FEDERAL REGISTER

Vol. 88 Monday,
No. 73 April 17, 2023

Pages 23323–23558

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–SC–22–0070]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2023–2024 Marketing Year

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

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2023–2024 marketing year.

DATES: Effective May 17, 2023.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary D. Olson, Chief, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: *Joshua.R.Wilde@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 rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (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 is comprised of spearmint oil producers operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, 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 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 that this 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Under the Order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2023–2024 marketing year, which begins on June 1, 2023.

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 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. Such 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.

Pursuant to the requirements in § 985.50 of the Order, the Committee meets each year to consider supply and demand of spearmint oil and to adopt a marketing policy for the ensuing marketing year. In determining such marketing policy, the Committee considers several factors, including, but not limited to, the current and projected supply of oil, estimated future demand, production costs, and producer prices for both classes of spearmint oil. Input from spearmint oil handlers and producers are considered as well.

Pursuant to the provisions in § 985.51, when the Committee's marketing policy considerations indicate a need to establish or to maintain stable market conditions through volume regulation, the Committee subsequently recommends to AMS the establishment of a salable quantity and allotment percentage for such class or classes of oil for the upcoming marketing year. Recommendations for volume control are intended to ensure market requirements for Far West spearmint oil are satisfied and orderly marketing conditions are maintained.

Salable quantity represents the total quantity of each class of oil (Scotch or Native) which handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each class of spearmint oil is the salable quantity for that class of oil divided by the total of all producers' allotment base for the same class of oil. A producer's allotment base is their calculated share of the spearmint oil market based on a

statistical representation of past spearmint production and sales. In order to account for changes in production and demand over time, the Committee periodically reviews and adjusts each producer's allotment base in accordance with a formula prescribed by the Committee and approved by AMS. Each producer's annual allotment of the salable quantity is calculated by multiplying their respective allotment base for each class of spearmint oil by the allotment percentage for that class of spearmint oil. The total allotment base is revised each year on June 1 to account for producer allotment base being lost as a result of the ''bona fide effort'' production provision of § 985.53(e) and additional base made available pursuant to the provisions of § 985.153.

Salable quantities and allotment percentages are established at levels intended to maintain orderly marketing conditions while also ensuring that markets are adequately supplied. Further, Committee recommendations for volume control are made in advance of the upcoming marketing year in which the regulations are to be effective, thereby allowing producers ample time to adjust their production decisions accordingly.

The Committee met on October 12, 2022, to consider its marketing policy for the 2023–2024 marketing year. At that meeting, the Committee determined that, based on the current market and supply conditions, volume regulation for both classes of oil would be necessary. The Committee recommended, with a vote of six in favor and one opposed, a salable quantity and allotment percentage for Scotch spearmint oil of 772,704 pounds and 34 percent, respectively. The member voting in opposition to the recommendation supported volume regulation but favored a salable quantity and allotment percent lower than what was recommended. In addition, the Committee unanimously recommended a salable quantity and allotment percentage for Native spearmint oil of 1,034,492 pounds and 40 percent, respectively.

This action establishes the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2023–2024 marketing year, which begins on June 1, 2023. Salable quantities and allotment percentages have been in effect each season since the Order's inception in 1980.

Scotch Spearmint Oil

The Committee recommended a Scotch spearmint oil salable quantity of 772,704 pounds and an allotment percentage of 34 percent for the 2023–2024 marketing year. The 2023–2024 marketing year salable quantity of 772,704 pounds is 59,876 pounds less than the salable quantity of 832,580 pounds established for the 2022–2023 marketing year. The recommended 34 percent allotment percentage for the 2023–2024 marketing year is three percent less than the percentage in effect the previous marketing year.

The total allotment base for the coming marketing year is estimated to be 2,272,660 pounds. This figure represents a one-percent increase over the revised 2022–2023 marketing year total allotment base of 2,250,124 pounds. The salable quantity (772,704 pounds) is the product of total allotment base (2,272,660 pounds) times the allotment percentage (34 percent).

The Committee considered several factors in making its recommendation, including the current and projected future supply, estimated future demand, production costs, and producer prices. The Committee's recommendation also accounts for the established acreage of Scotch spearmint, consumer demand, existing carry-in, reserve pool volume, and increased production in competing markets.

According to the Committee, as costs of production have increased and spearmint oil prices have decreased, many producers have forgone new plantings of Scotch spearmint. This has resulted in a significant decline in production of Scotch spearmint oil in recent years. Production has decreased from 1,113,346 pounds produced in 2016 to an estimated 576,692 pounds of Scotch spearmint production in 2021.

Industry reports indicate that trade demand for Far West Scotch spearmint oil, which has been declining since the 2014–2015 marketing year, has begun to stabilize. Sales of Far West Scotch spearmint oil declined from 1,060,232 pounds during the 2014–2015 marketing year to 488,484 pounds in the 2020–2021 marketing year, before notably rebounding to 667,793 pounds in the 2021–2022 marketing year, the last full year of available data. The Committee indicates that the downward pressure on trade demand for Scotch spearmint oil from the Far West has lessened as production of Scotch spearmint oil in competing markets, most notably by Canadian producers, has leveled off in recent years.

Given the anticipated market conditions for the coming year, the Committee estimates that Scotch spearmint oil trade demand for the 2023–2024 marketing year will be 635,000 pounds, which is 15,000 pounds lower than the prior year estimate and slightly higher than the 5-year moving sales average of 618,834 pounds. Should the established volume regulation levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases of the salable quantity and allotment percentage, as it has in previous marketing years.

The Committee calculated the minimum salable quantity of Scotch spearmint oil that will be required during the 2023–2024 marketing year (368,471 pounds) by subtracting the estimated salable carry-in on June 1, 2023, (266,529 pounds) from the estimated trade demand (635,000 pounds). This minimum salable quantity represents the estimated minimum amount of Scotch spearmint oil that will be needed to satisfy estimated trade demand for the coming year. To ensure that the market will be fully supplied, the Committee recommended a 2023–2024 marketing year salable quantity of 772,704 pounds. The recommended salable quantity, combined with an estimated 266,529 pounds of salable carry-in from the previous year, will yield a total available supply of 1,039,233 pounds of Scotch spearmint oil for the 2023–2024 marketing year. With the recommended salable quantity and current market environment, the Committee estimates that as much as 404,233 pounds of salable Scotch spearmint oil could be carried into the 2024–2025 marketing year.

Salable carry-in is the primary measure of excess spearmint oil supply under the Order, as it represents overproduction in prior years that is currently available to the market without restriction. Under volume regulation, spearmint oil that is designated as salable continues to be available to the market until it is sold and may be marketed at any time at the discretion of the owner.

The Committee estimates that there will be 266,529 pounds of salable carry-in of Scotch spearmint oil on June 1, 2023. If current market conditions are maintained and the Committee's projections are correct, salable carry-in will increase to 404,233 pounds at the beginning of the 2024–2025 marketing year. That level would be above the quantity that the Committee generally considers favorable (150,000 pounds). However, the Committee believes that, given the current economic conditions in the Scotch spearmint oil industry, some Scotch spearmint oil producers may not produce their annual allotment for the 2023–2024 marketing year. Further, the Committee estimates that as

much as 287,480 pounds of the 2022–2023 marketing year annual allotment may not be filled by producers. While the Committee has not projected unused base allotment for the upcoming 2023–2024 marketing year, it anticipates that the actual quantity of Scotch spearmint oil carried into the 2024–2025 marketing year will be much less than the quantity calculated above (404,233 pounds).

Spearmint oil held in reserve is oil that has been produced in excess of a producer's annual allotment, either in the current marketing year or in prior years and is restricted from freely entering the market. After December 1 of each marketing year, reserve pool oil is not available to the market in the current marketing year without an increase in the salable quantity and allotment percentage. The Order does include a provision for reserve oil to be released for limited market development projects, with approval of the Secretary, but this provision is rarely utilized.

Oil held in the reserve pool is another indicator of excess supply. Scotch spearmint oil held in reserve was 23,667 pounds as of May 31, 2022, down from 72,361 pounds as of May 31, 2021. This quantity of reserve pool oil should be an adequate buffer to supply the market, if necessary, should the industry experience an unexpected increase in demand.

The Committee recommended an allotment percentage of 34 percent for the 2023–2024 marketing year for Scotch spearmint oil. During its October 12, 2022, meeting, the Committee calculated an initial allotment percentage by dividing the minimum required salable quantity (368,471 pounds) by the total estimated allotment base (2,272,660 pounds), resulting in 16.2 percent. However, producers and handlers at the meeting indicated that the computed percentage (16.2 percent) might not adequately satisfy potential 2023–2024 marketing year Scotch spearmint oil market demand and may also result in a less than desirable carry-in for the subsequent marketing year. After deliberation, the Committee recommended an allotment percentage of 34 percent. The total estimated allotment base (2,272,660 pounds) for the 2023–2024 marketing year, multiplied by the recommended allotment percentage (34 percent), yields 772,704 pounds, which is the recommended salable quantity for the 2023–2024 marketing year.

The 2023–2024 marketing year computational data for the Committee's recommendations is detailed below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2023: 266,529 pounds.* This figure is the difference between the 2022–2023 marketing year total available supply of 901,529 pounds and the revised 2022–2023 marketing year estimated trade demand of 635,000 pounds.

(B) *Estimated trade demand of Scotch spearmint oil for the 2023–2024 marketing year: 635,000 pounds.* This figure was established at the Committee meeting held on October 12, 2022.

(C) *Minimum salable quantity of Scotch spearmint oil required from the 2023–2024 marketing year production: 368,471 pounds.* This figure is the difference between the estimated 2023–2024 marketing year trade demand (635,000 pounds) and the estimated carry-in on June 1, 2022 (266,529 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil that may be needed to satisfy estimated demand for the coming year.

(D) *Total estimated Scotch spearmint oil allotment base for the 2023–2024 marketing year: 2,272,660 pounds.* This figure represents a one-percent increase over the 2022–2023 marketing year total actual allotment base of 2,250,158 pounds, as prescribed by § 985.53(d). The one-percent increase equals 22,502 pounds. This total estimated allotment base is revised each year on June 1 in accordance with § 985.53(e).

(E) *Computed Scotch spearmint oil allotment percentage for the 2023–2024 marketing year: 16.2 percent.* This percentage is computed by dividing the minimum required salable quantity (368,471) by the total estimated allotment base (2,272,660 pounds).

(F) *Recommended Scotch spearmint oil allotment percentage for the 2023–2024 marketing year: 34 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (16.2 percent) and input from producers and handlers at the October 12, 2022, meeting. The recommended 34 percent allotment percentage reflects the Committee's belief that the computed percentage (16.2 percent) may not adequately supply the anticipated 2023–2024 marketing year Scotch spearmint oil market demand.

(G) *Recommended Scotch spearmint oil salable quantity for the 2023–2024 marketing year: 772,704 pounds.* This figure is the product of the recommended salable allotment percentage (34 percent) and the total estimated allotment base (2,272,660 pounds) for the 2023–2024 marketing year.

(H) *Estimated total available supply of Scotch spearmint oil for the 2023–2024 marketing year: 1,039,233 pounds.* This figure is the sum of the 2023–2024 marketing year recommended salable quantity (772,704 pounds) and the estimated carry-in on June 1, 2023 (266,529 pounds).

For the reasons stated above, the Committee believes that the salable quantity and allotment percentage established herein will adequately satisfy trade demand, will result in a reasonable carry-in for the following year, and will contribute to the orderly marketing of Scotch spearmint oil.

Native Spearmint Oil

The Committee recommended a Native spearmint oil salable quantity of 1,034,492 pounds and an allotment percentage of 40 percent for the 2023–2024 marketing year. These figures are, respectively, 66,777 pounds and 3 percentage points lower than the levels established for the 2022–2023 marketing year. The Committee utilized handlers' estimated trade demand of Native spearmint oil for the coming year, historical and current Native spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry to arrive at these recommendations.

The Committee anticipates that 2022 Native spearmint oil production will total 941,026 pounds, down slightly from the previous year's production of 985,797 pounds. Committee records indicate that spearmint-producing acres in the Far West have declined from a recent high of 9,013 acres in 2019 to an estimated 6,078 acres of Native spearmint production in 2022.

Additionally, sales of Native spearmint oil fell from 1,076,906 pounds in the 2020–2021 marketing year to 988,536 pounds for the 2021–2022 marketing year, the last full year of reported sales. This sales figure represents a 10-year low. However, the Committee expects a moderate rebound from this low, estimating trade demand for Native spearmint oil at 1,150,000 pounds for the 2023–2024 marketing year, which would be in line with the 3-year sales average of 1,132,567 pounds.

The Committee expects that 308,440 pounds of salable Native spearmint oil from prior years will be carried into the 2023–2024 marketing year. This amount is down from the 357,066 pounds of salable oil carried into the 2022–2023 marketing year but still above the level that the Committee generally considers favorable.

Further, the Committee estimates that there will be 1,093,144 pounds of Native spearmint oil in the reserve pool at the beginning of the 2023–2024 marketing

year. This figure is 125,978 pounds lower than the quantity of reserve pool oil held by producers at the beginning of the previous marketing year but still well above the level that the Committee believes is optimal. Generally, reserve pool oil has been increasing over the past several marketing years, climbing from 996,050 pounds of Native reserve oil at the start of the 2016–2017 marketing year to the 1,093,144 pounds expected for the 2023–2024 marketing year.

The Committee expects end users of Native spearmint oil to continue to rely on Far West production as their primary source of high-quality Native spearmint oil. Overseas production of Native spearmint has declined in recent years. As a result, U.S. exports of Native spearmint oil have been steadily increasing since 2018. However, increased domestic production of Native spearmint from regions outside of the Far West production area has created additional domestic competition for market share. For example, there were fewer than 2,000 acres of Native spearmint production in the U.S. Midwest region in 2016, compared to over 10,000 acres of Native spearmint oil production in the Far West. However, 2022 Native spearmint acreage estimates show that Far West acreage has declined to approximately 6,078 acres, compared to Native spearmint producing acreage of around 4,300 acres in the Midwest. This situation has contributed to declining trade demand for Far West Native spearmint oil and led to downward pressure on producer prices.

The Committee chose to be cautiously optimistic in the establishment of its trade demand estimate for the 2023–2024 marketing year to ensure that the market will be adequately supplied. At the October 12, 2022, meeting, the Committee estimated the 2023–2024 marketing year Native spearmint oil trade demand to be 1,150,000 pounds. This figure is based on input provided by producers at nine production area meetings held in early October 2022, as well as estimates provided by handlers and other meeting participants. This figure represents a decrease of 50,000 pounds from the previous year's original estimated trade demand for the 2022–2023 marketing year. The average estimated trade demand for Native spearmint oil derived from the area producer meetings was 1,124,857 pounds, whereas the handlers' estimates ranged from 850,000 to 1,250,000 pounds. The average of Native spearmint oil sales over the last three years is 1,132,567 pounds. The quantity marketed over the most recent full marketing year, 2021–2022, was 988,536 pounds.

The estimated June 1, 2023, carry-in of 308,440 pounds of Native spearmint oil, plus the recommended 2023–2024 marketing year salable quantity of 1,034,932 pounds, will result in an estimated total available supply of 1,342,932 pounds of Native spearmint oil during the 2023–2024 marketing year. With the corresponding estimated trade demand of 1,150,000 pounds, the Committee projects that 192,932 pounds of oil will be carried into the 2024–2025 marketing year. This will result in a year-over-year decrease in carryover of 115,508 pounds. The Committee estimates that there will be 1,093,144 pounds of Native spearmint oil held in the reserve pool at the beginning of the 2023–2024 marketing year. Should the industry experience an unexpected increase in trade demand, oil in the Native spearmint oil reserve pool could be released through an intra-seasonal increase in the salable quantity and allotment percentage to satisfy that demand.

The Committee recommended a Native spearmint oil allotment percentage of 40 percent for the 2023–2024 marketing year. During its October 12, 2022, meeting, the Committee calculated an initial allotment percentage of 32.5 percent by dividing the minimum required salable quantity to satisfy estimated trade demand (841,560 pounds) by the total allotment base (2,586,229 pounds). However, producers and handlers at the meeting expressed concern that the computed percentage of 32.5 percent may not adequately supply the potential 2023–2024 marketing year Native spearmint oil market demand. Further, it could result in a less than adequate carry-in for the subsequent marketing year. After deliberation, the Committee increased its allotment percentage recommendation to 40 percent. The total estimated Native spearmint oil allotment base (2,586,229 pounds) multiplied by the recommended salable allotment percentage (40 percent) yields 1,034,492 pounds, the recommended Native spearmint oil salable quantity for the 2023–2024 marketing year.

The 2023–2024 marketing year computational data for the Committee's recommendation is further outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2023: 308,440 pounds.* This figure is the difference between the 2022–2023 marketing year total available supply of 1,458,440 pounds and the revised 2022–2023 marketing year estimated trade demand of 1,150,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2023–2024 marketing year: 1,150,000 pounds.* This estimate was established by the Committee at its October 12, 2022, meeting.

(C) *Minimum salable quantity of Native spearmint oil required from the 2023–2024 marketing year production: 841,560 pounds.* This figure is the difference between the 2023–2024 marketing year estimated trade demand (1,150,000 pounds) and the estimated carry-in on June 1, 2023 (308,440 pounds). This is the minimum amount of Native spearmint oil that the Committee believes may be required to meet the anticipated 2023–2024 marketing year trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2023–2024 marketing year: 2,586,229 pounds.* This figure represents a one-percent increase over the 2022–2023 marketing year actual total allotment base of 2,560,623 pounds as prescribed in § 985.53(d). The one-percent increase equals 25,606 pounds of oil. This estimate is revised each year on June 1, to adjust for the bona fide effort production provisions of § 985.53(e).

(E) *Computed Native spearmint oil allotment percentage for the 2023–2024 marketing year: 32.5 percent.* This percentage is calculated by dividing the required minimum salable quantity (841,560 pounds) by the total estimated allotment base (2,586,229 pounds) for the 2023–2024 marketing year.

(F) *Recommended Native spearmint oil allotment percentage for the 2023–2024 marketing year: 40 percent.* This is the Committee's recommendation based on the computed allotment percentage (32.5 percent) and input from producers and handlers at the October 12, 2022, meeting. The recommended 40 percent allotment percentage is also based on the Committee's belief that the computed percentage (32.5 percent) may not adequately supply the potential market for Native spearmint oil in the 2023–2024 marketing year or allow for sufficient salable Native spearmint oil to be carried into the beginning of the 2024–2025 marketing year.

(G) *Recommended Native spearmint oil 2023–2024 marketing year salable quantity: 1,034,492 pounds.* This figure is the product of the recommended allotment percentage (40 percent) and the total estimated allotment base (2,586,229 pounds).

(H) *Estimated available supply of Native spearmint oil for the 2023–2024 marketing year: 1,342,932 pounds.* This figure is the sum of the 2023–2024 marketing year recommended salable quantity (1,034,492 pounds) and the

estimated carry-in on June 1, 2023 (308,440 pounds). This amount could be increased, as needed, through an intra-seasonal increase in the salable quantity and allotment percentage.

The Scotch and Native spearmint oil salable quantities and allotment percentages of 772,704 pounds and 34 percent, and 1,034,492 pounds and 40 percent, respectively, are expected to match the available supply of each class of spearmint oil to the estimated demand of each, thus avoiding extreme fluctuations in inventories and prices. This rule is similar to regulations issued in prior seasons.

The salable quantities in this final rule are not expected to cause a shortage of either class of spearmint oil. Any unanticipated or additional market demand for either class of spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity and corresponding allotment percentage. The Order contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers who have not transferred their excess spearmint oil to other producers must place their excess spearmint oil production into the reserve pool to be released in the future. Each producer controls the disposition of their respective reserve pool spearmint oil, in accordance with market needs and the Order's volume regulation provisions, and under the Committee's oversight.

AMS has reviewed the Committee's marketing policy statement for the 2023–2024 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, meets the requirements of §§ 985.50 and 985.51.

The establishment of the salable quantities and allotment percentages in this rule are expected to allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information regarding the amount of spearmint oil that should be produced for the 2023–2024 and subsequent marketing years to meet anticipated market demand.

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 rule 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 40 producers of Scotch spearmint oil and 94 producers of Native spearmint oil operating within the regulated production area. In addition, there are approximately 8 spearmint oil handlers (both Scotch and Native spearmint) subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $34,000,000, and small agricultural producers of spearmint oil are defined as those having annual receipts of less than $2,500,000 (13 CFR 121.201).

The SBA size standards reported in this rule are higher than in the proposed rule because new standards went into effect on December 19, 2022, after the proposed rule was published. The size threshold for small agricultural service firms increased from $30 million to $34 million. The size threshold for small agricultural producers of spearmint oil increased from $2,250,000 to $2,500,000.

The Committee reported that recent producer prices for spearmint oil have ranged from $18.50 to $22.00 per pound. The National Agricultural Statistics Service reported that the 2021 U.S. season average spearmint oil producer price per pound was $15.80. Spearmint oil utilization for the 2021–2022 marketing year, as reported by the Committee, was 667,793 pounds and 988,536 pounds for Scotch and Native spearmint oil, respectively, for a total of 1,656,329 pounds. Multiplying $15.80 per pound by 2021–2022 marketing year spearmint oil utilization of 1,656,329 pounds yields a crop value estimate of about $26.17 million.

