322 2843
323 2843
324 2843
325 2843
326 2843
327 2843
328 2843
329 2843
330 2843
331 2843
332 2843
333 2843
334 2843
335 2843
336 2843
337 2843
338 2843
339 2843
340 2843
341 2843
342 2843
343 2843
344 2843
345 2843
346 2843
347 2843
348 2843
349 2843
350 2843
351 2843
352 2843
353 2843
354 2843
355 2843
356 2843
357 2843
358 2843
359 2843
360 2843
361 2843
362 2843
363 2843
364 2843
365 2843
366 2843
367 2843
368 2843
369 2843
370 2843

42 CFR
68 4735
88 2845
405 297
410 ..... 297, 2546
411 297
412 297
413 297
414 2546
416 297
419 297
424 297
485 297
489 297

43 CFR
4 5789
10 3315

Proposed Rules:
10 1344
11 3373
2800 2304
2860 2304
2880 2304
2920 2304

45 CFR
3 1134
1149 2004
1158 2004
1230 3928
1302 993
2554 3928

Proposed Rules:
87 2395
88 820
2525 1021
2526 1021
2527 1021
2528 1021
2529 1021
2530 1021
4556 4945

46 CFR
221 1114
307 1114
340 1114
356 1114
506 1517

Proposed Rules:
8 1547
197 1547

47 CFR
1 783
54 2248
64 3668
73 ..... 10, 2550, 2551

Proposed Rules:
Ch. I 3681
9 2565
25 2590
54 ..... 1035, 2305
64 3953
73 ..... 42, 1038, 2595, 3680

48 CFR
802 4739
804 4739
811 4739
812 4739
824 4739
839 4739
852 4739

Proposed Rules:
252 5843

49 CFR
107 ..... 1114, 4756
110 4756
171 ..... 1114, 4756
172 4756
173 4756
174 4756
175 4756
176 4756
177 4756
178 4756
180 4756
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
831 2858
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
571 5844

50 CFR
11 5796
17 ..... 2006, 4087, 4761, 4908
218 604
222 4792
300 5273
635 786
648 ..... 11, 788, 2271, 2551,

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

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