Given the accounting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the $15.80 average spearmint oil price and Committee production data for each producer, the Committee estimates that 39 of the 40 Scotch spearmint oil producers and all of the 94 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third-party or governmental entity that collects and reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Twenty percent of the 2021 producer price ($15.80) is $3.16, which results in a handler Free on Board (f.o.b.) price per pound estimate of $18.96 ($15.80 + $3.16).

Multiplying this estimated handler f.o.b. price by the 2020–2021 marketing year total spearmint oil utilization of 1,656,329 pounds results in an estimated handler-level spearmint oil value of $31.4 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about $3.9 million, which is well below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data compiled by the Committee on the pounds of spearmint oil handled by each handler and the abovementioned estimated handler price per pound, the Committee reported that it is not likely that any of the eight handlers had 2021–2022 marketing year spearmint oil sales that exceeded SBA's $34-million threshold.

Therefore, in view of the foregoing, the majority of producers of spearmint oil may be classified as small entities, and all of the handlers of spearmint oil may be classified as small entities.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2023–2024 marketing year. The Committee recommended this action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased from or handled on behalf of producers during the marketing year through volume regulation allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this proposal is provided in §§ 985.50, 985.51, and 985.52 of the Order.

The Committee estimates the total trade demand for the 2023–2024 marketing year for both classes of oil at

1,785,000 pounds. In addition, the Committee expects that the combined salable carry-in for both classes of spearmint oil will be 574,969 pounds. As such, the combined required salable quantity for the 2023–2024 marketing year is estimated to be 1,210,031 pounds (1,785,000 pounds trade demand less 574,969 pounds carry-in). Under volume regulation, total sales of spearmint oil by producers for the 2023–2024 marketing year will be held to 2,382,165 pounds (the recommended salable quantity for both classes of spearmint oil of 1,807,196 pounds plus 574,969 of carry-in).

This total available supply of 2,382,165 pounds should be more than adequate to supply the 1,785,000 pounds of anticipated total trade demand for spearmint oil. In addition, as of May 31, 2022, the total reserve pool for both classes of spearmint oil stood at 1,242,789 pounds. That quantity is expected to remain relatively unchanged over the course of the 2022–2023 marketing year, with current Committee reserve pool estimates totaling 1,130,893 pounds. Should trade demand increase unexpectedly during the 2023–2024 marketing year, reserve pool spearmint oil could be released into the market to supply that increase in demand.

The recommended allotment percentages, upon which 2023–2024 marketing year annual producer allotments are based, are 34 percent for Scotch spearmint oil and 40 percent for Native spearmint oil. Without volume regulation, producers would not be held to these allotment levels and could sell unrestricted quantities of spearmint oil.

The AMS econometric model used to evaluate the Far West spearmint oil market estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about $2.65 per pound without volume regulation. The surplus situation for the spearmint oil market that would exist without volume regulation in the 2023–2024 marketing year also would likely dampen prospects for improved producer prices in future years because of the excessive buildup in stocks.

In addition, spearmint oil prices would likely fluctuate with greater amplitude in the absence of volume regulation. The coefficient of variation, or CV (a standard measure of variability), of Far West spearmint oil producer prices for the period 1980–2021 (the years in which the Order has been in effect), is 25 percent, compared to 49 percent for the 20-year period (1960–1979) immediately prior to the establishment of the Order. Since higher CV values correspond to greater variability, this is an indicator of the price-stabilizing impact of the Order.

The use of volume regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume regulation is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee rejected the idea of not regulating volume for either class of spearmint oil because of the severe, price-depressing effects that are more likely to occur without volume regulation. The Committee also discussed and considered salable quantities and allotment percentages that were above and below the levels that were eventually recommended for both classes of spearmint oil. Ultimately, the action recommended by the Committee was to slightly reduce the allotment percentage and salable quantity for both Scotch spearmint oil and Native spearmint oil from the levels established for the 2022–2023 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

Based on its review, the Committee believes that the salable quantities and allotment percentages established in this rule will achieve the objectives sought. The Committee also believes that, should there be no volume regulation in effect for the upcoming marketing year, the Far West spearmint oil industry would return to the pronounced cyclical price patterns that occurred prior to the promulgation of the Order. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the Order's inception. The salable quantities and allotment percentages established herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for the 2023–2024 and future marketing years.

This final rule establishes the salable quantities and allotment percentages for Scotch and Native spearmint oil produced in the Far West during the 2023–2024 marketing year. Costs to producers and handlers, large and small, resulting from this action are expected to be offset by the benefits derived from a more stable market and increased returns. The benefits of this rule are expected to be equally available to all producers and handlers regardless of their size.

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 OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this rule. 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 Far West spearmint oil 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 January 3, 2023 (88 FR 18). Copies of the proposed rule were also mailed or sent via email to all Far West spearmint oil handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending February 2, 2023, was provided for interested persons to respond to the proposal. No comments were received during the comment period. 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, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 985 as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add § 985.238 to read as follows:

§ 985.238 Salable quantities and allotment percentages—2023–2024 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2023, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 772,704 pounds and an allotment percentage of 34 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,034,492 pounds and an allotment percentage of 40 percent.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–08009 Filed 4–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2720–22; DHS Docket No. USCIS–2023–0003]

RIN 1615–AC84

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1240

[EOIR No. 23–0010; AG Order No. 5632–2023]

RIN 1125–AB29

Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims From Nationals of Third Countries; Correction

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: The Department of Justice (''DOJ'') and the Department of Homeland Security (''DHS'') (''collectively, ''the Departments'') are correcting inadvertent errors and omissions in the preamble and the amendatory language of the final rule titled ''Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries'' published in the **Federal Register** on March 28, 2023.

DATES: This correction is effective April 17, 2023, and is applicable beginning at 12:01 a.m. on Saturday, March 25, 2023.

FOR FURTHER INFORMATION CONTACT: For U.S. Citizenship and Immigration Services: Renáa Cutlip-Mason, Chief, Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588–0009; telephone (240) 721–3000 (not a toll-free call).

For Executive Office of Immigration Review: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need for Correction

On March 28, 2023, the Departments published a final rule in the **Federal Register** at 88 FR 18227 to implement the Additional Protocol to the Agreement between The Government of the United States of America and The Government of Canada For Cooperation in the Examination of Refugee Status Claims From Nationals of Third Countries (''Additional Protocol of 2022'') negotiated by the Governments of the United States and Canada, and signed in Ottawa, Ontario, Canada, on March 29, 2022, and in Washington, DC, United States, on April 15, 2022, respectively.[1] The Additional Protocol of 2022 supplements certain terms of the December 5, 2002 Agreement between The Government of the United States and The Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (''Safe Third Country Agreement,'' ''STCA'').[2] This document corrects inadvertent errors and omissions in the final rule published on March 28, 2023.

In the final rule, DHS amended 8 CFR 208.30(e)(7) to clarify that the STCA includes the Additional Protocol of 2022.[3] The regulations at 8 CFR 208.30(e)(7) consists of paragraph (e)(7) introductory text paragraphs (e)(7)(i) through (iv). DHS intended to revise only the introductory text of paragraph (e)(7) of 8 CFR 208.30 and to leave paragraphs (e)(7)(i) through (iv) intact. However, through its instructions, DHS inadvertently removed paragraphs (e)(7)(i) through (iv) of § 208.30. This document corrects this error and the amendatory language to ensure that these paragraphs remain in the Code of Federal Regulations (''CFR''). DHS makes no additional changes to 8 CFR 208.30(e)(7) with this correction.

Additionally, in the final rule, DOJ amended 8 CFR 1003.42(h). DOJ revised paragraphs (h)(1) and (2) by making conforming amendments, including amendments to clarify that any determination under the STCA includes the Additional Protocol of 2022.[4] The regulatory text also indicated a change in the heading of paragraph (h)—*i.e.,* changing ''*Asylum cooperative agreement-*'' to ''*Safe Third Country Agreement—*''.[5] That change was inadvertent, as reflected by the fact that DOJ omitted any reference to changing

[1] *See* 88 FR 18227.

[2] *See id.*

[3] *See* 88 FR 18227 at 18232–33, 18234–35.

[4] *See* 88 FR at 18233 and 18235.

[5] *See* 88 FR at 18240.

the paragraph (h) heading in the associated amendatory text.[6] Further, because DOJ did not include a change to the paragraph (h) heading in the amendatory text, the current text of the CFR retains the original wording—*i.e.,* ''*Asylum Cooperative Agreement—*''. Because the current CFR text uses the correct heading, DOJ is not altering the paragraph (h) heading with this document. DOJ now clarifies, however, that no change in the paragraph (h) heading was intended by the publication of the rule at 88 FR 18227 or the inadvertent use of the phrase ''*Safe Third Country Agreement—*'' at 88 FR 18240.

Finally, the Departments are correcting the omission of a reference to the CFR in a citation in the preamble at 88 FR 18232 n.43.

Corrections

Preamble Correction

In FR Doc. 2023–06351, appearing on page 18227 in the March 28, 2023, issue of the **Federal Register**, the following correction is made:

1. On page 18232, in the third column in footnote 43, revise the last sentence (the citation sentence) to read as follows: ''*See* 8 CFR 1240.11(h)(1) (revised).''

CFR Correction

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the Department of Homeland Security amends 8 CFR part 208 with the following correcting amendment:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. In § 208.30, add paragraphs (e)(7)(i) through (iv) to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

* * * * *

(e) * * *

(7) * * *

(i)(A) If the asylum officer, with concurrence from a supervisory asylum officer, determines during the threshold screening interview that an alien does not qualify for an exception under the applicable agreement, and, if applicable, that the alien has not demonstrated that it is more likely than not that he or she would be persecuted on account of a protected ground or tortured in the receiving country, the alien is ineligible to apply for asylum in the United States. Subject to paragraph (e)(7)(i)(B) of this section, after the asylum officer's documented finding is reviewed by a supervisory asylum officer, the alien shall be advised that he or she will be removed to the receiving country, as appropriate under the applicable agreement, in order to pursue his or her claims relating to a fear of persecution or torture under the law of the receiving country. Prior to removal to a receiving country under an agreement authorized by section 208(a)(2)(A), the alien shall be informed that, in the receiving country, the alien will have an opportunity to pursue the alien's claim for asylum or equivalent temporary protection.

(B) Aliens found ineligible to apply for asylum under this paragraph (e)(7) shall be removed to the receiving country, depending on the applicable agreement, unless the alien voluntarily withdraws his or her request for asylum.

(ii) If the alien establishes by a preponderance of the evidence that he or she qualifies for an exception under the terms of the applicable agreement, or would more likely than not be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or tortured, in the receiving country, the asylum officer shall make a written notation to that effect, and may then proceed to determine whether any other agreement is applicable to the alien under the procedures set forth in this paragraph (e)(7). If the alien establishes by a preponderance of the evidence that he or she qualifies for an exception under the terms of each of the applicable agreements, or would more likely than not be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or tortured, in each of the prospective receiving countries, the asylum officer shall make a written notation to that effect, and then proceed immediately to a determination concerning whether the alien has a credible fear of persecution, reasonable possibility of persecution, or a reasonable possibility of torture, under paragraph (d) of this section.

(iii) An exception to an applicable agreement is defined under the terms of the agreement itself. Each agreement, including any exceptions, will be announced in a **Federal Register** document. If the asylum officer determines that an alien is within one of the classes covered by a section 208(a)(2)(A) agreement, the officer shall next determine whether the alien meets any of the applicable agreement's exceptions. Regardless of whether the text of the applicable agreement provides for the following exceptions, all such agreements, by operation of section 208(a)(2)(A) of the Act, and as applicable to the United States, are deemed to contain the following provisions:

(A) No alien may be removed, pursuant to an agreement authorized by section 208(a)(2)(A), to the alien's country of nationality, or, if the alien has no nationality, to the alien's country of last habitual residence; and

(B) No alien may be removed, pursuant to an agreement authorized by section 208(a)(2)(A), where the Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest for the alien to receive asylum in the United States, and that the alien therefore may apply for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

(iv) If the asylum officer determines the alien meets an exception under the applicable agreement, or would more likely than not be persecuted on account of a protected ground or tortured in the prospective receiving country, the officer may consider whether the alien is subject to another agreement and its exceptions or would more likely than not be persecuted on account of a protected ground or tortured in another receiving country. If another section 208(a)(2)(A) agreement may not be applied to the alien, the officer should immediately proceed to a credible fear interview.

* * * * *

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs, U.S. Department of Homeland Security.

Dated: April 11, 2023.

Rosemary Hart,

Special Counsel, U.S. Department of Justice.

[FR Doc. 2023–07966 Filed 4–14–23; 8:45 am]

BILLING CODE 9111–97–P

[6] *See id.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0694; Airspace Docket No. 23–ASO–11]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Kissimmee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Kissimmee, FL, Class D, and Class E airspace descriptions to update the Kissimmee Gateway Airport name and geographic coordinates. This action does not change the boundaries, altitudes, or operating requirements of the Class D and E airspace areas.

DATES: Effective 0901 UTC, June 15, 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: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class D and E airspace descriptions in Kissimmee, FL, by updating the airport's name and geographic coordinates.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. 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 Class D airspace and Class E airspace extending upward from 700 feet above the surface for Kissimmee Gateway Airport (formerly Lakeland Kissimmee Municipal Airport), Kissimmee, FL, by updating this airport's name and geographic coordinates to coincide with the FAA's database. This action also replaces the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the Class D airspace description. This action does not affect the boundaries, altitudes, or operating requirements of the airspace. Therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

Lists 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 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 5000 Class D Airspace.

* * * * *

ASO FL D Kissimmee, FL [Amended]

Kissimmee Gateway Airport, FL
(Lat 28°17′23″ N, long. 81°26′13″ W)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4-mile radius of the Kissimmee Gateway Airport, excluding that portion within the Orlando International Airport, FL, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Orlando, FL [Amended]

Orlando Executive Airport, FL
(Lat 28°32′44″ N, long. 81°19′59″ W)
Orlando VORTAC
(Lat 28°32′34″ N, long. 81°20′06″ W)
Orlando International Airport
(Lat 28°25′46″ N, long. 81°18′32″ W)
Kissimmee Gateway Airport
(Lat 28°17′23″ N, long. 81°26′13″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Orlando Executive Airport, and within 3.1-miles each side of Orlando VORTAC 067° radial extending from the 7-mile radius to 9.5-miles northeast of the VORTAC, and within a 7-mile radius of Orlando International Airport, and within 3 miles each side of Orlando VORTAC 176° radial extending from the 7-mile radius to 19 miles south of the VORTAC, and within a 7-mile radius of Kissimmee Gateway Airport.

Issued in College Park, Georgia, on April 10, 2023.

Andreese C. Davis,

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

[FR Doc. 2023–07842 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230407–0094]

RIN 0694–AJ21

Additions and Revisions of Entities to the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security is amending the Export Administration Regulations (EAR) by adding 28 entities under 32 entries to the Entity List. These entities are listed under the destinations of Armenia (1), the People's Republic of China (China) (12), Malta (1), Russia (10), Singapore (1), Spain (1), Syria (1), Turkey (1), the United Arab Emirates (UAE) (2), and Uzbekistan (2). Some entities are added under multiple entries, accounting for the difference in the totals. This final rule also modifies two existing entries on the Entity List under the destinations of China and Russia.

DATES: This rule is effective April 12, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) where a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that adds the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additions to the Entity List

The ERC determined to add Allparts Trading Co., Ltd.; Avtex Semiconductor Limited; ETC Electronics Ltd.; Maxtronic International Co., Ltd.; and STK Electronics (HK) Co., Ltd, under the destination of China; ETC Electronics; Promelektronika; TD Promelektronika LLC; and OOO Vest-Ost to the Entity List under the destination of Russia for attempting to evade export controls and acquiring or attempting to acquire U.S.-origin items in support of Russia's military and/or defense industrial base. Specifically, these nine entities have continued to procure or attempt to procure items on behalf of Russian entities that have been sanctioned since Russia's further invasion of Ukraine. This activity is contrary to U.S. national security and foreign policy interests under § 744.11. These entities qualify as 'military end users' under § 744.21 of the EAR and are receiving a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' pursuant to § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed in § 734.9(g). These entities are added with a license requirement for all items subject to the EAR. They are added with a license review policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

The ERC determined to add I JET GLOBAL DMCC under the destinations of Malta, Spain, Syria and the United Arab Emirates (UAE); and Success Aviation Services under the destination of the UAE to the Entity List for coordinating flights that assisted in the transfer of Iranian unmanned aerial vehicles (UAVs), personnel, and related equipment from Iran to Russia, ultimately contributing to Russia's military and defense industrial base. These entities are added with a license requirement for all items subject to the EAR. They are added with a license review policy of a presumption of denial.

The ERC determined to add the following 16 entities under 17 entries to the Entity List for attempting to evade export controls and acquiring or attempting to acquire U.S.-origin items in support of Russia's military and/or defense industrial base: Tako LLC, under the destination of Armenia; 3HC Semiconductors (HK) Co., Ltd.; Leadway Technology Limited; Newsuntech Electronics Limited; Wynn Electronics Co. Ltd.; Yishang Network (Shenzhen) Co., Ltd.; and Yongli Electronic Components (Shenzhen) Co., Ltd., under the destination of China; Art Logistics LLC; GFK Logistics LLC; Novastream Limited; SKS Elektron Broker LLC; Trust Logistics; and Trust Logistics Group LLC under the destination of Russia; Alfa Beta Creative LLC and GFK Logistic Asia LLC under the destination of Uzbekistan; and Xinnlinx Electronics Pte Ltd under the destinations of China and Singapore. Specifically, these entities have continued to procure items on behalf of Russian parties designated on the Entity List or on the U.S. Department of the Treasury, Office of Foreign Assets

Control's List of Specially Designated Nationals and Blocked Persons (SDN List) since the Russian invasion of Ukraine. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. These entities qualify as 'military end users' under § 744.21 of the EAR and are receiving a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' pursuant to § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed in § 734.9(g). These entities are added with a license requirement for all items subject to the EAR. They are added with a license review policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

The ERC determined to add Dexias Industrial Products and Trade Limited Company under the destination of Turkey to the Entity List based on information that this company significantly contributes to Russia's military and/or defense industrial base and is involved in activities contrary to the national security and foreign policy interests of the United States under §§ 744.11 and 744.21 of the EAR. This entity will receive a footnote 3 designation because the ERC has determined that it is a Russian or Belarusian 'military end user' in accordance with § 744.21. A footnote 3 designation subjects this entity to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed under § 734.9(g). This entity is added with a license requirement for all items subject to the EAR. License applications will be reviewed under a policy of denial for all items subject to the EAR, other than applications for food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

For the reasons described above, this final rule adds or modifies the following 28 entities under 32 entries to the Entity List and includes, where appropriate, aliases:

Armenia

- Tako LLC.

China

- 3HC Semiconductors (HK) Co., Ltd.,
- Allparts Trading Co., Ltd.,
- Avtex Semiconductor Limited,
- ETC Electronics Ltd.,
- Leadway Technology Limited,
- Maxtronic International Co., Ltd.,
- Newsuntech Electronics Limited,
- STK Electronics (HK) Co., Ltd.,
- Wynn Electronics Co. Ltd.,
- Xinnlinx Electronics Pte Ltd.,
- Yishang Network (Shenzhen) Co., Ltd., *and*
- Yongli Electronic Components (Shenzhen) Co., Ltd.

Malta

- I JET GLOBAL DMCC.

Russia

- Art Logistics LLC,
- ETC Electronics,
- GFK Logistics LLC,
- Novastream Limited,
- OOO Vest-Ost,
- Promelektronika,
- SKS Elektron Broker LLC,
- TD Promelektronika LLC,
- Trust Logistics, *and*
- Trust Logistics Group LLC.

Singapore

- Xinnlinx Electronics Pte Ltd.

Spain

- I JET GLOBAL DMCC.

Syria

- I JET GLOBAL DMCC.

Turkey

- Dexias Industrial Products and Trade Limited Company.

United Arab Emirates

- I JET GLOBAL DMCC, *and*
- Success Aviation Services FZC.

Uzbekistan

- Alfa Beta Creative LLC, *and*
- GFK Logistic Asia LLC.

Modifications to the Entity List

The ERC determined to modify one existing entry on the Entity List, ''AOOK Technology Limited'', under the destination of China, to add two additional addresses.

In addition, this rule makes a conforming change to the existing entry for ''Dexias Industrial Products and Trade Limited Company'' under the destination of Russia. The Russian entry is revised to reference the Dexias Industrial Products and Trade Limited Company entry located under the destination of Turkey.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on April 12, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before May 12, 2023. Any such items not actually exported, reexported or transferred (in-country) before midnight, on May 12, 2023, require a license in accordance with this final rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

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

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or

by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

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

■ 1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended by:

■ a. Under ARMENIA, adding an entry in alphabetical order for ''Tako LLC;''

■ b. Under CHINA, PEOPLE'S REPUBLIC OF:

■ i. Adding entries in alphabetical order for ''3HC Semiconductors (HK) Co., Ltd.'' and ''Allparts Trading Co., Ltd.;''

■ ii. Revising the entry for ''AOOK Technology Limited;'' *and*

■ iii. Adding entries in alphabetical order for ''Avtex Semiconductor Limited;'' ''ETC Electronics Ltd.;'' ''Leadway Technology Limited;'' ''Maxtronic International Co., Ltd.;'' ''Newsuntech Electronics Limited;'' ''STK Electronics (HK) Co., Ltd.;'' ''Wynn Electronics Co. Ltd.;'' ''Xinnlinx Electronics Pte Ltd.;'' ''Yishang Network (Shenzhen) Co., Ltd.,'' ''Yongli Electronic Components (Shenzhen) Co., Ltd.;''

■ c. Under MALTA, adding an entry in alphabetical order for ''I JET GLOBAL DMCC;''

■ d. Under RUSSIA:

■ i. Adding an entry for ''Art Logistics LLC;''

■ ii. Revising the entry for ''Dexias Industrial Products and Trade Limited Company;'' and

■ iii. Adding entries in alphabetical order for ''ETC Electronics;'' ''GFK Logistics LLC;'' ''Novastream Limited;'' ''OOO Vest-Ost;'' ''Promelektronika;'' ''SKS Elektron Broker LLC;'' ''TD Promelektronika LLC;'' ''Trust Logistics;'' *and* ''Trust Logistics Group LLC;''

■ e. Under SINGAPORE, adding an entry in alphabetical order for ''Xinnlinx Electronics Pte Ltd.;''

■ f. Under SPAIN, adding an entry in alphabetical order for ''I JET GLOBAL DMCC;''

■ g. Under SYRIA adding an entry in alphabetical order for ''I JET GLOBAL DMCC;''

■ h. Under TURKEY, adding an entry in alphabetical order for ''Dexias Industrial Products and Trade Limited Company;''

■ i. Under UNITED ARAB EMIRATES, adding entries in alphabetical order for ''I JET GLOBAL DMCC;'' *and* ''Success Aviation Services FZC;'' and

■ j. Under UZBEKISTAN, adding entries in alphabetical order for ''Alfa Beta Creative LLC;'' *and* ''GFK Logistic Asia LLC.''

The revisions and additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
ARMENIA	*	*	* *	*
	Tako LLC, the following one alias: -Taco LLC. 17 Garegin Nzhdehi Street, Shengavit, Yerevan, 0026, Armenia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
CHINA, PEOPLE'S REPUBLIC OF.	3HC Semiconductors (HK) Co., Ltd., a.k.a. the following two aliases: -Shenzhen Sanhe Technology Co., Ltd.; *and* -Sanhe Semiconductor. Room 605, 6/F, Fa Yuen Commercial Building, 75–77, Fa Yuen Street, Mongkok, Kowloon, Hong Kong.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Allparts Trading Co., Ltd., Room 2901B, Bank of Communications, Shenzhen, Futian District, China; *and* Room 1901H Bank of Communications, Shenzhen, Futian District, China; and Room 803, Chevalier House, 45–51 Chatham Road South, Kowloon, Tsim Sha Tsui, Hong Kong; *and* 4/F Building 6 Deguan Lighting Factory, No. 2 South 1st Guangzhou, China; *and* Room 13, 27/F, Ho King Commercial Centre, 2–16 Fa Yuen, Street, Mongkok Kowloon, Hong Kong; *and* 3 Garden Road Central, Hong Kong.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	AOOK Technology Limited, a.k.a., the following two aliases: -AOOK; *and* -AOOK Electronics. Rm 803 Chevalier Building 45–51 Chatham Rd S Tsim Sha Tsui Hong Kong; *and* 2608 Glittery City Shennanzhong Road, Futian District, Shenzhen, China; *and* 1206 Jiahui New Town, Futian District, Shenzhen, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR 12171, 2/27/23. 88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	Avtex Semiconductor Limited, 1703A, Block C, CEC Building, 2070, Shennan Middle Road, Huaqiang North, Futian District, Shenzhen, 518031, China; *and* Room 1003A, Fortun Harbor International Center, No. 1084 Baoyuan Road, Xixiang Street, Baoan District, Shenzhen, China; *and* l 7C Block C, Nr. 2070 Electronic Technology Building, Shennan Road, Futian District, Shenzhen, China; *and* Building A, Minsheng 2nd Road, Liukeng New Village, Shiyan Street, Baoan District, Shenzhen, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	ETC Electronics Ltd., Room 315, Fiyta Building, Zhenhua, Road No. 163, Shenzhen, China; *and* WHSE B DD118 Tai Shu Ha West Road New Territories, Yuen Long, Hong Kong; *and* Unit 2, D6, 2/F Mai Wah Industrial Building No. 1/7 Wah sing Street, Kwai Chung, New Territories, Hong Kong; *and* Unit 2 13/F Leader Industrial Center 57–59, Au Pui Wan Street Shatin, Hong Kong.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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	Leadway Technology Limited, a.k.a. the following one alias: -Shenzhen United Leadway Technology. Room 812, Building 511, Bagualing Industrial Zone, Futian District, Shenzhen, Guangdong, 518028, China; *and* 406 Hongyi Building, Longgang District, Jihua Road, Shenzhen, Bantian, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Maxtronic International Co., Ltd., a.k.a. the following one alias: -Maxtronic Global Limited. 2301 Dynamic World Building, Zhonghang Road, Shenzhen, Futian District, 518031, China; *and* Room 301 One Fuhu Street, Shenzhen, 518000, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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	Newsuntech Electronics Limited, a.k.a. the following one alias: -Hong Kong New Santai Electronics Co., Ltd. Unit 205, Unit C, 2/F, Kwong On Bank Mongkok Branch Building, 728–730 Nathan Road, Mong Kok, Hong Kong; *and* Room 606 Chevalier House, 45–51 Chatham Road South, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	STK Electronics (HK) Co., Ltd., a.k.a. the following one alias: -STK Electronics Co., Ltd. Room 1705, Block 4, Phase 2 Clound Park Bantian, Longgang District, Shenzhen City, China; *and* Room 2338 Guoli Plaza, Shenzhen, Futian District, Zhonghong Road, China; and Room 2607 DingCheng Building, Shenzhen, China; *and* Workshop 18 9/F Thriving Industrial Building, No. 26–38 Sha Tsui Road, Tsuen Wan NT, Hong Kong; *and* 7IF Bright, Unit 04, 33 Mong Kok Road, Hong Kong; *and* Unit 2D, 2nd Floor, Mai Wah Industrial Building, Nos 1/7, Wah sing Street, Kwai Chu Hong Kong; and Workshop 14 9/F, No. 26–38 Sha, Hong Kong; *and* 50/F Champion Tower, 3 Garden Road, Central, Hong Kong.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	Wynn Electronics Co. Ltd., 2818 Glittery City Shennan Middle Road, Shenzhen, China; *and* Unit 04,7/F Bright Way Tower No.33 Mong Kok Rd Konglong, Hong Kong; *and* Room 2503, Block A, Ester Times Building, Huaqiang North, Futian, 518031, Hong Kong.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	Xinnlinx Electronics Pte Ltd., SPB–A 1601 Overseas Decoration Building, Shenzhen, China. (See alternate address under Singapore).	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	Yishang Network (Shenzhen) Co., Ltd., Room 812, Building 511, Bagualing Industrial Zone, Futian District, Shenzhen, Guangdong, 518028, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.

Country	Entity	License requirement	License review policy	Federal Register citation
	* *	*	* *	*
	Yongli Electronic Components (Shenzhen) Co., Ltd., Room 2818, 28/F, Huishang Center, Jiahui New City, Shenzhen, 518033, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
MALTA	* *	*	* *	*
	I JET GLOBAL DMCC, a.k.a. the following five aliases: -iJet; -iJet Aviation Services; -iJET Flight Support Services; -Trade Med Middle East; *and* -Trade Mid Middle East. 116/8, St. George's Road, St. Julians STJ3203, Malta. (See alternate addresses under Spain, Syria, and United Arab Emirates).	For all items subject to the EAR (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
RUSSIA	* *	*	* *	*
	Art Logistics LLC, a.k.a. the following one alias: -Art of Logistics LLC. Building 32, Kirovogradskaya Street, Moscow, 117519, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	Dexias Industrial Products and Trade Limited Company, a.k.a., the following five aliases: -Dexias; -Dexias Endil strivel; -Dexias IPTLC; -Mainbox LLC; *and* -Orunler ve Ticaret Limited Sirketi. Apartment 261, Building 3, Ryabinovaya Street, Moscow. (See alternate address under Turkey).	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR 12171, 2/27/23. 88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	ETC Electronics, 14 Dorogobuzhskaya, Building 40, Moscow, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	GFK Logistics LLC, a.k.a. the following one alias: -OOO Dzhiefkei Logistiks. Building 32, Kirovogradskaya Street, Moscow, 117519, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Novastream Limited, a.k.a. the following two aliases: -Novastream LTD; *and* -Novastrim LLC. Building 2A, Suites 50 and 51, Severnaya Street, Vladimir, 600007, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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	OOO Vest-Ost, a.k.a. the following one alias: -West-Ost. 21 Gotvalda Street, K. 2, Porn. 17, Ekaterinburg, Sverdlovskaya Oblast, 620107, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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	Promelektronika, a.k.a. the following two aliases: -Promelectronica; *and* -ZAO Promelektronika. 70 Kolmogorova Street, Ekaterinburg, Sverdlovskaya Oblast, 620034, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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	SKS Elektron Broker LLC, Building 18, Block 2, Kosmonavtov Street, Moscow, 129301, Russia; *and* Office 316, 3rd Floor, Sheremetyevo-2 Business Center, Khimki, Moscow Oblast, 141400, Russia; *and* Building 8, Domodedovo Airport Territory, Domodedovo District, Moscow Oblast, 142015, Russia; *and* Office 301 Vnutriportovaya Street, Nakhodka, Primorsky Oblast, 692941, Russia; *and* Office 701 Lenina Avenue 61A, Yaroslavl, 150054, Russia; *and* Office 3.076, 3n1 Floor, Building 4, 37 Pulkovskoe Highway, St. Petersburg, 196210, Russia; *and* Office 117, Letter Zh, 5th Verkhniy Lane, Industrial Zone Pamas, St. Petersburg, 194292, Russia; *and* Office 415, Business Center Osipoff, 16 Tsvetochnaya Street, St. Petersburg, 196084, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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	TD Promelektronika LLC, a.k.a. the following one alias: -Trading House Promelektronika. 70 Kolmogorova Street, Office 209, Ekaterinburg, Sverdlovskaya Oblast, 620034, Russia; *and* 31 Novocherkasski Bulvar, Moscow, 109369, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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	Trust Logistics, a.k.a. the following one alias: OOO Logistika Doveriya. Office 321, 3n1 Floor, Property 5, Territory of Sheremetyevo Airport, Khimki , Moscow Oblast, 141402, Russia; *and* 27 Engelsa street, floor 2, Khimki, Moscow Oblast, 141402, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.

Country	Entity	License requirement	License review policy	Federal Register citation
	Trust Logistics Group LLC, a.k.a. the following one alias: OOO Trast Lodzhistiks Grupp. Room 40, Suite I, Building 92, Yurovskaya Street, Moscow, 125466, Russia; *and* 32kl Baryshikha Street, Moscow, 125368, Russia; *and* Office 321, 3rd Floor, Property 5, Territory of Sheremetyevo Airport, Khimki, Moscow Oblast, 141402, Russia; *and* 23 Yelizarova Street, Samara, 443051, Russia; *and* 92 Yurovskaya Street, Moscow, 125466, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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SINGAPORE	* *	*	* *	*
	Xinnlinx Electronics Pte Ltd, 152 Beach Road Gateway East Tower, #14–03, Singapore 189721. (See alternate address under China).	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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SPAIN	* *	*	* *	*
	I JET GLOBAL DMCC, a.k.a. the following five aliases: -iJet; -iJet Aviation Services; -iJET Flight Support Services; -Trade Med Middle East; *and* -Trade Mid Middle East. Plaza del Olivar, 1 4, Palma de Mallorca, Baleares H24 07002, Spain. (See alternate addresses under Malta, Syria, *and* United Arab Emirates).	For all items subject to the EAR (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
SYRIA	I JET GLOBAL DMCC, a.k.a. the following five aliases: -iJet; -iJet Aviation Services; -iJET Flight Support Services; -Trade Med Middle East; *and* -Trade Mid Middle East. Damascus, Syria. (See alternate addresses under Malta, Spain, *and* United Arab Emirates).	For all items subject to the EAR (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
TURKEY	* *	*	* *	*
	Dexias Industrial Products and Trade Limited Company, a.k.a., the following five aliases: -Dexias; -Dexias Endil strivel; -Dexias IPTLC; -Mainbox LLC; *and* -Orunler ve Ticaret Limited Sirketi. Mecidivekoy Street, Trump Towers Bloc No: 12/221 Sisli/Istanbul, Turkey. (See alternate address under Russia).	For all items subject to the EAR (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
UNITED ARAB EMIRATES.	* *	*	* *	*

Country	Entity	License requirement	License review policy	Federal Register citation
	I JET GLOBAL DMCC, a.k.a. the following five aliases: -iJet; -iJet Aviation Services; -iJET Flight Support Services; -Trade Med Middle East; *and* -Trade Mid Middle East. Unit No: 3504, 1 Lake Plaza, Plot No: JLT–PH2–T2A, Jumeirah Lakes Towers, Dubai, United Arab Emirates. (See alternate addresses under Malta, Spain, *and* Syria).	For all items subject to the EAR (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
	Success Aviation Services FZC, a.k.a. the following three aliases: -Success Aviation; -Success Aviation FZC; *and* -Success Aviation Services. 608, The Apricot Tower, Dubai Silicon Oasis, Dubai, United Arab Emirates; and Building L1, Sharjah International Airport, Sharjah, United Arab Emirates.	For all items subject to the EAR (See § 744.11 of the EAR)	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	* *	*	* *	*
UZBEKISTAN ...	Alfa Beta Creative LLC, 16A Navoi Street, Shaykhantakhur District, Tashkent, 100011, Uzbekistan.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
	GFK Logistic Asia LLC, 16A Navoi Street, Shaykhantakhur District, Tashkent, 100011, Uzbekistan.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR)	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] April 17, 2023.
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[3] For this entity, ''items subject to the EAR'' includes foreign-produced items that are subject to the EAR under § 734.9(g) of the EAR. See §§ 746.8 and 744.21 of the EAR for related license requirements, license review policy, and restrictions on license exceptions.

* * * * *

Alan F. Estevez,

Under Secretary of Commerce for Industry and Security.

[FR Doc. 2023–07840 Filed 4–12–23; 11:15 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 551, 552, 553, 560, 561, 566, 570, 576, 578, 583, 584, 588, 589, 590, 592, 594, 597, and 598

Inflation Adjustment of Civil Monetary Penalties

Correction

In rule document 2023–00593 beginning on page 2229 in the issue of Friday, January 13, 2023, make the following correction:

Appendix A to Part 501 [Corrected]

■ On page 2231, in Appendix A to Part 501, in the third column, in the 16th line, ''v'' should read ''vi''.

[FR Doc. C1–2023–00593 Filed 4–14–23; 8:45 am]

BILLING CODE 0099–10–D

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Freedom of Information Act Regulations

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: On July 1, 2022, the Central Intelligence Agency (CIA or the Agency) submitted a proposed rule for comment on its public regulations governing its

implementation of the Freedom of Information Act (FOIA), as amended by the FOIA Improvement Act of 2016. The CIA has reviewed and carefully considered all of the comments that were submitted in response to its proposal. As a result of that review, the CIA hereby issues its final rule on its FOIA regulations concerning the requirements for filing FOIA requests and CIA's procedures for processing and reviewing such requests.

DATES: This rule is effective April 17, 2023.

FOR FURTHER INFORMATION CONTACT: Michelle Murphy-Bell; (703) 613–1287

SUPPLEMENTARY INFORMATION: In the July 1, 2022 edition of the **Federal Register**, 87 FR 39432, the CIA published a proposed rule, which would amend its regulations governing implementation of the FOIA, as amended by the FOIA Improvement Act of 2016. The CIA proposed rule intended to enhance the administration and operations of the Agency's FOIA program by ensuring compliance with all legal requirements and by increasing the transparency and clarity of the regulations governing the Agency's FOIA program. The CIA received a set of comments with feedback and suggestions from one commenter. Based on that set of comments, CIA made a number of amendments to the proposed rule. First, for clarity, the Agency made amendments throughout the rule to specify when reference to the term ''day'' refers to a ''calendar'' day, or a ''business'' day (which is now defined as calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays). Additionally, throughout the rule, the Agency replaced the term ''reproduction'' with the term ''duplication,'' and the term ''hold in abeyance'' with the term ''toll,'' to remain consistent with the OMB fee schedule and guidelines.

Second, in § 1900.02, certain language included in the definition of the term ''fees'' was moved to § 1900.12. The language referred to what fee information a requester should provide the Agency, and how the Agency may determine the proper fee category. The Agency determined that this language was more appropriate for the substantive provisions regarding fee determinations, rather than in a provision defining the term ''fees.''

Third, in §§ 1900.11 and 1900.12, the Agency clarified that the form and content of a request requires a physical mailing address or email address where CIA can send a response or other correspondence related to the request. The Agency further clarified that a requester's failure to provide any required information may result in a delay or declination in processing the request.

Fourth, in § 1900.13, to remain consistent with the OMB fee schedule and guidelines, the Agency will request a specific commitment from the requester to pay applicable fees when the Agency estimates that fees will exceed $25.00, rather than $100.00 as was previously proposed.

Fifth, in § 1900.33, the Agency explicitly states that it will alert the requester to the availability of the Office of Government Information Services in the event the Agency extends its timeframe beyond the statutory requirements of the FOIA.

Finally, the Agency made a number of administrative amendments to ensure consistent formatting and clarity for the readers. With these amendments, the Agency will revise its FOIA regulations found in chapter 19 of title 32 of the Code of Federal Regulations.

Statutory and Executive Order Reviews

Executive Order 12866 and 13563

This final rule has been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review,* section 1, *Statement of Regulatory Philosophy and Principles,* and in accordance with Executive Order 13563, *Improving Regulation and Regulatory Review,* section 1, General Principles of Regulation. Because this final rule does not constitute a significant regulatory action under section 3(f) of Executive Order 12866, it was not subject to mandatory prior review by the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6 of Executive Order 12866.

Paperwork Reduction Act

Because this final rule does not involve a collection of information, the review and OMB clearance requirements of the Paperwork Reduction Act, 44 U.S.C. 3506 and 3507, do not apply.

Executive Order 12988

This final rule meets the applicable standards set forth in Executive Order 12988, *Civil Justice Reform.*

Executive Order 13132

Because this final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, it does not constitute policies that have federalism implications under Executive Order 13132. Thus, the requirements of Executive Order 13132 sections 2, 3, and 8, governing agency policies or regulations do not apply.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), CIA has reviewed this final rule and certifies that it will not have a significant economic impact on a substantial number of small entities, and thus no regulatory flexibility analysis is required. This final rule pertains to CIA's policies and practices for processing FOIA requests, and does not impose any new requirements on small entities.

Unfunded Mandates Reform Act of 1995

This final 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, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a) and 1533(a).

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Thus, it does not constitute major rules as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

National Environmental Policy Act of 1969

CIA has reviewed this final rule for purposes of the National Environmental Policy Act of 1969 (NEPA) and has determined that this final rule does not constitute ''major Federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(C).

List of Subjects in 32 CFR Part 1900

Administrative practice and procedure, Classified information, Freedom of information.

For the reasons stated in the preamble, the CIA revises 32 CFR part 1900 to read as follows:

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

Sec.

Authority: 5 U.S.C. 552; 50 U.S.C. 3001 *et seq.;* 50 U.S.C. 3501 *et seq.;* 50 U.S.C. 3141; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

General

§ 1900.01 Authority and purpose.

(a) This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and in accordance with the CIA Information Act of 1984 (50 U.S.C. 3141); section 102A(i) of the National Security Act of 1947, as amended (50 U.S.C. 3024(i)); and section 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 3507). It contains procedures that CIA follows in processing requests for records submitted under the FOIA. The procedures in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Fee Guidelines).

(b) Requests made by individuals for records about themselves under the Privacy Act of 1974 (5 U.S.C. 552a) are processed in accordance with CIA's Privacy Act regulations, set forth at 32 CFR part 1901, as well as under this part.

(c) Other than as expressly provided in this part, this part creates no right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

§ 1900.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator.

(b) *Agency Release Panel (ARP)* means the Agency's forum for reviewing information review and release policy, assessing the adequacy of resources available to all Agency declassification and release programs, and considering administrative appeals in accordance with this part.

(c) *Business days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) business days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) business days may be added if responding by international mail.

(d) *Chief FOIA Officer* means the senior CIA official, at the CIA's equivalent of the Assistant Secretary level, who has been designated by the Director of the CIA (DCIA) to have Agency-wide responsibility for the CIA's efficient and appropriate compliance with the FOIA.

(e) *CIA Information and Privacy Coordinator* or *Coordinator* means the official who serves as the Agency manager of information review and release activities implementing the FOIA.

(f) *Direct costs* means those expenditures that CIA actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages,* which means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Duplication,* which means generation of a copy of a requested record in a form appropriate for release;

(3) *Review,* which means all time expended in preparing a record for release, including examining a record to determine whether any portion must be withheld pursuant to law and in effecting any necessary deletions but excludes personnel hours expended in resolving general legal or policy issues regarding the application of exemptions; and

(4) *Search,* which means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids, including time spent determining whether records located during a search are responsive to the request.

(g) *Fees* means those direct costs which a requester may be assessed considering the categories established by the FOIA; the fee categories include:

(1) *Commercial use.* Requests in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests, which can include furthering those interests through litigation.

(2) *Educational or non-commercial scientific institution, or a representative of the news media*—(i) *Educational or non-commercial scientific institution.* Requests made under the auspices of an accredited United States institution engaged in scholarly or scientific research and which are for information not for commercial use, but rather intended to be used in specific scholarly or scientific works.

(ii) *Representative of the news media.* Requests from any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and individual or corporate publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered a representative of the news media. A publishing contract would be the clearest proof that publication is expected, but the Agency may also look to the past publication record of a requestor in making this determination.

(3) *All other.* Requests not described in paragraph (g)(1) or (2) of this section.

(h) *FOIA Public Liaison* means the CIA supervisory official(s) who shall assist in the resolution of any disputes between a FOIA requester and the Agency and to whom a FOIA requester may direct a concern regarding the service he or she has received from CIA and who shall respond on behalf of the Agency as prescribed in this part.

(i) *FOIA Requester Service Center* means the office within the CIA where a FOIA requester may direct inquiries regarding the status of a FOIA request he or she filed at the CIA, requests for guidance on narrowing or further defining the nature of scope of his or her FOIA request, and requests for general information about the FOIA program at the CIA.

(j) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue.

§ 1900.03 Contact for general information and requests.

(a) A member of the public seeking to file a FOIA request or an administrative appeal must direct a written request or appeal via mail to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, or online at: *https://www.foia.cia.gov/foia_request/form,* in accordance with the requirements of this part.

(b) Requesters may view the status of pending FOIA requests at *https://www.cia.gov/readingroom/request/status.* In addition, inquiries regarding the status of a FOIA request, obtaining guidance on narrowing or further defining the nature or scope of a FOIA request, or obtaining general information about the FOIA program at CIA, may be directed to the CIA FOIA Requester Service Center, Central Intelligence Agency, Washington, DC 20505, via facsimile at (703) 613–3007, or via telephone at (703) 613–1287. Collect calls cannot be accepted.

(c) Concerns, suggestions, comments, or complaints regarding the service received from CIA or regarding the Agency's general administration of the FOIA may be directed to the FOIA Public Liaison, Central Intelligence Agency, Washington, DC 20505, via facsimile at 703–613–3007, or via telephone at 703–613–1287. Collect calls cannot be accepted.

§ 1900.04 Suggestions and complaints.

The CIA remains committed to administering a results-oriented and citizen-centered FOIA program, to processing requests in an efficient, timely and appropriate manner, and to working with requesters and the public to continuously improve Agency FOIA operations. The Agency welcomes suggestions, comments, or complaints regarding its administration of the FOIA. Members of the public shall address all such communications to the FOIA Public Liaison as specified at § 1900.03(c). The Agency may respond as determined feasible and appropriate under the circumstances. Requesters seeking to raise concerns about the service received from the CIA FOIA Requester Service Center may contact the FOIA Public Liaison after receiving an initial response from the CIA FOIA Requester Service Center. The FOIA Public Liaison shall be responsible for assisting in reducing delays and assisting in the resolution of disputes between a FOIA requester and the Agency.

Filing of FOIA Requests

§ 1900.11 Preliminary information.

(a) Members of the public shall address all communications to the CIA Coordinator as specified at § 1900.03. Any requests for access to records which are not directed to the Information and Privacy Coordinator, in accordance with the requirements set forth in §§ 1900.03 and 1900.12, shall not be considered proper FOIA requests.

(b) The CIA shall not process a request for records under the FOIA or an appeal of an adverse determination regarding a FOIA request submitted by a member of the public who owes outstanding fees for information services at this or other Federal agencies and will terminate the processing of any pending requests submitted by such persons to the CIA.

(c) The CIA shall not accept requests for records under the FOIA submitted by any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof, or from any representative of such a government entity.

§ 1900.12 Requirements as to form and content.

(a) *Required information.* (1) Requests must reasonably describe the records of interest sought by the requester, as set forth at 5 U.S.C. 552(a)(3). This means that documents must be described sufficiently so that Agency professionals who are familiar with the subject area of the request are able, with a reasonable effort, to determine which particular records are within the scope of the request. In order to assist CIA in identifying the specific records sought, all requesters are encouraged to be as specific as possible in describing the records they are seeking by including, for example, the relevant date or date range, the title of the record, the type of record (such as memorandum or report), the specific event or action to which the record refers, and the subject matter. Requests for electronic communications should attempt to specify a sender, recipient, date range, and subject or keyword. Extremely broad or vague requests or requests requiring research do not satisfy the requirement that a request be ''reasonably described.''

(2) Requesters must provide a physical mailing address or email address where CIA can send a response or other correspondence related to the request.

(3) Failure to provide the required information in this section may result in a delay or declination in processing the request.

(b) *Requirements as to identification of requester.* (1) Individuals seeking access to records concerning themselves shall provide their full (legal) name, address, date and place of birth together with a signed statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If the Agency determines that this information is not sufficient, the Agency may request additional or clarifying information.

(2) Attorneys or other individuals retained to represent a requester shall provide evidence of such representation by submission of a representational agreement or other document which establishes the relationship with the requester.

(3) Failure to provide the required information in this section may result in a delay or declination in processing the request.

(c) *Additional information for fee determination.* A requester should provide sufficient information to allow the Agency to determine the appropriate fee category for the request and the Agency may draw reasonable inferences from the identity and activities of the requester in making such a determination. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(d) *Additional communication with requester.* Although the Agency is not required to answer questions, create records, or perform research in response to a FOIA request, when the request lacks sufficient clarity to allow the records to be located with a reasonable effort, the Agency will provide the

requester with an opportunity to narrow or further define the nature or scope of the request. Additionally, individuals may contact the CIA FOIA Requester Service Center for the purpose of obtaining recommendations as to how to frame or narrow a particular request.

§ 1900.13 Fees for record services.

(a) *In general.* Search, review, and duplication fees will be charged in accordance with the provisions in paragraphs (b) through (j) of this section relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever the Agency determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served; or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Chair of the Agency Release Panel via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth in § 1900.01.

(d) *Time for fee waiver requests and appeals.* Fee waiver requests and appeals must be directed to the Coordinator in accordance with §§ 1900.03 and 1900.11. It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) business days of our initial decision subject to the following condition: If processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision. When making fee waiver requests or appeals, no particular format is required other than a statement of the basis for the request or appeal.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, the Agency will request a specific commitment from the requester to pay applicable fees when the Agency estimates that fees will exceed $25.00. The Agency will toll for forty-five (45) business days requests requiring such agreement and will thereafter deem the request closed in the absence of a response from the requester. This action, of course, would not prevent a requester from refiling the FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* The Agency may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed $250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester previously failed to pay fees in a timely fashion. The Agency will toll for forty-five (45) business days those requests where deposits have been requested and will thereafter deem the request closed in the absence of a response from the requester.

(g) *Schedule of fees*—(1) *In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

Table 1 to Paragraph (g)(1)

BILLING CODE 6310–02–P

Personnel Search and Review		
Clerical/Technical	Quarter hour	$5.00
Professional/Supervisory	Quarter hour	$10.00
Manager/Senior Professional	Quarter hour	$18.00
Duplication		
Photocopy (b&w, standard, or legal)	Per page	$0.10
Photocopy (color, standard, or legal)	Per page	$1.00
Microfiche	Per frame	$0.20
CD (bulk recorded)	Each	$10.00
CD (recordable)	Each	$20.00
Pre-printed (if available)	Per 100 pages	$5.00
Published (if available)	Per item	NTIS

BILLING CODE 6310–02–C

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various duplication services. In any event where the actual cost to the Agency of a particular item is less than listed in the schedule in table 1 to paragraph (g)(1) of this section (*e.g.,* a large production run of a document resulted in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) may also be available from CIA pursuant to this part at the NTIS price as authorized by statute.

(3) *Other services.* For all other types of output, production, or duplication (*e.g.,* photographs, maps, or published reports), actual cost or amounts authorized by statute will be charged. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Charging fees.* In responding to FOIA requests, CIA shall assess fees as follows unless a waiver or reduction of fees has been granted under paragraph (b) of this section:

(1) *Commercial use requesters.* Charges which recover the full direct costs related to search, review, and duplication of responsive records (if any);

(2) *Educational or non-commercial scientific institutions, or representatives of the news media.* Charges for duplication of responsive records (if any) beyond the first 100 pages; and

(3) *All other requesters.* Charges which recover the full direct costs related to search and duplication of responsive records (if any) beyond the first two hours of search time and first 100 pages.

(i) *Limitations on collection of fees*—(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to the Agency of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of April 17, 2023, is deemed to be $25.00.

(2) *Requests for personal information.* No fees will be charged for U.S. citizens or lawful permanent residents seeking records about themselves under the Privacy Act; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(3) *Untimely response.* If CIA fails to comply with the FOIA's time limits for responding to a request, CIA will not charge search fees or, in the case of requesters in the educational or non-commercial scientific institutions or representatives of the news media category, duplication fees, except as set forth in paragraph (i)(4) of this section.

(4) *Special circumstances.* (i) If CIA determines that unusual circumstances as defined by the FOIA apply and the Agency has provided timely written notice to the requester, a failure to comply with the time limit shall be excused an additional ten (10) business days.

(ii) If CIA determines that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Agency may charge search fees or, in the case of requesters in the educational or non-commercial scientific institutions or representatives of the news media category, duplication fees if the Agency has provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and has discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with the requirements of the FOIA, 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, CIA may charge all applicable fees incurred in the processing of the request.

(iii) If a court determines that exceptional circumstances exist, as defined in the FOIA, 5 U.S.C. 552(a)(6)(C), a failure to comply with the time limit shall be excused for the length of time provided by the court order.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, the Agency may aggregate the requests and charge the applicable fees.

§ 1900.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. The Agency will endeavor within twenty (20) business days to provide an accurate estimate, and, if a request is thereafter submitted, the Agency will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

CIA Action on FOIA Requests

§ 1900.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§ 1900.11 through 1900.13 shall be considered proper FOIA requests and will be processed under the Freedom of Information Act, 5 U.S.C. 552, this part, and in accordance with any other applicable statutes. Upon receipt, the Agency shall within ten (10) business days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the CIA components reasonably believed to hold responsive records.

(b) *Previously-released records.* As an alternative to extensive tasking, search, and review, some requesters may wish to consider limiting the scope of their requests to previously released records. Searches of such records can often be accomplished expeditiously. Moreover, requests for such records that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in limiting their requests to previously released Agency information, in lieu of traditional processing of a FOIA request, should so indicate in their correspondence.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the mere fact of their existence or nonexistence is itself classified under Executive Order 13526 (or successor orders), or revealing of intelligence sources and methods protected pursuant to section 102A(i)(1) of the National Security Act of 1947, as amended. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise the requester of the right to an administrative appeal.

(d) *Time for response.* The Agency will make every effort to respond to a proper FOIA request within the statutory 20-business day time period after receipt of the request. However, the Agency may seek additional time from a requester in accordance with § 1900.33.

§ 1900.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* (1) CIA components tasked pursuant to a FOIA request shall conduct a reasonable search of all relevant record systems within their areas of responsibility which have not been exempted from search, review, and disclosure under the FOIA by the CIA Information Act of 1984 and which are reasonably likely to contain records responsive to the request. They shall:

(i) Determine whether any responsive records exist;

(ii) Determine whether, and to what extent, any FOIA exemptions, as set forth in 5 U.S.C. 552(b), apply to the responsive records;

(iii) Review the exempt records to determine whether they contain any reasonably segregable, non-exempt material;

(iv) Approve the disclosure of all non-exempt records, or portions of records, within their areas of responsibility; and

(v) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another component or interested party.

(2) In making the decisions discussed in paragraph (a)(1) of this section, the CIA component officers shall be guided by the applicable law as well as the procedures specified at §§ 1900.31 and 1900.32 regarding confidential commercial or financial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable, any CIA records containing information originated by other CIA components shall be forwarded to those entities for appropriate action in accordance with paragraph (a) of this section. Records originated by other Federal agencies or CIA records containing other Federal agency information shall be forwarded to such agencies for appropriate action in accordance with the applicable procedures of each agency.

§ 1900.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the Central Intelligence Agency and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), the Agency will promptly inform the requester of its determination regarding the request. With respect to any records that the Agency determines may be released, the Agency will provide copies. For any records or portions of records that the Agency determines must be denied, the Agency shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a CIA ''reading room'' in the metropolitan Washington, DC, area. Access will be granted after applicable and accrued fees have been paid. All such requests shall be in writing and addressed pursuant to § 1900.03. The records will be available at such times as mutually agreed but not less than three (3) business days from our receipt of a request. The requester will be responsible for duplication charges for any copies of records desired. The Agency has an electronic FOIA reading room on its website, located at *www.cia.gov/readingroom,* which contains records that the Agency has previously publicly released under

FOIA as well as under other information review and release activities.

Additional Administrative Matters

§ 1900.31 Procedures for business information.

(a) *In general.* Business information obtained by the Central Intelligence Agency from a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means confidential commercial or financial information obtained by the United States Government from a submitter that is reasonably believed to contain information exempt from disclosure under 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments. This term does not include any other Federal Government entity.

(b) *Designation of confidential commercial or financial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial or financial information and hence protected from required disclosure pursuant to 5 U.S.C. 552(b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request*—(1) *Notice to submitters.* The Agency shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information if, after reviewing the request, the responsive records, and, if applicable, any appeal by the requester, the Agency determines that it may be required to release the records, provided:

(i) The submitter has in good faith designated the information as confidential commercial or financial information; or

(ii) The Agency believes the information may be exempt from disclosure pursuant to 5 U.S.C. 552(b), but is unable to make that determination without additional information; and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial or financial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) The Agency shall specify a reasonable time period within which the submitter must respond to the notice described in paragraphs (c)(1) and (2) of this section with a detailed statement identifying any claims of confidentiality, supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide the Agency and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(iii) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objections to disclosure of the business information identified therein.

(4) *Decision and notice of intent to disclose.* (i) The Agency shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Agency determines that if must disclose the requested records, notwithstanding the submitter's objections, the Agency shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) business days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the Agency shall also notify the requester and, if the Agency notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, the Agency shall promptly notify the submitter. The submitter, as specified in paragraph (a)(2) of this section, shall provide such litigation assistance as required by the Agency and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if the Agency determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or Federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the Agency will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1900.32 Procedures for information concerning other persons.

(a) Personal information concerning individuals other than the requester shall not be disclosed in response to a FOIA request if, as set forth in 5 U.S.C. 552(b)(6), the release of such information would constitute a clearly unwarranted invasion of personal privacy. *Personal information* is any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information. *Public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) In making the required determination under this section and pursuant to 5 U.S.C. 552(b)(6), the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) A requester seeking information on a third party is encouraged to provide a signed affidavit or declaration from the third party waiving all or some of their privacy rights, or to submit proof that the third party is deceased (*e.g.,* a copy of a death certificate, a published obituary, etc.). Third-party waivers shall be narrowly construed and the Coordinator, in the exercise of the

Coordinator's discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1900.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component;

(2) The business demands imposed on the component by the DCIA or otherwise by law;

(3) The information review and release demands imposed by the Congress or other governmental authority; and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities*—(1) *Chief FOIA Officer.* The Chief FOIA Officer shall monitor the Agency's compliance with the requirements of the FOIA and administration of its FOIA program. The Chief FOIA Officer shall keep the DCIA, the General Counsel of the CIA, and other officials appropriately informed regarding the Agency's implementation of the FOIA and make recommendations, as appropriate. The Chief FOIA Officer shall designate one or more CIA FOIA Public Liaisons. The CIA FOIA Public Liaison shall be responsible for assisting in reducing delays and assisting in the resolution of disputes between requesters and the Agency.

(2) *Multi-track processing.* The Agency shall exercise due diligence in its responsibilities under the FOIA. The Agency shall designate a specific track for requests that are granted expedited processing, as set forth in § 1900.34. In addition, although the Agency will generally process requests and administrative appeals on a ''first in, first out'' basis, based upon a reasonable allocation of available resources, the Agency may designate additional processing queues that distinguish between simple and more complex requests based on the estimated amount of time or work needed to complete the processing of the request. The Agency may provide requesters in a slower queue an opportunity to limit the scope of their request in order to qualify for faster processing.

(c) *Requests for extension of time.* When the Agency is unable to meet the statutory time requirements of the FOIA due to unusual circumstances, as defined in the FOIA, and the Agency extends the time limit on that basis, the Agency shall, before the expiration of the 20-business day time limit to respond, notify the requester in writing of the unusual circumstances involved and of an estimated date by which processing of the request is expected to be completed. When the extension exceeds 10 business days, the Agency shall, as described in the FOIA, provide the requester with an opportunity to modify the scope of the request or arrange an alternative time period for processing the original or modified request. CIA's FOIA Requester Service Center or the CIA FOIA Public Liaison are available to assist in this process. The Agency shall also alert the requester to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

§ 1900.34 Requests for expedited processing.

(a) *Expedited processing requests.* Requests for expedited processing shall be submitted to the Coordinator in accordance with §§ 1900.03, 1900.11, and 1900.12. Such requests will be approved only when a compelling need is established to the satisfaction of the Agency. Within ten (10) calendar days of receipt of a request for expedited processing, the Agency will decide whether to grant expedited processing and will notify the requester of its decision. A *compelling need* is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal Government activity.

(b) *Expedited processing appeals.* Denials of requests for expedited processing may be appealed to the CIA's Agency Release Panel via the Coordinator and shall be acted upon expeditiously.

CIA Action on FOIA Administrative Appeals

§ 1900.41 Designation of authority to hear appeals.

(a) *Agency Release Panel (ARP).* Appeals of initial adverse decisions under the FOIA shall be reviewed by the ARP which shall issue the final Agency decision.

(b) *ARP membership.* The ARP is chaired by the Director, Enterprise Data Management (EDM) (or the Deputy Director, EDM, acting on the Director's behalf), and is composed of the Information Review Officers from the various Directorates, a voting representative of the Office of General Counsel, as well as the representatives of the various CIA release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP. The Chair may request interested parties to participate when special equities or expertise are involved.

§ 1900.42 Right of appeal and appeal procedures.

(a) *Right of appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, or no records are located in response to a request. In addition, requesters may appeal denials of requests for expedited processing and fee waivers, as well as the adequacy of a search for records responsive to a request. The Agency will apprise all requesters in writing of their right to file an administrative appeal to the ARP through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within ninety (90) calendar days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) business days for the submission of an appeal. All appeals shall be in writing and addressed as specified in § 1900.03. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be processed if the requester has outstanding fees for information services at this or another Federal agency.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the relevant components for appropriate action.

(e) *Time for response.* The Agency shall attempt to complete action on an appeal within twenty (20) business days of the date of receipt, except for appeals of denial of expedited processing, for which the Agency shall attempt to complete action within ten (10) business days of the date of receipt. The current volume of requests, however, often requires that the Agency request additional time from the requester pursuant to § 1900.33. In such event, the

Agency will inform the requester of the right to judicial review.

§ 1900.43 [Reserved]

§ 1900.44 Action by appeals authority.

(a) The Coordinator, acting in the capacity of Executive Secretary of the ARP, shall place administrative appeals of FOIA requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide the ARP membership with a summary of the request and issues raised on appeal for the Panel's consideration and make available to the Panel the complete administrative record of the request consisting of the request, the document(s) at issue (in redacted and full-text form), if any, and the findings and recommendations of the relevant components.

(b) The ARP shall determine whether an appeal before the Panel is meritorious. The ARP may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the Executive Secretary of the ARP, refer such matters to the CIA Chief Data Officer (CDO) for resolution. In the event of a disagreement with any decision by the CDO, Directorate or Independent Office heads may appeal to the CIA Chief Operating Officer (COO) for a final Agency decision. The final Agency decision shall reflect the vote of the ARP, unless the CDO or COO disagrees with the ARP and makes a superseding final Agency decision.

(c) Appeals of denials of requests for fee waivers or reductions and/or denial of requests for expedited processing shall go directly from the Coordinator to the Agency Release Panel for a final Agency determination.

§ 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the ARP shall promptly prepare and communicate the final Agency decision to the requester. With respect to any adverse Agency determination, that correspondence shall state the reasons for the decision, and include a notice of a right to judicial review.

Dated: March 24, 2023.

Michelle Murphy-Bell,

Director, Enterprise Data Management.

[FR Doc. 2023–07255 Filed 4–14–23; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket No. USCG–2023–0265]

Transportation Worker Identification Credential—Facility Reader Requirement; Conforming Amendment

AGENCY: Coast Guard, DHS.

ACTION: Final rule; conforming amendments.

SUMMARY: The Coast Guard is amending its Risk Group A facility regulations so that their provisions to implement Transportation Worker Identification Credential (TWIC) electronic inspection requirements by May 8, 2023, is changed to May 8, 2026. This will revise our regulations to conform with recently passed legislation. The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Authorization Act) was enacted December 23, 2022. A provision within the Authorization Act directs the Secretary of Homeland Security to not implement TWIC reader regulations for certain facilities before May 8, 2026. This conforming amendment will have no substantive effect. Controlling statutory authority already nullifies the May 8, 2023, implementing dates in our regulations. We note there is a separate ongoing rulemaking to address whether the implementation date should remain May 8, 2026, or be moved to a later date. The Authorization Act was enacted after the Coast Guard published the proposed rule for that separate rulemaking.

DATES: This final rule is effective April 17, 2023.

FOR FURTHER INFORMATION CONTACT: For information about this document or technical inquiries, call or email Lieutenant William Gasperetti, U.S. Coast Guard; telephone 202–372–1139; email *William.N.Gasperetti@uscg.mil.* General information and press inquiries: Contact Chief Warrant Officer 3 Kurt Fredrickson, U.S. Coast Guard; telephone 202–372–4619; email *Kurt.N.Fredrickson@uscg.mil.*

SUPPLEMENTARY INFORMATION: On August 23, 2016, the Coast Guard published the Transportation Worker Identification Credential (TWIC)—Reader Requirements final rule (81 FR 57652). Among other things, it added 33 CFR 105.253 to 33 CFR part 105. Section 105.253 identifies certain facilities as being in Risk Group A. And § 105.255 imposes certain electronic TWIC inspection requirements for facilities in Risk Group A.

The Coast Guard last amended the list of facilities in Risk Group A in 2020 through the TWIC—Reader Requirements; Delay of Effective Date final rule (85 FR 13493, March 9, 2020). That rule expanded the categories of facilities in Risk Group A and inserted implementation dates for each category. The facilities identified in § 105.253(a)(2) through (4) were given a May 8, 2023, implementation date. And those same three categories of facilities correspond to what are called ''covered facilities'' in Sec. 11804 of the Authorization Act that was enacted December 23, 2022 (Pub. L. 117–263, 136 Stat 2395).

The Authorization Act directs the Secretary not to implement the 2016 TWIC Reader Requirements rule ''for covered facilities before May 8, 2026.'' The Authorization Act identifies covered facilities as:

- Facilities that handle Certain Dangerous Cargoes in bulk and transfer such cargoes from or to a vessel;
- Facilities that handle Certain Dangerous Cargoes in bulk, but do not transfer it from or to a vessel; and
- Facilities that receive vessels carrying Certain Dangerous Cargoes in bulk but, during the vessel-to-facility interface, do not transfer it from or to the vessel.

And these three categories are identical to facilities identified in paragraphs (a)(2) through (4) of 33 CFR 105.253, a section established by the 2016 TWIC Reader rule and amended by the 2020 Reader Delay rule. This rule changes the implementation date in those three paragraphs from May 8, 2023, to May 8, 2026, thereby conforming these regulations with the Authorization Act.

This conforming amendment to 33 CFR 105.253 will have no substantive effect. The controlling statutory authority enacted December 23, 2022, has nullified the May 8, 2023, implementing dates in our regulations. The Coast Guard may not implement requirements in § 105.253(a)(2) through (4) before May 8, 2026.

Two weeks before the Authorization Act was enacted, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Transportation Worker Identification Credential (TWIC)-Reader Requirements; Second Delay of Effective Date'' (87 FR 74563, December 6, 2022). In it we proposed to change the implementation dates in § 105.253(a)(2) through (4) to May 8, 2026, and requested comments on whether we should extend the date as late as May 8, 2029. In that rulemaking we are considering comments received on that

proposed rule and other relevant matter presented, including the Authorization Act.

We do not anticipate issuing a final rule in that rulemaking until after May 8, 2023. In that rulemaking we will consider either keeping the implementation date introduced by this rule, May 8, 2026, or changing it to an even later date. To view the status of that rulemaking, TWIC—Reader Requirements; Second Delay of Effective Date, search for RIN 1625–AC80 in the Unified Agenda via *www.reginfo.gov.*

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule. This rule simply conforms the regulations with the applicable statute, notice and comment procedures are unnecessary. We have referenced the separate, ongoing rulemaking that will address whether the implementing date in our regulations should be changed to a date beyond the earliest date, May 8, 2026, permitted by the Authorization Act.

Also, we find good cause under provisions in 5 U.S.C. 553(d)(3) to make this rule effective upon publication because delaying the effective date is unnecessary and contrary to the public interest. Given the nullification of the May 6, 2023 date by the Authorization Act, changing the date immediately will have no effect on the public. In addition, waiting 30 days after publication to remove the conflicting dates from § 105.253(a)(2) through (4) is contrary to the public's interest in having access to accurate regulations.

We have analyzed this final rule under Department of Homeland Security Management 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 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. A Record of Environmental Consideration supporting this determination is available in the docket. This rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01(series). Paragraph L54 pertains to regulations that are editorial or procedural.

List of Subjects in 33 CFR Part 105

Maritime security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons listed in the preamble, the Coast Guard amends 33 CFR part 105 as follows:

PART 105—MARITIME SECURITY: FACILITIES

■ 1. The authority citation for part 105 continues to read as follows:

Authority: 46 U.S.C. 70034, 70103, 70116; sec. 811, Pub. L. 111–281, 124 Stat. 2905 (46 U.S.C. 70103 note); 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. In § 105.253, paragraphs (a)(2) through (4), remove the date ''May 8, 2023'', and add, in its place, the date ''May 8, 2026''.

Dated: April 12, 2023.

J.E. McLeod,

Acting Chief, Office of Regulations and Administrative Law.

[FR Doc. 2023–08040 Filed 4–14–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0262]

Safety Zones; Annual Fireworks Displays Within the Captain of the Port, Puget Sound

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce fourteen safety zones for annual firework displays in the Captain of the Port, Sector Puget Sound Zone during the dates and times noted under **SUPPLEMENTARY INFORMATION**. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. The regulation prohibits persons and vessels from being in the regulated areas unless authorized by the Captain of the Port Puget Sound or a designated representative.

DATES: The regulations in 33 CFR 165.1332 will be enforced for the fourteen safety zones identified in the **SUPPLEMENTARY INFORMATION** section from 5 p.m. on July 4, 2023, through 1 a.m. on July 5, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Chief Warrant Officer William Martinez, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6051, *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce regulations in 33 CFR 165.1332 for the following safety zones established for Annual Fireworks Displays within the Captain of the Port, Puget Sound Area of Responsibility. These regulations will be enforced from 5 p.m. on July 4, 2023, through 1 a.m. on July 5, 2023, at the following locations:

Event name	Location	Latitude	Longitude
Seattle Seafair	Lake Washington	47°34.333′ N	122°16.017 W
City of Anacortes	Fidalgo Bay	48°30.016′ N	122°36.154′ W
Mercer Island Celebration	Mercer Island	47°35.517′ N	122°13.233′ W
Fireworks Display	Henderson Bay	47°21.8′ N	122°38.367′ W
Kenmore Community Fireworks Display	Lake Forest Park	47°44.783′ N	122°16.917′ W
Kingston Fireworks	Appletree Cove	47°47.65′ N	122°29.917′ W
Brewster Fire Department Fireworks	Brewster	48°05.362′ N	119°47.147′ W
Port Angeles	Port Angeles Harbor	48°07.033′ N	123°24.967′ W
Friday Harbor Independence	Friday Harbor	48°32.255′ N	123°0.654′ W
Roche Harbor Fireworks	Roche Harbor	48°36.7′ N	123°09.5′ W
True Colors Event	Blaine	48°59.488′ N	122°46.339′ W

Event name	Location	Latitude	Longitude
City of Mount Vernon Fireworks	Edgewater Park	48°25.178′ N	122°20.424′ W

The special requirements listed in 33 CFR 165.1332(b) apply to the activation and enforcement of these safety zones. All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port or their designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to the publication of this document in the **Federal Register**, the Coast Guard will issue advanced notification of enforcement of these safety zones via the Broadcast Notice to Mariners and Local Notice to Mariners.

Dated: April 10, 2023.

Y. Moon,

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

[FR Doc. 2023–08014 Filed 4–14–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0207]

RIN 1625–AA87

Security Zone; Kokosing ROV Survey Operation, Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for navigable waters within a 500-yard radius of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. The security zone is needed to protect the remotely operated vehicle survey operations from other vessels. Entry of vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Ste. Marie.

DATES: This rule is effective from May 1, 2023, through May 31, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0207 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impractical to publish an NPRM by the date operations begin and we must establish a security zone in order to ensure that remotely operated vehicle (''ROV'') operations can be conducted safely.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034, 70051, 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3. The Captain of the Port Sault Ste. Marie (COTP) has determined that potential safety hazards posed by other vessels to ROV survey operations within one nautical mile of charted submerged pipeline or cable in the Straits of Mackinac RNA starting May 1, 2023, will be a concern and is establishing security zone within a 500-yard radius of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. This rule is needed to protect the vessels and personnel involved in the ROV survey operations from other vessels transiting the Straits of Mackinac at the same time this project is being conducted.

IV. Discussion of the Rule

This rule establishes a security zone from May 1, 2023 through May 31, 2023. The security zone will cover all navigable waters within 500 yards of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. The duration of the security zone is intended to protect personnel and vessels involved with conducting the ROV survey operations. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and location of the security zone. Vessel traffic will be able to safely transit around this security zone which would impact a small designated area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Local Notice to Mariners about the security zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended,

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting from May 1, 2023 through May 31, 2023 that will prohibit entry within 500 yards of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V conducting ROV survey operations within one nautical mile of charted submerged pipeline or cable in the Straits of Mackinac RNA. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0207 to read as follows:

§ 165.T09–0207 Security Zone; Tugs Valerie B, Nancy Anne, Champion, and General and crew boat Timmy V operating in the Straits of Mackinac, MI.

(a) *Location.* The following areas are security zones: All navigable water within 500 yards of the Tugs Valerie B, Nancy Anne, Champion and General and crew boat Timmy V while conducting ROV survey operations within one nautical mile of charted submerged pipeline or cable within the Straits of Mackinac RNA.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16 or telephone at (906) 635–3233. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Dated: April 3, 2023.

A.R. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2023–08013 Filed 4–14–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0179; FRL–10883–02–R3]

West Virginia; Finding of Failure To Submit State Implementation Plan Revision in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to find that the West Virginia Department of Environmental Protection (WVDEP) failed to timely submit a state implementation plan (SIP) revision required by the Clean Air Act (CAA) to address the deficiencies identified in EPA's 2015 findings of substantial inadequacy and ''SIP calls'' for provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). EPA is issuing this finding of failure to submit (FFS) without prior public notice and opportunity for comment. This action triggers certain CAA deadlines for EPA to impose sanctions if a state does not submit a complete SIP revision addressing the outstanding requirements and to promulgate a Federal Implementation Plan (FIP) if EPA does not approve the state's submission as a SIP revision. In a separate but related action, published elsewhere in this issue of the **Federal Register**, EPA is also issuing a final disapproval of a SIP revision submitted by West Virginia which allowed sources who could not meet emission limits during startup and shutdown events to apply for alternative emission limits (AELs) (*see* Docket ID No. EPA–R03–OAR–2022–0956).

DATES: This action is effective on May 17, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2023–0179. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning and Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553(b)(3)(B) of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions to meet the requirement. As is discussed in further detail later, pursuant to CAA section 110(k)(1)(B), EPA ''shall determine'' no later than six months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). EPA exercises no significant judgment in making a determination that a state failed to make a submission and subsequently issuing a finding of failure to submit. Thus, notice and public procedures are unnecessary to take this action. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

I. Background

On June 12, 2015, EPA finalized an action (2015 SSM SIP Action), which clarified, restated, and updated EPA's national policy regarding SSM provisions in SIPs (2015 Policy).[1] The 2015 Policy explained EPA's interpretation of certain CAA requirements, affirming that SSM exemption provisions (*e.g.,* automatic exemptions, discretionary exemptions, and overly broad enforcement discretion provisions) and affirmative defense SIP provisions are generally viewed as inconsistent with CAA requirements. At the same time, pursuant to CAA section 110(k)(5), EPA issued findings of substantial inadequacy for SIP provisions applying to excess emissions during SSM periods for 36 states that were applicable in 45 statewide and local jurisdictions (air agencies).[2] As part of the 2015 SSM SIP Action, EPA also issued a ''SIP call'' (2015 SIP Call) to each of those 45 air agencies. The 2015 SIP Call required air agencies to adopt and submit revisions to EPA to correct identified SSM-related deficiencies in their SIPs by November 22, 2016. The 2015 SSM SIP Action also responded to a petition for rulemaking alleging specific deficiencies related to SSM provisions in existing SIPs. On July 27, 2015, the 2015 SSM SIP Action was challenged in the United States Court of Appeals for the District of Columbia Circuit.[3]

In 2017, EPA requested that the pending litigation on the final 2015 SSM SIP Action be held in abeyance to allow the new administration time to review the action. In 2020, Regions 4, 6, and 7 took final actions that were inconsistent with the 2015 Policy and EPA withdrew the corresponding SIP calls previously issued to Texas, North Carolina, and Iowa. These state-specific actions are the subject of pending litigation.[4] Moreover, in alignment with the SIP call withdrawals for Texas, North Carolina, and Iowa, EPA issued a Memorandum in October 2020 (2020 Memorandum), which established a new national policy that permitted the

[1] State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 FR 33840 (June 12, 2015).

[2] For convenience, the EPA refers to ''air agencies'' in this action collectively when meaning to refer in general to states, the District of Columbia, and local air permitting authorities that are currently administering, or may in the future administer, EPA-approved implementation plans.

[3] *Environ. Comm. Fl. Elec. Power* v. *EPA, et al.,* No. 15–1239 (D.C. Cir.) (and consolidated cases).

[4] *Sierra Club, et al.* v. *EPA, et al.,* No. 20–1115 (D.C. Cir. Apr. 7, 2020); *Sierra Club, et al.* v. *EPA, et al.,* No. 20–1229 (D.C. Cir. June 29, 2020); *Sierra Club, et al.* v. *EPA, et al.,* No. 21–1022 (D.C. Cir. January 2021).

inclusion of certain provisions governing SSM periods in SIPs, including those related to exemptions and affirmative defenses. Importantly, the 2020 Memorandum was not a regulatory action and did not alter or withdraw the 2015 SIP Call for any of the 45 air agencies identified in the 2015 SSM SIP Action. The 2020 Memorandum did, however, indicate EPA's intent at the time to review the remaining SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA issued a Memorandum (2021 Memorandum) that announced a withdrawal of the 2020 Memorandum and EPA's intent to return to the 2015 Policy and implement it fully. As previously articulated in the 2015 Policy, the 2021 Memorandum states that SSM exemption provisions and affirmative defense provisions included in SIPs will generally be viewed as inconsistent with CAA requirements.

As part of the reinstatement of the 2015 Policy, EPA intends to implement the pending SIP calls, which remain in place from the 2015 SSM SIP Action. Pursuant to CAA section 110(k)(1)(B), EPA must determine no later than six months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). These criteria are set forth at 40 CFR part 51, appendix V. EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria, or has not submitted a SIP at all, as a ''finding of failure to submit.''

For the 2015 SIP Call, as previously discussed, SIP submissions were due by November 22, 2016. EPA's determinations of whether air agencies made submittals were therefore due on May 22, 2017. West Virginia submitted a SIP revision to EPA on June 13, 2017, which became complete by operation of law on December 13, 2017. The June 13, 2017 SIP revision asked EPA to approve into the SIP new West Virginia regulations allowing sources that could not meet their emission limits during periods of startup or shutdown to apply for AELs during these periods of startup and/or shutdown. These new West Virginia regulations also prohibited sources which were subject to Federal new source performance standards (NSPS) or national emission standards for hazardous air pollutants (NESHAPS) from applying for AELs if the applicable NSPS or NESHAP had emission limits or provisions covering startup or shutdown. In a separate rulemaking action, EPA is taking final action to disapprove West Virginia's June 13, 2017 SIP revision published elsewhere in the ''Rules'' section of this issue of the **Federal Register** (*see* Docket ID No. EPA–R03–OAR–2022–0956).

EPA originally assumed that WVDEP's June 13, 2017 submittal was intended as a response to the 2015 SIP Call. However, WVDEP submitted comments in response to EPA's December 22, 2022 notice of proposed rulemaking (NPRM)[5] indicating that the 2017 SIP submittal was not intended to address the provisions identified in EPA's 2015 SSM SIP Action and that West Virginia would submit future SIP revisions to address the provisions identified in the 2015 SSM SIP Action.[6] However, West Virginia has not submitted those future SIP revisions addressing the 2015 SSM SIP Action. This clarification means that WVDEP has not submitted the required SIP revisions responding to the 2015 SIP call. Accordingly, EPA is now issuing a finding of failure to submit (FFS).

II. Finding of Failure To Submit

In the 2015 SSM SIP Action, EPA issued a final determination that 14 provisions in the West Virginia SIP were substantially inadequate to meet CAA requirements.[7] Specifically, the 2015 SSM SIP Action issued a SIP call for the following sections of the West Virginia SIP: W. Va. Code R. 45–2–9.1, W. Va. Code R. 45–7–10.3, W. Va. Code R. 45–40–100.8, W. Va. Code R. 45–2–10.1, W. Va. Code R. 45–3–7.1, W. Va. Code R. 45–5–13.1, W. Va. Code R. 45–6–8.2, W. Va. Code R. 45–7–9.1, W. Va. Code R. 45–10–9.1, W. Va. Code R. 45–21–9.3, W. Va. Code R. 45–3–3.2, W. Va. Code R. 45–7–10.4, W. Va. Code R. 45–2–10.2, and W. Va. Code R. 45–2–9.4.[8] The rationale underlying EPA's determination that these provisions were substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to West Virginia to remedy the provisions, is detailed in the 2015 SSM SIP Action and the relevant proposals prior to the SIP call and will not be repeated here.

West Virginia's June 13, 2017, SIP submittal did not remove any of these provisions from the West Virginia SIP, and West Virginia did not submit any other SIP revisions subsequent to the June 13, 2017 SIP submittal removing or otherwise addressing any of these West Virginia SIP provisions identified above and in the 2015 SSM SIP Action. As noted above, these revisions were due by May 22, 2017. Therefore, EPA is issuing a finding that West Virginia has failed to submit revisions to the substantially inadequate SIP provisions identified in EPA's 2015 SSM SIP action.

III. Consequences of Findings of Failure To Submit

If EPA finds that a state has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) establishes specific consequences, after a period of time, including the imposition of mandatory sanctions under CAA section 179(b) for the affected areas or states. The two applicable sanctions enumerated in CAA section 179(b) are: (1) the 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment New Source Review (NSR) program, and (2) restrictions on highway funding. Additionally, a finding that a state has failed to submit a complete SIP triggers an obligation under CAA section 110(c) for EPA to promulgate a FIP no later than two years after issuance of the finding of failure to submit if the affected state has not submitted, and EPA has not approved, the required SIP submittal.

With respect to mandatory sanctions, if EPA has not affirmatively determined that a state has made the required complete SIP submittal within 18 months[9] of the effective date of this final action, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area or state. If EPA has not affirmatively determined that the state has made the required complete SIP submittal within six months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area(s), in accordance with CAA section 179(b)(1) and 40 CFR 52.31.[10] The sanctions will not take effect if, within 18 months after the effective date of these findings, EPA affirmatively determines that the state has made a complete SIP submittal addressing the deficiency for which the finding was made. Additionally, if the state makes the required SIP submittal and EPA takes final action to approve the submittal within two years of the

[5] 87 FR 78617.

[6] See West Virginia's comments in response to the NPRM, located in the docket for the NPRM. Docket ID EPA–R03–OAR–2022–0956.

[7] 80 FR 33840, at 33961, June 12, 2015.

[8] Id.

[9] CAA 110(k)(5).

[10] Such highway sanctions would only apply in nonattainment areas. If a state jurisdictional area does not contain any nonattainment areas, then the highway sanctions would not apply in that state.

effective date of these findings, EPA is not required to promulgate a FIP.

IV. Final Action

Based on a review of SIP submittals received and deemed complete as of the date of signature of this action, the EPA finds that WVDEP has failed to submit a SIP revision by November 22, 2016, addressing the deficiencies identified in the 2015 SSM SIP Call.

V. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning 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 provisions of the PRA. This final action does not establish any new information collection requirement apart from what is already required by law. This action relates to the requirement in the CAA for states to submit SIPs in response to findings of substantial inadequacy under section 110(k)(5).

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. The action is a finding that the named air agencies have not made the necessary SIP submission in response to findings of substantial inadequacy under section 110(k)(5) of the CAA.

D. Unfunded Mandates Reform Act of 1995 (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. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action finds that several air agencies have failed to submit SIP revisions in response to findings of substantial inadequacy under section 110(k)(5) of the CAA. No tribe is subject to the requirement to submit an implementation plan under the findings of inadequacy relevant to this action. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern 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 is a finding that several air agencies failed to submit SIP revisions in response to findings of substantial inadequacy under section 110(k)(5) of the CAA and does not directly or disproportionately affect children.

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)

This final action does not involve technical standards.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

K. Congressional Review Act (CRA)

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

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2023. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such action. This action may not be challenged later in proceedings to enforce its requirements (*see* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–07614 Filed 4–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0956; FRL–10885–02–R3]

Air Plan Disapproval; West Virginia; Revision to the West Virginia State Implementation Plan To Add the Startup, Shutdown, Maintenance Rule 45CSR1—Alternative Emission Limitations During Startup, Shutdown, and Maintenance Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is disapproving a state implementation plan (SIP) revision submitted by the State of West Virginia on June 13, 2017. The revision pertains to a new rule setting forth the requirements to establish, at the discretion of the Secretary of the West Virginia Department of Environmental Protection, an alternative emission limitation (AEL) for a source that requests an AEL. This SIP revision was submitted subsequent to a finding of substantial inadequacy and SIP call published on June 12, 2015, for provisions in the West Virginia SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is disapproving this revision to the West Virginia SIP because it does not comply with the requirements of the Clean Air Act (CAA). EPA will also be issuing a finding of failure to submit (FFS) in a separate action, published elsewhere in this issue of the **Federal Register**, to address West Virginia's failure to correct the deficiencies identified in the June 12, 2015, SIP call.

DATES: This final action is effective on May 17, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0956. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 12, 2015, pursuant to CAA section 110(k)(5), the EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' [1] hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated the EPA's interpretation that SSM exemptions (whether automatic or discretionary) and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016. With respect to the West Virginia SIP, in the 2015 SSM SIP Action, EPA determined that 14 provisions were substantially inadequate to meet CAA requirements.

On June 13, 2017, West Virginia submitted a SIP revision requesting the approval of a new state rule into the West Virginia SIP that sets forth the requirements to establish an AEL for a source that may require an AEL. The new West Virginia regulation, found at 45 Code of State Rules (CSR) 1, is referred to as ''Rule 1'' in West Virginia's SIP submission, and will be referred to the same way here.

On December 22, 2022, EPA published a notice of proposed rulemaking (NPRM) related to West Virginia's June 13, 2017 submittal.[2] In that document, EPA proposed disapproval of West Virginia's submittal for multiple reasons. These reasons included: (1) the SIP revision did not remove any of the existing West Virginia SSM exemptions identified as substantially inadequate in the 2015 SSM SIP Action; (2) the new AEL regulations did not specify that any AELs granted by the state would be submitted to EPA as SIP revisions; (3) the AEL regulations allowed sources to request AELs on a case-by-case basis, rather than adopting AELs for a narrow category of sources with similar characteristics and controls; (4) the AEL regulations did not allow for AELs for malfunctions; and (5) sources subject to the new source performance standard (NSPS) or national emission standard for hazardous air pollutants (NESHAPS) with startup and shutdown provisions could not obtain AELs and instead had to comply with the startup or shutdown standards in the applicable NSPS and/or NESHAP. A more complete explanation of the reasons for the proposed disapproval can be found in the December 22, 2022 NPRM.

In response to the NPRM, West Virginia submitted comments claiming that EPA failed to understand that the SIP revision allowing for AELs was only a first step in responding to the 2015 SSM SIP Action, and that therefore the AEL SIP revision should be judged solely on its own approvability under the Clean Air Act. Given this new information, which was not clearly stated in the documents included in the AEL SIP revision package, EPA is now assessing this AEL SIP revision independently of the state SIP provisions identified as the basis for West Virginia's inclusion in the 2015 SSM SIP Action. That is, EPA has reviewed the SIP submission solely on the basis of whether it meets the requirements of the Clean Air Act, rather than assessing whether it also addresses the deficiencies cited in the 2015 SSM SIP Action. However, when reviewed solely on this basis, and as discussed in response to West Virginia's comments below, the AEL SIP revision is not approvable as a SIP revision under section 110 of the CAA. In addition, based on West Virginia's clarification, EPA is also taking a separate action, published elsewhere in this issue of the **Federal Register**, making a FFS for West Virginia's failure to submit any SIP revision addressing the 14 State regulatory provisions identified in the 2015 SSM SIP Action.

II. EPA's Response to Comments Received

EPA received two sets of comments on the December 22, 2022 NPRM. The full text of the comments is in the

[1] 80 FR 33839, June 12, 2015.

[2] 87 FR 78617, December 22, 2022.

docket for this action. A summary of the comments and EPA's responses are provided herein.

A. Summary of Comments From the Sierra Club and the Environmental Integrity Project.

Comment: These commenters agree with EPA's proposed disapproval of West Virginia's SSM SIP submittal, and offer three major reasons why EPA should disapprove West Virginia's SIP submission: (1) West Virginia's SIP call response did not remove the unlawful SSM SIP provisions, (2) West Virginia's proposed AEL rule would unilaterally amend its SIPs through permits without undergoing the SIP revision process, and (3) West Virginia's proposed AEL rule does not comply with the CAA and the SSM SIP call guidance on AELs. As a result, these commenters urge EPA to propose a FIP to remove the unlawful SSM SIP provisions.

Response: The first three points raised by this commenter are similar to reasons EPA cited for proposing to disapprove West Virginia's SIP revision. In response to the request that EPA promulgate a FIP if West Virginia does not promptly submit a SIP revision addressing this disapproval, EPA notes that the states are not required to adopt and submit to EPA SIP revisions creating AELs for periods of SSM. States may choose to remove SSM exemptions, director's discretion provisions, and affirmative defense provisions and not provide alternative limits for periods of SSM. Thus, following this disapproval, West Virginia could choose to not create new AEL regulations and submit those as a SIP revision, and instead rely upon their enforcement discretion should a source exceed an emission limit which is part of the EPA-approved SIP. In a separate action, published elsewhere in this issue of the **Federal Register**, EPA is issuing an FFS for West Virginia's failure to address the issues cited in the 2015 SSM SIP Action, and that FFS will provide deadlines, in accordance with CAA sections 110(c) and 179(a).

B. Summary of Comments From the West Virginia Department of Environmental Protection (WVDEP).

WVDEP objects to the proposed disapproval for multiple reasons, with the most important being that the SIP submittal was not intended to be a full remedy to the 2015 SSM SIP call. West Virginia also claims that EPA's lack of communication with West Virginia deprived the State of an opportunity to remedy the issues cited in the disapproval prior to the proposed disapproval. In addition, West Virginia also requests that EPA not take final action on this SIP revision until a decision is issued by the U.S. Court of Appeals for the D.C. Circuit in a lawsuit challenging EPA's SIP call. West Virginia's concerns are set forth with more specificity below.

Comment: West Virginia asks that EPA delay final action on this SIP submission until the United States Court of Appeals for the D.C. Circuit issues its ruling on the lawsuits seeking to challenge EPA's issuance of the 2015 SSM SIP Action.[3]

Response: EPA is under a court-ordered deadline to take final action on West Virginia's AEL SIP submittal.[4] Given this deadline, EPA cannot wait to take final action on West Virginia's AEL SIP submittal until the D.C. Circuit rules on the lawsuits challenging the 2015 SSM SIP Call. The judicial consent decree requires EPA to take final action on the West Virginia AEL SIP submittal within 240 days of the Court's entry of the final decree. Public notice and opportunity to comment upon this consent decree was published on April 11, 2022. No comments were received from West Virginia. The consent decree was entered on June 27, 2022, and as such the 240-day deadline for taking final action was February 22, 2023, but was extended to April 12, 2023 by court order.

Even if there were not a court-ordered deadline for EPA to take action, it would not be appropriate or necessary to wait until the D.C. Circuit rules on the lawsuits challenging the 2015 SSM SIP Call. EPA's disapproval of West Virginia's AEL SIP submission is based on other CAA legal deficiencies that are unrelated to the deficiencies and Agency policies underlying the 2015 SSM SIP Call (for example, the fact that West Virginia's submission would allow for changes to West Virginia's SIP without appropriate procedures), and thus are irrelevant to the D.C. Circuit's eventual decision.

Comment: West Virginia states that the only purpose of the 2017 West Virginia SIP revision was to add Rule 1 into the West Virginia SIP, and that nothing in the 2017 SIP revision states that the revision was intended to be a complete response to the 2015 SSM SIP Action. West Virginia further states that it was considering revising or removing requirements identified in the 2015 SSM SIP Action through subsequent legislative rulemaking after sources had a SIP-approved mechanism to obtain AELs, but that EPA's failure to take timely action on the 2017 SIP revision prevented West Virginia from doing so. Therefore, West Virginia argues that this SIP revision should have been evaluated on its own merits, and EPA's reliance on West Virginia's failure to remove the provisions allowing exemptions from emission limits during SSM events cited in the 2015 SSM SIP Call is irrelevant.

Response: EPA notes that West Virginia's 2017 SIP submission did not specifically state that it was only a first step in addressing the 2015 SSM SIP Call. EPA reviewed the SIP submission and found that, in response to a comment submitted by the Sierra Club, West Virginia stated that ''Division of Air Quality (DAQ) intends to propose removal of the provisions identified in the SSM SIP Call after 45 CSR1 is effective.'' West Virginia's own comments do not cite to this statement in its SIP submission. In the absence of a specific statement directed to EPA in the SIP submittal noting that this was DAQ's plan, it is easy to see how EPA misunderstood DAQ's intent.

In response to this clarification by West Virginia, EPA is no longer identifying the AEL submission's failure to fully address the SIP call as a basis for its disapproval. Instead, in a separate action published elsewhere in the ''Rules'' section of this issue of the **Federal Register**, EPA is issuing a FFS for West Virginia's failure to submit SIP revisions addressing the other deficiencies identified in the 2015 SSM SIP Action.[5] The reasons for issuing a FFS will be discussed in that separate action and therefore are not discussed here.

Regarding West Virginia's claim that it was hampered by a lack of communication from EPA, the Region and Agency has publicly recognized that there were changes to the Agency's SSM policy in 2020 and 2021[6] which could have caused confusion and delay in the submission of SIP revisions. However, the policy changes occurred well after the November 2016 deadline for submitting SIP revisions set by the 2015 SSM SIP Call, which is still in place, and was never lifted. Indeed, the 2020 Memorandum specifically noted that it ''[did] not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state

[3] *Environ. Comm. Fl. Elec. Power* v. *EPA, et al,* No. 15–1239 (D.C. Cir.) (and consolidated cases).

[4] *Sierra Club, et. al.,* v. *Michael S. Regan,* Case No. 4:21–cv–6956–SBA (N.D. Ca., Sept. 8, 2021).

[5] See Docket ID No. EPA–R03–OAR–2023–0179.

[6] October 9, 2020, Memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator. September 30, 2021; Memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

SIP provisions that were substantially inadequate to meet the requirements of the Act.'' [7]

Finally, based on EPA's new understanding of West Virginia's intention in submitting the AEL SIP revision, EPA has analyzed the 2017 AEL SIP revision on its own merits, but nevertheless finds that the AEL SIP revision is not approvable for two reasons that are independent of the 2015 SSM SIP Action. First, as noted in the NPRM, the AEL SIP revision cannot be approved because it does not specify that any AEL granted by West Virginia must be submitted to EPA as a SIP revision for approval. Instead, West Virginia's comments note that the submitted AEL regulations require that any AEL granted by West Virginia must be incorporated into a permit under West Virginia Rule 13, Rule 14, or Rule 19, and that each of these permitting programs are approved by EPA as part of the SIP. West Virginia cites to its original response to EPA's 2016 comments when Rule 1 was proposed at the State level:

> These permitting rules are all SIP approved and are an integral part of the State air program designed to address compliance with the NAAQS [National Ambient Air Quality Standard]. By virtue of their SIP approval, it is immaterial whether an AEL is directly approved into the SIP because it will be embodied in a permit under a SIP approved program and is therefore fully federally enforceable.

West Virginia's comment does not address the most important element of EPA's concern, which is that these regulations creating AELs do not require that the AELs, when issued, be submitted to EPA for approval as a SIP revision. While inclusion of the AEL limits in a permit issued under an EPA-approved permitting program in the SIP does make the limit federally enforceable, it does not provide a SIP mechanism for assuring that SIP limits would not be changed without first going through the CAA's SIP revision process. To the contrary, it creates a non-SIP mechanism for amending the SIP by creating alternatives to it. It also creates the potential for confusion because the associated AEL would not be contained in the SIP with the SIP limits that it amends, and it allows for the possibility of non-SIP AELs that conflict with the SIP limits. Moreover, it does so without opportunity for EPA review or disapproval where the AEL fails to meet CAA requirements. Any AEL which revises a limit that is EPA-approved as part of the West Virginia SIP must go through the process of being submitted as a SIP revision in accordance with CAA section 110. EPA's SIP call makes clear that AELs that modify SIP-approved emissions limitations, whether adopted on a case-by-case basis or as an AEL generally applicable to a narrow category of similar sources, must be presented to EPA for approval as a SIP revision, and go through the SIP revision process. This is because the AELs at issue here would be changes to a state emission regulation adopted as part of the state's SIP to implement the CAA, and as such must be approved as a SIP revision by EPA. States cannot unilaterally make changes to SIP-approved emission limits without the requirements of CAA section 110 being met, including a public comment process and EPA approval.

EPA specifically addressed this concern in the 2015 SSM SIP Action, at 80 FR 33918, June 12, 2015:

> Pursuant to the EPA's own responsibilities under sections 110(k)(3), 110(l) and 193 . . ., it would be inappropriate for the Agency to approve a SIP provision that automatically preauthorized the state unilaterally to revise the SIP emission limitation without meeting the applicable procedural and substantive statutory requirements for a SIP revision.

The 2015 SSM SIP Action also stated—

> It is a fundamental tenet of the CAA that states cannot unilaterally change SIP provisions, including the emission limitations within SIP provisions, without the EPA's approval of the change through the appropriate process.

Thus, the fact that an AEL must be incorporated into a permit that is part of the EPA-approved West Virginia SIP does not do away with this requirement that the AEL be submitted as a SIP revision and go through the SIP revision process.

The second reason for disapproving the AEL SIP submission which is unrelated to the deficiencies in the 2015 SSM SIP Action is that the AEL prohibits a source from obtaining an AEL if that source is subject to a CAA section 111 Federal new source performance standard (NSPS) and/or a national emission standard for hazardous air pollutants (NESHAP) under section 112, and that NSPS or NESHAP has a startup or shutdown provision. The regulation at 45CSR1–1.5.b specifically states that persons subject to NSPS in 45CSR16 or to NESHAPS in 45CSR34 ''shall meet the applicable startup and shutdown provisions of the applicable Federal rule and are not eligible for an alternative emission limit under this rule for affected sources.'' As EPA explained in the 2015 SSM SIP Action and in the NPRM for this action, those NSPS and NESHAPS adopted before 2008 but not yet updated may contain problematic exemptions for startups and shutdowns that have not yet been corrected to comply with the 2008 *Sierra Club* v. *Johnson* decision.[8] West Virginia's 45CSR1–1–5.b does not distinguish between the updated standards and not-yet-updated standards. For those not-yet-updated, the Agency cannot approve as a SIP revision a regulation that allows these NSPS and/or NESHAP-related SSM provisions to continue to exist in State-issued permits, nor can it approve a blanket provision preventing the State from issuing or revising permits to address the problematic provisions.[9] In addition, West Virginia's blanket rule requiring sources to follow applicable NSPS or NESHAP startup and shutdown provisions assumes that emission limitation requirements in recent NESHAP and NSPS are appropriate for all pollutants and sources regulated by the SIP. That is, the NSPS or NESHAP may not be designed to address the excess emission of NAAQS pollutants, which the SIPs seek to control, and as such may not adequately address excess emission of NAAQS pollutants during startup or shutdown. West Virginia's regulation assumes, without support, that NSPS and/or NESHAP startup and shutdown provisions are directed at controlling emissions of NAAQS pollutants, which may not be the case. Thus, a source's compliance with an NSPS or NESHAP startup or shutdown provision is not guaranteed to address excessive emissions of NAAQS pollutants or precursors. Therefore, the particular emissions limitation which any particular NSPS or NESHAP adopts for a startup or shutdown event as part of a continuously applicable emission limitation would still need to be evaluated on a case-by-case basis as to their applicability and appropriateness as AELs for SIP purposes.

Comment: Rule 1 does not establish limits for sources. West Virginia objects to EPA citing as one reason for the disapproval the fact that the SIP submittal setting AEL requirements did not address those provisions of West Virginia's regulations granting sources an automatic or discretionary exemption during SSM events that were specifically cited by EPA in the 2015 SSM SIP Action. West Virginia notes that states are allowed some discretion in how they establish programs to meet CAA requirements, and they chose to adopt the guidance and codify the requirements for sources to establish AELs. West Virginia also seems to

[7] October 9, 2020 Memorandum at 3.

[8] 87 FR 78617, at 78620, December 22, 2022.

[9] *Id.*

believe that EPA's comments ''suggest that West Virginia should have conducted a detailed technical analysis for each distinct category of sources . . .''.

Response: As noted above, in response to West Virginia's claim that the AEL SIP revision was not intended to address all of the deficiencies cited in the 2015 SSM SIP Action, EPA is evaluating the AEL SIP submission solely as to whether it meets the requirements for approvability under the CAA, without regard to whether it addresses all the 2015 SSM SIP Action deficiencies. Thus, whether the AEL SIP submission addresses all the SIP Action deficiencies is no longer relevant to this action.

Regarding the claim that EPA's proposal suggests that West Virginia should have conducted an analysis for each distinct category of sources, EPA believes that West Virginia is misinterpreting the discussion in the proposed disapproval at 87 FR 78620 (87 FR 78617, December 22, 2022). That discussion points out that some NSPS and NESHAP regulate pollutants other than criteria pollutants. Therefore, controls, operational standards and other measures in those regulations that are meant to address non-criteria pollutants may not work for criteria pollutants. As such, reliance by a state on the NSPS or NESHAP control requirements may not address the emission of pollutants regulated by a state's SIP.

Comment: WVDEP did not and does not now consider it necessary to require all sources to apply for an AEL, nor is it necessary for the DEP to conduct a detailed analysis to review every permit for every source to make that determination.

Response: EPA agrees that it may not be necessary for all sources to apply for an AEL. However, the EPA statement quoted in West Virginia's comments does not say or imply that every source must apply for an AEL. As noted above, EPA also did not state that West Virginia must conduct a detailed analysis of every permit for every source.

Comment: The WVDEP disagrees with the EPA's concern regarding the first of the seven criteria set forth in the 2015 SSM SIP Action because the criterion for narrowly defined source categories using specific control strategies is embodied in the West Virginia case-by-case approach codified in Rule 1. WVDEP argues that the EPA has been unable to define alternatives for narrowly defined source categories in the almost eight years since it finalized the 2015 SSM SIP Call and objects to EPA's expectation that the states do the same in a much shorter time frame and without EPA assistance.

Response: EPA agrees that West Virginia's case-by-case approach to AELs embodies the idea of granting AELs narrowly to specific types of sources using specific controls. However, EPA continues to believe that the case-by-case approach could prove to be a resource-intensive endeavor for WVDEP. As such, EPA reiterates that West Virginia could meet the requirements of the 2015 SSM SIP Action by removing the cited SSM exemptions from its SIP. There is no requirement that West Virginia adopt an AEL regulation to address the SIP call. This approach would avoid West Virginia having to undertake the potentially difficult task of creating AELs. If West Virginia nevertheless decides to proceed with a case-by-case AEL approach, the important point is that the regulation allowing for AELs must make it clear that each AEL must be submitted as a SIP revision to EPA for approval in accordance with section 110 of the CAA. In addition, as EPA explained in the proposed disapproval, West Virginia's case-by-case approach could lead to inconsistent alternative limits for sources that, based on similar operating characteristics, fuels, and other similar traits, should have similar AELs, and makes it difficult to consider any cumulative impact of source-specific emission limitations on West Virginia's air quality. Moreover, consistent with the court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. (2008)) and provisions set forth in CAA section 302(k), EPA is revising NESHAP and NSPS regulations, which generally apply to defined source categories and require specific emission controls or other standards, as they come up for statutorily required review to eliminate SSM exemptions and ensure that standards apply at all times.

Comment: The fact that malfunctions are not included in the scope of 45CSR1 is not a reason for the SIP to be disapproved.

Response: EPA agrees. In the NPRM, EPA specifically points out that states are not required to establish an AEL for malfunction.[10]

Comment: WVDEP does not agree that an AEL developed by the EPA under the NESHAP program for an overlapping source category would not be relevant for sources covered by Rule 1. The WVDEP is confused by the EPA's argument that West Virginia should rely on a case-by-case analysis regarding the use of alternative limits allowed under a particular NSPS or NESHAP, which contradicts EPA's previous concern regarding WVDEP use of case-by-case analysis under Rule 1.

Response: EPA has reviewed the NPRM and cannot identify an EPA statement suggesting that an AEL developed by EPA under the NESHAP program for an overlapping source category[11] would not be relevant for sources seeking an AEL under Rule 1. EPA believes that West Virginia is conflating EPA's concern that existing SSM exemptions in NESHAPS should not be relied upon with EPA's other expressed concern that NESHAPS may not be focused on addressing criteria pollutants (or criteria pollutant pre-cursors), so reliance on limits in such NESHAP limits addressing periods of SSM for these other pollutants may not control certain criteria pollutants, which are the focus of SIPs. The discussion of these issues, at 87 FR 78620 of EPA's NPRM, was in the context of 45CSR1–1–5.b, which states that sources subject to NSPS, as incorporated into 45CSR16, and NESHAPS, as incorporated into 45CSR34, shall follow any startup or shutdown provisions set forth in an applicable NSPS and/or NESHAP and is not eligible for an AEL. EPA has been clear that state reliance on NSPS or NESHAPs with ''legacy'' SSM exemptions is not an acceptable alternative to the removal of the specific SSM provisions cited in the 2015 SSM SIP Call. EPA is separately working to remove these SSM exemptions, and if EPA develops AELs for emissions of certain NAAQS pollutants when removing these SSM provisions from NSPS and NESHAPS, those AELs may be relevant for purposes of the state if it elects to set an AEL for the same NAAQS pollutants when removing SSM provisions from its SIP. If EPA has not yet removed such SSM exemption, the state may, in conjunction with removing its SIP-based SSM exemption, elect to establish an AEL. If so, it would need to perform a ''case-by-case'' analysis of the particular source category at issue to determine what would constitute an appropriate AEL. EPA also notes, again, that West Virginia could resolve the CAA violations detailed in the 2015 SSM SIP Call without implementing any AELs, but simply by removing the violating provisions from the State's SIP.

Comment: At multiple places, West Virginia notes that EPA did not comment on certain issues when it

[10] 87 FR 78620, December 22, 2022.

[11] EPA interprets ''overlapping source category'' as a source category currently granted an SSM exemption by state regulations which is also regulated as a NESHAP source category.

submitted comments to the state during the 2016 public comment period.

Response: EPA's relevant comments, dated July 28, 2016, addressed seven submitted West Virginia proposed air quality rules, including Rule 1. These rules were submitted by WVDEP to EPA on or about June 29, 2016. At that time, EPA identified four issues, one being an issue cited in this disapproval, that the AEL limitations must be submitted for EPA approval into West Virginia's SIP for SIP compliance purposes. EPA's failure to identify all of its concerns with Rule 1 at that time is not a waiver of its responsibility to do so now, and EPA notes that it must also address comments submitted by commenters in response to EPA's NPRM. Commenter Sierra Club has identified many of the same issues with Rule 1 as EPA, so even if EPA had not raised these issues in the NPRM, the issues would need to be addressed.

III. Final Action

EPA is disapproving West Virginia's June 13, 2017 submittal as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action disapproving West Virginia's new rule related to AELs as a SIP revision merely ascertains that this State law does not meets Federal requirements and therefore does not impose additional requirements beyond those imposed by State law.

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this SIP disapproval does not in-and-of itself create any new information collection burdens, but simply disapproves certain State requirements for inclusion in the SIP.

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. This SIP disapproval does not in-and-of itself create any new requirements but simply disapproves certain pre-existing State requirements for inclusion in the SIP.

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 EPA is disapproving would not 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 this SIP disapproval does not in-and-of itself create any new regulations, but simply disapproves certain pre-existing State requirements for inclusion in the SIP.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental

justice for people of color, low-income populations, and Indigenous peoples.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2023. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such action. This action pertaining to the disapproval of West Virginia's June 13, 2017 submittal, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–07615 Filed 4–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 502

[Docket No. FMC–2023–0011]

RIN 3072–AC97

Delegations to Bureau of Enforcement, Investigations, and Compliance

AGENCY: Federal Maritime Commission

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) is delegating authority to the Bureau of Enforcement, Investigations, and Compliance (BEIC), to issue Notice(s) of Violations and to compromise civil penalty claims subject to review by the Commission. Delegation of authority to BEIC provides enhanced efficiency flexibility during the enforcement process while maintaining Commission oversight.

DATES: The rule is effective without further action on May 17, 2023.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission's Bureau of Enforcement, Investigations, and Compliance (BEIC) is responsible for investigating potential violations of the Shipping Act of 1984, as amended, and associated Commission regulations, and initiating enforcement actions. The Commission is delegating authority to BEIC to issue Notice(s) of Violations (NOV) and to compromise civil penalty claims subject to approval by the Commission. Delegation of authority to BEIC coupled with Commission review of compromise agreements will provide enhanced efficiency and flexibility during the enforcement process while maintaining Commission oversight.

II. Background

Pursuant to its authority under the Shipping Act of 1984, as amended, Commission regulations currently provide for two types of enforcement actions seeking civil penalties, formal enforcement action under 46 CFR 502.63 and informal compromise procedures under 46 CFR 502.604. Currently, both require Commission approval to proceed at multiple steps during the process, thereby making the enforcement process unnecessarily burdensome and hindering the efficient resolution of enforcement matters.

The current process for BEIC to conduct an enforcement action requires: (1) providing notice to the subjects of investigations that BEIC intends to recommend that the Commission initiate enforcement proceedings and allowing the subject an opportunity to respond before BEIC submits those recommendations and responses to the Commission for approval; (2) receiving Commission approval before formal or informal enforcement action is undertaken, including approval to enter into compromise discussions; and (3) receiving Commission approval of any proposed compromise agreements. The current process has proven procedurally complicated since it involves multiple levels and cycles of approval prior to any case culminating in resolution. The rigidity of the process combined with the opportunity for respondents to submit responses of up to 40 pages has increased time and resource costs in enforcement matters both for the Commission and for the entities it regulates.

III. Regulatory Changes

As briefly described in Section II, the Commission is streamlining the current process by delegating authority to BEIC to issue Notice(s) of Violations setting forth alleged violations and to compromise such claims, subject to review by the Commission instead of requiring Commission approval at each step under the current approach. Compromise agreements will be subject to Commission review after the parties have reached an agreement rather than before negotiations begin and again at the conclusion, thereby increasing the efficiency of Commission enforcement efforts by removing an added level of approval at the outset of an informal enforcement action.

The revised procedure will also give BEIC delegated authority with respect to the investigative and initial compromise phases of the enforcement process. Specifically, BEIC will have the authority to (1) directly enter discussions to compromise civil penalty allegations prior to the issuance of an NOV if a party requests to negotiate a compromise, (2) issue NOVs providing notice of alleged violations and the corresponding civil penalty proposed by BEIC, or (3) recommend that the Commission institute a formal adjudicatory proceeding. An NOV will provide the opportunity for the subject to either request to enter into compromise discussions or to submit a written response, if desired. The Commission retains the authority to review any proposed compromise agreement reached by the parties pursuant to § 501.11(f)(2); and Commission approval continues to be required to initiate a formal proceeding pursuant to § 502.63(a). Accordingly, BEIC has the flexibility to assess an enforcement matter and to determine the most appropriate process given the facts of a particular matter.

A. Informal Enforcement Process

The Commission is revising the informal enforcement process under § 502.63(d) to give BEIC discretion to issue an NOV to expedite the enforcement process. The current pre-enforcement notice (PEN) process requires multiple levels of review and approval for an enforcement case to progress, starting with the issuance of a PEN and culminating either in a compromise agreement or a formal proceeding. In either instance, BEIC's ability to compromise is subject to approval by the Commission. Once a PEN is issued, the respondent has 30

days to submit a written response, limited in length to 40 pages, addressing the alleged violations identified in the PEN. If a respondent desires to initiate compromise discussions regarding BEIC's preliminary determinations instead of proceeding with a written submission, BEIC is currently required to obtain Commission approval prior to entering such discussions. These regulatory changes are intended to provide a basic framework for the new process. Under the revised process, the respondent may either request to enter compromise discussions (and BEIC would proceed, if appropriate, with these discussions immediately without first seeking Commission approval) or submit a written response.

B. Delegation of Authority to BEIC

The Commission is revising § 501.18 to add a new section giving BEIC the authority to issue NOVs and informally identify and compromise civil penalties, subject to review by the Commission. The grant of delegated authority gives BEIC the flexibility to resolve cases where a respondent requests to compromise the civil penalty ahead of the issuance of a NOV as well as authority to enter into compromise discussions after issuance of a NOV. The discretion to exercise either option allows BEIC to conclude cases on an expedited timeline where a respondent is preemptively offering to not only negotiate in good faith but also to provide disclosures that may lead to the opening of other investigations of violations of the Shipping Act by other entities involved in violations voluntarily disclosed by the respondent. Commission oversight is maintained by providing the Commission with the opportunity to review all compromise agreements prior to them becoming effective.

IV. Rulemaking Analysis and Notices

A. Review Under the Administrative Procedure Act

The Administrative Procedure Act (APA) requires that a notice of proposed rulemaking be published in the **Federal Register** unless certain exceptions apply. 5 U.S.C. 553(b). These exceptions include rules of agency procedure or practice, 5 U.S.C. 553(b)(A), as well as rules for which the agency finds good cause to waive notice and comment as unnecessary, impracticable or contrary to the public interest. 5 U.S.C. 553(b)(B). This rule amends regulations that set forth the agency's internal procedures by delegating to the BEIC the authority to engage in the investigative and initial compromise phases of the enforcement process while retaining the Commission's authority to review any proposed compromise agreement reached by the parties pursuant to § 501.11(f)(2) and in approving the initiation of a formal proceeding pursuant to § 502.63(a). Accordingly, the exception to the notice and comment provisions provided under 5 U.S.C. 553(b)(A) applies. Similarly, because this rule involves changes to the Commission's internal procedures on its administratively handling of enforcement-related matters, holding notice and comment on these changes would be impracticable, unnecessary, and contrary to the public interest since it would delay Commission's implementation of these changes and may impact the efficiently handling of these matters. For these reasons, the Commission also finds that notice and comment on the adoption of these internal procedural changes is unnecessary, impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

B. Congressional Review Act

This final rule is not a ''rule'' as defined by the Congressional Review Act (CRA), codified at 5 U.S.C. 801 *et seq.,* and is not subject to the provisions of the CRA. The CRA adopts the Administrative Procedure Act's definition of a ''rule'' in 5 U.S.C. 551, subject to certain exclusions. *See* 5 U.S.C. 804(3). In particular, the CRA does not apply to rules relating to agency management and personnel and rules of agency organization, procedure, and practice that do not substantially affect the rights or obligations of non-agency parties. *Id.* This final rule relates to agency management and personnel as well as agency organization, procedures, and practices. Specifically, this final rule revises internal Commission delegations of investigatory and initial settlement authority to BEIC and the regulations governing enforcement procedures. The only effect the changes have with respect to non-agency parties is to provide parties with an earlier opportunity to enter compromise discussions with BEIC. The Commission already provides notice and an opportunity to respond in both formal and informal enforcement procedures. For informal compromise actions, the rule delegates to BEIC the authority to issue a NOV and to enter into compromise discussions Accordingly, although the Interim Final Rule may affect the timing and manner of non-agency parties' interactions with the Commission, it does not affect their underlying rights and obligations under the Shipping Act and the Commission's regulations. Therefore, this final rule is not a ''rule'' under the CRA and is not subject to the CRA's requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish an FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

As discussed above, this final rule is a rule of agency organization, procedure, or practice. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare an FRFA.

D. National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any

requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule revises internal Commission delegations of investigatory and initial settlement authority to BEIC and the regulations governing enforcement procedures with respect to potential Shipping Act violations. This rulemaking thus falls within the categorical exclusions for procedural rules pursuant to 46 CFR part 502 (§ 504.4(a)(4)), investigatory and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act of 1984 (§ 504.4(a)(22)), and matters related to Commission personnel (§ 504.4(a)(28)).

Therefore, no environmental assessment or environmental impact statement is required.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and

Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

G. Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects

46 CFR Part 501

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR parts 501 and 502 of chapter IV of Title 46, Code of Federal Regulations as set forth below:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

■ 1. Revise the authority citation for part 501 to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. 40101–41309, 42101–42109, 44101–44106, 46101–46108; Pub. L. 89–56, 70 Stat. 195; 5 CFR part 2638; Pub. L. 104–320, 110 Stat. 3870.

■ 2. Add § 501.18 to subpart B to read as follows:

§ 501.18 Delegation to the Director, Bureau of Enforcement, Investigations, and Compliance.

As set forth in §§ 502.63(d) and 502.604, the Director, Bureau of Enforcement, Investigations, and Compliance (BEIC) has delegated authority to issue Notice(s) of Violations (NOV) and to compromise civil penalty claims subject to review by the Commission pursuant to § 501.11(f)(2). This delegation shall include the authority to compromise claims relating to the retention, suspension, or revocation of ocean transportation intermediary licenses.

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 3. Revise the authority citation for part 502 to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106, 46105; 5 CFR part 2635.

■ 4. In § 502.63, revise paragraphs (a), paragraph (d) paragraph heading and (d)(1) to read as follows:

§ 502.63 Commission enforcement action.

(a) The Commission may issue an Order of Investigation and Hearing commencing an adjudicatory investigation against one or more respondents alleging one or more violations of the statutes that it administers. Prior to recommending the issuance of an Order of Investigation and Hearing, BEIC will provide a respondent with notice of BEIC's intent and provide the respondent with the opportunity to make a written submission within 15 days for consideration by the Commission.

* * * * *

(d) *Informal enforcement process.* (1) BEIC may issue a Notice of Violations (NOV) to provide the person or persons with notice of the alleged violations and provide the opportunity for informal resolution of such claims pursuant to the procedures in § 502.604. [Rule 63.]

* * * * *

■ 5. Revise § 502.604 to read as follows:

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

(a) *Scope.* Except in pending civil penalty assessment proceedings provided for in § 502.603, the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when circumstances render it unnecessary, send a Notice of Violations (NOV) to the respondent by electronic and registered or certified mail, or by other means reasonably calculated to give notice. The NOV will describe specific violation(s) on which the claim is based, including the particular facts, dates, and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The NOV also will state the deadlines for the institution and completion of compromise negotiations. If a compromise agreement is not reached between the parties and BEIC intends to recommend that the Commission institute a formal proceeding pursuant to § 502.63(a), then BEIC shall provide notice of its intent to the respondent and provide the respondent with the opportunity to make a written submission within 15 days for consideration by the Commission.

(c) *Request for compromise.* Any person receiving an NOV provided for in paragraph (b) of this section may, within the time specified, request opportunity for informal resolution, deny the violation, or submit materials explaining, mitigating, or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 502.603(b), in compromising a penalty claim, the Commission may consider litigative concerns, the cost of collecting the claim, and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When a penalty is compromised and the respondent agrees to settle, a compromise agreement shall be executed by the respondent. This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official subsequent to Commission review under § 501.11, if any. Upon compromise of the penalty in the agreed amount, a duplicate original of the fully executed agreement shall be furnished to the respondent.

(2) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this subpart is delegated to the Director, Bureau of Enforcement, Investigations, and Compliance. The Director, Bureau of Enforcement, Investigations, and Compliance, has the authority to negotiate the terms of compromise agreements, provided that any compromise agreement shall not become effective until the Commission has had the opportunity to review pursuant to § 501.11(f)(2). [Rule 604.]

By the Commission.

William Cody,

Secretary.

[FR Doc. 2023–08073 Filed 4–14–23; 8:45 am]

BILLING CODE 6730–02–P

Proposed Rules

Federal Register
Vol. 88, No. 73
Monday, April 17, 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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2019–0024]

RIN 0579–AE66

Cut Flowers Regulations; Removal of Chrysanthemum White Rust-Related Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of cut flowers to remove requirements for the importation of specific types of cut flowers from the regulations, and to list them in the U.S. Department of Agriculture database called the Agricultural Commodity Import Requirements instead. Updates to these requirements would occur through a noticed-based process rather than rulemaking. We are also proposing to remove entirely any restrictions on the importation of cut flowers of the genera *Chrysanthemum, Leucanthemella,* and *Nipponanthemum* from countries in which chrysanthemum white rust (*Puccinia horiana* P. Henn., CWR) is known to exist. For this latter proposed action, we have prepared an analysis, which we are making available for public review and comment, that evaluates the efficacy of the current regulatory requirements in precluding the spread of CWR and the possible economic impacts associated with removing these requirements. These changes would allow us to use a notice-based, streamlined approach to update the import requirements for cut flowers, and it would remove CWR-specific restrictions on the importation of cut flowers.

DATES: We will consider all comments that we receive on or before June 16, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2019–0024 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–2019–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, 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: Ms. Julie Orr, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–4022.

SUPPLEMENTARY INFORMATION:

Background

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this authority to the Administrator of the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA).

Pursuant to the regulations in 7 CFR part 319, APHIS prohibits or restricts the importation of plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control.

The regulations in Subpart P—Cut Flowers, §§ 319.74–1 through 319.74–4 (referred to below as the regulations), govern the importation of cut flowers into the United States. Section 319.74–2 of the regulations contains conditions governing the importation of cut flowers. Paragraph (a) provides that all imported cut flowers are subject to inspection at ports of entry into the United States, while paragraph (b) describes, in general terms, actions that APHIS may require if cut flowers are found during the inspection to be infested with a plant pest.

Paragraphs (c) and (d) of § 319.74–2 contain requirements regarding specific types of cut flowers. Paragraph (c) provides that any cut flower found upon inspection to be infested with agromyzids (leaf-miners) must be fumigated with methyl bromide in accordance with 7 CFR part 305, which contains our phytosanitary treatment regulations. Paragraph (d) lists the cut flowers of the genera *Chrysanthemum, Leucanthemella,* and *Nipponanthemum* that are considered to be hosts of chrysanthemum white rust (*Puccinia horiana* P. Henn., CWR) and countries in which CWR is known to exist. It explains that in order for any of these cut flowers to be imported into the United States, they must be grown in a place of production that is registered with the national plant protection organization (NPPO) of the respective country and that is subject to inspection by an APHIS-approved inspector; must be accompanied by a phytosanitary certification or equivalent documentation issued by the NPPO of the exporting country or their designee with an additional declaration that the place of production and the consignment itself were inspected and found free of CWR; and must have the identity of the registered production site marked on their box as well as other shipping documents that accompany the cut flowers.

In addition to the regulations, APHIS maintains the USDA Agricultural Commodity Import Requirements (ACIR) database found on the internet at *https://acir.aphis.usda.gov/s/.* The database contains additional guidance regarding the importation of cut flowers. It also contains requirements for the importation of various taxa of cut flowers beyond the general requirements for the importation of all cut flowers.

Proposed Notice-Based Process for Revising Requirements for the Importation of Cut Flowers

We are proposing to revise § 319.74–2 to remove requirements regarding specific types of cut flowers from the regulations, to establish the ACIR database as the single location where such requirements are found, and to incorporate a notice-based process for updating these requirements.

As revised, paragraph (c) of § 319.74–2 would provide that, in addition to any other general conditions for importation in the section, APHIS may impose additional restrictions on the importation of specific types of cut flowers in order to effectively mitigate the risk of introducing quarantine pests into the United States. For the taxa of cut flowers whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of the cut flowers, please consult the ACIR database.

As revised, paragraph (d) of § 319.74–2 would provide the process for adding, changing, or removing restrictions on the importation of a particular type of cut flowers. Paragraph (d)(1) would provide that, if APHIS determines that the requirements for the importation of a specific type of cut flower are no longer necessary to reasonably mitigate the pest risk posed by the cut flower, we would publish a notice in the **Federal Register** proposing to revise the requirements for the importation of the cut flower. The notice would also make the new pest risk documentation on which these proposed requirements are based available for public comment. The notice would allow for at least 60 days of public comment.

We would then issue a second notice after the close of the public comment period. This notice would inform the public of our decision whether to remove or relax requirements for the importation of the cut flower, and it would respond to any comments received on the initial notice.

These provisions are modeled on the notice-based process for relaxing restrictions on the importation of plants for planting, which is found in 7 CFR 319.37–20, and the notice-based process for relaxing restrictions on the importation of fruits and vegetables, which is found in 7 CFR 319.56–4. APHIS has found that such notice-based processes allow us to respond to changes in the pest risk associated with the importation of plants for planting and fruits and vegetables in a timelier manner than rulemaking, while still providing the public with an opportunity to thoroughly evaluate the risk documentation on which our proposed changes are based.

Proposed paragraph (d)(2) would provide the process for adding restrictions to the importation of a specific type of cut flower. If APHIS determines that the requirements for the importation of a specific type of cut flower are no longer sufficient to reasonably mitigate the pest risk posed by the cut flower, we would prohibit or further restrict importation of the cut flower. We would subsequently publish a notice in the **Federal Register** advising the public of our finding. The notice would specify the amended importation requirements, provide an effective date for the change, and invite public comment on the subject. This process is modeled on the process found in § 319.56–4, which we have used, in conjunction with Federal Orders, in order to impose additional restrictions on the importation of fruits and vegetables based on newly identified pest risks.

In § 319.74–2, we are proposing to redesignate current paragraphs (e) and (f) as paragraphs (f) and (g), respectively. We would add a new paragraph (e) to provide that types of cut flowers whose importation was subject to specific restrictions by specific regulation as of the effective date of any final rule following this proposed rule would continue to be subject to those restrictions, except as changed in accordance with the process specified in proposed paragraph (d) of § 319.74–2. It would further provide that these restrictions are found in the ACIR database.

Finally, we are proposing to add two definitions to § 319.74–1, which contains definitions of terms used in the regulations, in order to clarify the meaning of two terms (*quarantine pest* and *USDA ACIR database*) that would be used in § 319.74–2.

We would define *quarantine pest* as a pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled. This is the definition used by the International Plant Protection Convention (IPPC) in International Standards for Phytosanitary Measures (ISPM) No. 5, ''Glossary of Phytosanitary Terms.'' [1] The United States is a member of the IPPC and a signatory to ISPM No. 5. This is also the definition used in our regulations governing the importation of fruit and vegetables.

The definition for *USDA ACIR database* would provide that it is a database that contains restrictions on the importation of specific types of cut flowers, as provided in § 319.74–2, and other information about the importation of cut flowers as provided in the regulations. The definition would also provide the location on the internet where the database may be found, as well as the means of obtaining a written copy of the downloadable information.

For assistance obtaining a hard copy of commodity import requirements for an article(s), individuals may call (301) 851–2046, or (877) 770–5990 (toll-free automated system); email: *acirdatabase.comments@usda.gov;* or state a request in writing to United States Department of Agriculture, Animal and Plant Health Inspection Service; Attention: PPQ–PEIP–IRM–ISMU; 4700 River Road, Unit 133, Riverdale, MD 20737.

Removal of CWR-Related Restrictions on the Importation of Cut Flowers

If this rule is finalized, we would move the restrictions on cut flowers that are currently found in paragraph (c) of § 319.74–2 (those pertaining to cut flowers found upon inspection to be infested with agromyzids) from the regulations to the ACIR database, thus retaining the restrictions. We would not, however, retain restrictions on the importation of cut flowers of the genera *Chrysanthemum, Leucanthemella,* and *Nipponanthemum* that are hosts of CWR from countries in which CWR is known to exist. We are proposing to relieve such restrictions based on an economic evaluation analysis, titled ''Economic Evaluation of the Regulatory Policy for Chrysanthemum White Rust (CWR) (*Puccinia horiana* Henn.) in the United States,'' which we are making available for public comment along with this proposed rule. The economic evaluation (EE) determines that it is no longer technically or economically justified to consider CWR to be of quarantine significance.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES**

[1] *https://www.fao.org/3/mc891e/mc891e.pdf.*

above for instructions for accessing *Regulations.gov*).

CWR is considered a pest of quarantine significance in the United States. The aforementioned EE, however, has determined that it is no longer technically or economically justifiable to consider CWR of quarantine significance and thus should be removed from the list of quarantined pests. Plants infected with CWR are considered unmarketable and result in lost sales. The proposed rule, if promulgated, would remove CWR-specific restrictions on cut flower imports and transition the cut flower regulations to a notice-based process for communicating changes in import requirements based on pest risk. Stakeholders would have the opportunity to comment on the notices. The proposed rule directly affects the importation of cut flowers that are considered susceptible to CWR, namely chrysanthemum pompoms. The notice-based process established by the rule would be of general applicability to importation of all taxa of cut flowers.

We estimate that the time savings afforded by this rule may range from 6 months to 2½ years per notice, relative to the status quo. This is based on comparable estimates in a prior rulemaking (83 FR 46627–46639, Docket No. APHIS–2010–0082) that established a similar notice-based process for the importation of all fruits and vegetables, as well as their interstate movement from Hawaii and the territories. Before that final rule, the rulemaking process for importation or interstate movement from Hawaii and the U.S. territories of fruits and vegetables for which the notice-based process was not applicable took anywhere from 18 months to upward of 3 years. We estimated that the rule would reduce the administrative process needed for approval of these fruits and vegetables to 6 to 12 months. The rulemaking process for cut flowers is currently like that of fruits and vegetables, and the notice-based process that we are proposing would be substantively similar in terms of administrative process needed for approval of the notices. Accordingly, the time savings is expected to be similar for cut flowers.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects their rules have on small entities as established by the Small Business Administration (SBA) and based on the North American Industry Classification System (NAICS) size standards for economic entities. According to the SBA, entities involved in Floriculture Production with $1 million or less in annual receipts are classified as small entities.[2] [3] National Agriculture Statistics Service data in 2020 indicates there were about 5,930 producers in the industry with around $4.8 billion in sales. Of the producers in the floriculture category, a little more than 1,000 operations had sales of $500,000 or more.[4] Thus, at least 81 percent of all floriculture operations can be classified as small entities. The percentage of small entities is likely higher given entities with annual revenue of between $500,000 and $750,000.

The proposed rule would only directly pertain to cut flowers that serve as hosts for the CWR fungus. Of the approximately 285 operations engaged in cut flower production, which is a subcategory of the floriculture industry, there are only about 14 chrysanthemum (pompoms) operations. The wholesale value of the cut flower category was about $295 million in 2020, while that of chrysanthemums (pompoms) was around $2.8 million (1 percent of the total cut flower wholesale value). This implies most chrysanthemum producers are small entities.[5]

In terms of wholesalers, based on the NAICS code, there are approximately 3,407 business entities classified as Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers. This category is comprised of establishments that are primarily engaged in the merchant wholesale distribution of flowers, florists' supplies, and/or nursery stock (except plant seeds and plant bulbs). The small-entity standard for these operations is not sales revenue, but whether they have 100 or more employees. According to 2019 U.S. Census Bureau data, 62 entities in this industry category had 100 or more employees and are considered small by SBA standards.[6]

The proposed rule would remove CWR-specific import restrictions only for cut flowers that are susceptible to CWR, specifically chrysanthemums. While the proposed rule may enable foreign producers to send a greater quantity of chrysanthemums to the United States, it is doubtful that the quantity would be large enough to affect chrysanthemum prices or alter demand, as imports are already allowed (albeit with a phytosanitary certificate and/or equivalent documentation). Colombia already dominates this import category, with about 98 percent of chrysanthemum imports.

It is not known how sensitive U.S chrysanthemum prices are to changes in the quantity imported. There is little information with which to quantify the impact of a potential increase in cut chrysanthemum imports on prices, but we assume demand would remain relatively unchanged and the proposed rule should not adversely impact producers, wholesalers, or retailers.

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this proposed rule are approved by the Office of Management and Budget (OMB) under OMB control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and

[2] Table of Size Standards based on NAICS 2014 [Floriculture Production: NAICS code 111422]. Washington, DC: U.S. Small Business Administration, effective August 19, 2019. *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

[3] NAICS Code 111422: Floriculture Production is defined as establishments primarily engaged in growing and/or producing floriculture products (*e.g.,* cut flowers and roses, cut cultivated greens, potted flowering and foliage plants, and flower seeds) under cover and in open fields.

[4] USDA–NASS, *Floriculture Crops 2020 Summary.* Washington, DC: National Agricultural Statistics Service, ISSN: 1949–0917, May 2021, *https://downloads.usda.library.cornell.edu/usda-esmis/files/0p0966899/s4656b62g/g445d913v/floran21.pdf.*

[5] $2.8 million divided by 14 entities yields an average value of sales of $200,000.

[6] United States Census Bureau 2019 County Business Patterns Survey: *https://data.census.gov/cedsci/table?t=Employment&n=424930.*

other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Amend § 319.74–1 by adding, in alphabetical order, definitions for *Quarantine pest* and *USDA Agricultural Commodity Import Requirements database* to read as follows:

§ 319.74–1 Definitions.

* * * * *

Quarantine pest. A pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.

* * * * *

USDA Agricultural Commodity Import Requirements database. The database that contains restrictions on the importation of specific types of cut flowers, as provided in § 319.74–2, and other information about the importation of cut flowers as provided in this subpart. The database is available on the internet at *https://acir.aphis.usda.gov/s/.* Hard copies of commodity import requirements may be obtained by calling (301) 851–2046 or (877) 770–5990 (toll-free automated system), by emailing *acirdatabase.comments@usda.gov,* or by submitting a request to the United States Department of Agriculture's Animal and Plant Health Inspection Service, Attention: PPQ–PEIP–IRM–ISMU, 4700 River Road, Unit 133, Riverdale, MD 20737–1231. Written requests for the database information should be marked as such.

■ 3. Amend § 319.74–2 by:

■ a. Revising paragraphs (c) and (d);

■ b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), and adding a new paragraph (e);

■ c. In newly redesignated paragraph (f), in the first sentence, by removing the words ''under this part'' and adding, in their place, the words ''in accordance with this part''; and

■ d. Revising the OMB citation at the end of the section.

The revisions and addition read as follows:

§ 319.74–2 Conditions governing the entry of cut flowers.

* * * * *

(c) *Location of additional requirements for the importation of specific cut flowers.* In addition to any other general conditions for importation in this section, APHIS may impose additional restrictions on the importation of specific types of cut flowers in order to effectively mitigate the risk of introducing quarantine pests into the United States. For the taxa of cut flowers whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of those cut flowers, consult the USDA Agricultural Commodity Import Requirements database.

(d) *Process for adding, changing, or removing restrictions.* Restrictions on the importation of specific types of cut flowers will be changed through the following processes:

(1) *Process for removing or relaxing restrictions.* (i) If APHIS determines that the requirements for the importation of a specific type of cut flower are no longer necessary to reasonably mitigate the pest risk posed by the cut flower, APHIS will publish a notice in the **Federal Register** proposing to revise the requirements for the importation of the cut flower. The notice will also make the new pest risk documentation on which these proposed requirements are based available for public comment. The notice will allow for at least 60 days of public comment.

(ii) APHIS will issue a second notice after the close of the public comment period on the notice described in paragraph (d)(1)(i) of this section. This notice will inform the public of APHIS' decision whether to remove or relax requirements for the importation of the cut flower, and it will respond to any comments received on the initial notice.

(2) *Process for adding restrictions.* If APHIS determines that the requirements for the importation of a specific type of cut flower are no longer sufficient to reasonably mitigate the pest risk posed by the cut flower, APHIS will prohibit or further restrict importation of the cut flower. APHIS will subsequently publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended importation requirements, provide an effective date for the change, and will invite public comment on the subject.

(e) *Previously imposed restrictions on the importation of specific types of cut flowers.* Types of cut flowers whose importation was subject to specific restrictions as of [Effective date of final rule], will continue to be subject to those restrictions, except as changed in accordance with the process specified in paragraph (d) of this section. The restrictions are found in the USDA Agricultural Commodity Import Requirements database.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0049)

Done in Washington, DC, this 7th day of April 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–07894 Filed 4–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice: 11928]

RIN 1400–AF57

Privacy Act of 1974; STATE–60, Special Presidential Envoy for Hostage Affairs and Related Records

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State is giving concurrent notice of a publication for a system of records pursuant to the Privacy Act of 1974 for the Special Presidential Envoy for Hostage Affairs and Related Records, STATE–60; and this proposed rulemaking, which exempts portions of this system of records from one or more provisions of the Privacy Act of 1974.

DATES: Comments on this proposed rule are due by May 30, 2023.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- Visit the *Regulations.gov* website at: *http://www.regulations.gov* and search for the docket number DOS–2023–0007.
- *Email: Privacy@state.gov.* You must include RIN 1400–AF57 in the subject line of your message.
- All comments should include the commenter's name, the organization the commenter represents, if applicable,

and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Eric F. Stein, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; Room 1417, 2201 C St. NW, Washington, DC 20520 or by calling (202) 485–2051.

SUPPLEMENTARY INFORMATION: The Department of State maintains the Special Presidential Envoy for Hostage Affairs and Related Records system of records. The primary purpose of this system of records is to support diplomatic and consular efforts to secure the recovery of and provide assistance and support services to individuals taken hostage or wrongfully detained abroad.

The Department of State is issuing this document as a notice to amend 22 CFR part 171 to exempt portions of the Special Presidential Envoy for Hostage Affairs and Related Records system of records from paragraphs (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(1) and (k)(2). STATE–60 is exempted under paragraph (k)(1) to the extent that records within that system are subject to the provisions of 5 U.S.C. 552(b)(1). STATE–60 is exempted under paragraph (k)(2) to the extent that records within that system are comprised of investigatory material compiled for law enforcement purposes, subject to the limitations set forth in that section.

List of Subjects in 22 CFR Part 171

Privacy.

For the reasons stated in the preamble, 22 CFR part 171 is proposed to be amended as follows:

PART 171—PUBLIC ACCESS TO INFORMATION

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 22 U.S.C. 2651a; 5 U.S.C. 552, 552a; E.O. 12600 (52 FR 23781); Pub. L. 95–521, 92 Stat. 1824 (codified as amended at 5 U.S.C. app. 101–505); 5 CFR part 2634.

■ 2. Amend § 171.26 by:

■ a. In paragraph (b)(1) adding an entry, in alphabetical order, for ''Special Presidential Envoy for Hostage Affairs and Related Records, State–60.''; and

■ b. In paragraph (b)(2) adding an entry, in alphabetical order, for ''Special Presidential Envoy for Hostage Affairs and Related Records, State-60.''

The additions read as follows:

§ 171.26 Exemptions.

* * * * *

(b) * * *

(1) * * *

Special Presidential Envoy for Hostage Affairs and Related Records, State-60.

* * * * *

(2) * * *

Special Presidential Envoy for Hostage Affairs and Related Records, State-60.

* * * * *

Eric F. Stein,

Deputy Assistant Secretary, Global Information Services (A/GIS), Department of State.

[FR Doc. 2023–07969 Filed 4–14–23; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120653–22]

RIN 1545–BQ54

Advanced Manufacturing Investment Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–120653–22) that was published in the **Federal Register** on Thursday, March 23, 2023. The proposed rulemaking published in March contains proposed regulations to implement the advanced manufacturing investment credit established by the CHIPS Act of 2022 to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment within the United States.

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by May 22, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–120653–22) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically and on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–120653–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jason P. Deirmenjian of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317–4137 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Vivian Hayes (202) 317–5306 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under section 48D of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–120653–22) contains errors that need to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–120653–22), which was the subject of FR Doc. 2023–05871, published March 23, 2023, at 88 FR 17451, is corrected as follows:

1. On page 17455, in the third column, first partial paragraph, line 19 from the bottom of the paragraph, the language ''of concern, and'' should be corrected to read ''of concern; and''.

2. On page 17455, in the third column, the heading ''IV. Applicability Date'' is corrected to read as ''VII. Applicability Date''.

§ 1.48D–0 [Corrected]

3. On page 17457, in the first column, the entry for § 1.48D–4(c)(3)(i) is corrected to read ''*Example 1: Primary purpose.*''.

4. On page 17457, in the second column, the entry for § 1.48D–4(c)(3)(ii) is corrected to read ''*Example 2: Primary purpose.*''.

§ 1.48D–2 [Corrected]

5. On page 17458, in the first column, the third line of paragraph (c), the language ''the the basis of the qualified

property'' is corrected to read ''the basis of the qualified property''.

§ 1.48D–4 [Corrected]

6. On page 17460, in the third column, the heading for paragraph (c)(3)(i) is corrected to read ''*Example 1: Primary purpose.*''.

7. On page 17461, in the first column, the heading of paragraph (c)(3)(ii) is corrected to read as ''*Example 2: Primary purpose.*''.

§ 1.48D–6 [Corrected]

8. On page 17464, in the second column, paragraph (d)(3)(i), the sixth line, the language ''48D(d)(2)(A)(I)(i)'' is corrected to read ''48D(d)(2)(A)(i)(I)''.

Oluwafunmilayo A. Taylor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2023–07987 Filed 4–14–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120080–22]

RIN 1545–BQ52

Section 30D New Clean Vehicle Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the Federal income tax credit under the Inflation Reduction Act of 2022 for the purchase of qualifying new clean vehicles, including new plug-in electric vehicles powered by an electric battery meeting certain requirements and new qualified fuel cell vehicles. These proposed regulations would affect eligible taxpayers who purchase new vehicles that qualify for the credit.

DATES:

Comments and Requests for a Public Hearing: Written or electronic comments and requests for a public hearing must be received by June 16, 2023. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

Applicability Date of New Critical Mineral and Battery Component Requirements: See section III.D of the ''Background'' section for a discussion of the applicability date of the new critical mineral and battery component requirements.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–120080–22) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted, whether electronically or on paper, to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–120080–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments and requests for a public hearing, Vivian Hayes at (202) 317–5306 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

Section 30D(a) of the Internal Revenue Code (Code) provides a credit (section 30D credit) against the tax imposed by chapter 1 of the Code (chapter 1) with respect to each new clean vehicle that a taxpayer purchases and places in service. The credit is determined and allowable with respect to the taxable year in which the taxpayer places the new clean vehicle in service. This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 30D of the Code (proposed regulations). To date, no regulations have been proposed pursuant to section 30D.

Section 30D was originally enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for the purchase and placing in service of new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by section 13401 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).

The amount of the section 30D credit is treated as a personal credit or a general business credit depending on the character of the vehicle. In general, the section 30D credit is treated as a personal credit allowable under subpart A of the Code. Section 30D(c)(2). However, the amount of the section 30D credit that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year business credit under section 38(b) instead of being allowed under section 30D(a). Section 30D(c)(1). Section 38(b)(30) lists as a current year business credit the portion of the section 30D credit to which section 30D(c)(1) applies. The IRA did not amend section 30D(c)(1) or (2).

II. IRA Amendments to Section 30D

The IRA made a number of amendments to section 30D. In general, the purpose of these amendments is to promote the purchase and use of new clean vehicles by lower and middle-income Americans, to promote resilient supply chains and domestic manufacturing, to strengthen supply chains with trusted trading partners, to protect against improper credit claims, and to achieve significant carbon emissions reductions. These amendments are specifically described in the following subsections.

A. Credit Amount and Critical Mineral and Battery Component Requirements

The IRA amends the rules for determining the amount of the section 30D credit. Prior to the amendments to section 30D made by section 13401(a) and (e) of the IRA becoming applicable, the amount of the section 30D credit is calculated based on the vehicle's battery capacity. The base amount is $2,500, plus $417 for a battery with a capacity of at least 5 kilowatt hours, and an additional $417 for each kilowatt hour of capacity in excess of 5 kilowatt hours, up to a maximum credit of $7,500 per vehicle. Section 13401(a) of the IRA amends section 30D(b) of the Code to provide a maximum credit of $7,500 per vehicle, consisting of $3,750 in the case of a vehicle that meets certain requirements relating to critical minerals and $3,750 in the case of a vehicle that meets certain requirements relating to battery components. The amendments made by section 13401(a) of the IRA apply to vehicles placed in service after the date on which the Secretary of the Treasury or her delegate (Secretary) issues proposed guidance described in new section 30D(e)(3)(B) of the Code relating to the new critical minerals requirements described in new section 30D(e)(1)(A) (Critical Minerals Requirement) and the new battery components requirements described in

new section 30D(e)(2)(A) (Battery Components Requirement). See section 13401(k)(3) of the IRA.

New section 30D(e)(1)(A) provides that the Critical Minerals Requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (ii) recycled in North America, is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the Critical Minerals Requirement is set forth in section 30D(e)(1)(B)(i) through (v) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date of issuance of the proposed guidance described in new section 30D(e)(3)(B) of the Code and before January 1, 2024, the applicable percentage is 40 percent. In the case of a vehicle placed in service during calendar year 2024, 2025, and 2026, the applicable percentage is 50 percent, 60 percent, and 70 percent, respectively. In the case of a vehicle placed in service after December 31, 2026, the applicable percentage is 80 percent.

New section 30D(e)(2)(A) provides that the Battery Components Requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the Battery Components Requirement is set forth in section 30D(e)(2)(B)(i) through (vi) of the Code and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date of issuance of the proposed guidance described in new section 30D(e)(3)(B) of the Code and before January 1, 2024, the applicable percentage is 50 percent. In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable percentage is 60 percent. In the case of a vehicle placed in service during calendar year 2026, 2027, and 2028, the applicable percentage is 70 percent, 80 percent, and 90 percent, respectively. In the case of a vehicle placed in service after December 31, 2028, the applicable percentage is 100 percent.

B. New Clean Vehicle Definition

The IRA amends the definition of the vehicles that may qualify for the section 30D credit. Section 13401(c) of the IRA amends section 30D(d) of the Code by making the credit applicable to ''new clean vehicles,'' instead of ''new qualified plug-in electric drive motor vehicles,'' applicable to vehicles placed in service after December 31, 2022. As amended by section 13401(c) and (g)(2) of the IRA, section 30D(d)(1) of the Code defines a ''new clean vehicle'' as a motor vehicle that satisfies the eight requirements set forth in section 30D(d)(1)(A) through (H) of the Code: the original use of the motor vehicle must commence with the taxpayer; the motor vehicle must be acquired for use or lease by the taxpayer and not for resale; the motor vehicle must be made by a qualified manufacturer; the motor vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act; the motor vehicle must have a gross vehicle weight rating of less than 14,000 pounds; the motor vehicle must be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 7 kilowatt hours, and is capable of being recharged from an external source of electricity; the final assembly of the motor vehicle must occur within North America; and the person who sells any vehicle to the taxpayer must furnish a report to the taxpayer and to the Secretary, at such time and in such manner as the Secretary provides, containing specifically enumerated items.

With respect to the requirement that the motor vehicle must be made by a qualified manufacturer, the IRA creates new requirements for manufacturers of vehicles eligible for the section 30D credit applicable to vehicles placed in service after December 31, 2022. As amended by section 13401(c) the IRA, section 30D(d)(3) of the Code defines a ''qualified manufacturer'' as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*)) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.

The IRA provides that certain fuel cell vehicles may qualify for the section 30D credit. Section 13401(c) of the IRA adds new section 30D(d)(6) to the Code, which includes in the definition of the term ''new clean vehicle'' applicable to vehicles placed in service after December 31, 2022, any ''new qualified fuel cell motor vehicle'' (as defined in section 30B(b)(3)) that meets the requirements under section 30D(d)(1)(G) and (H) (North American final assembly and seller reporting requirements).

The IRA disqualifies certain vehicles from the section 30D credit if the battery of the vehicle contains critical minerals or battery components from a foreign entity of concern. As amended by section 13401(e) of the IRA, section 30D(d)(7) of the Code excludes, after certain specified dates, vehicles placed in service with batteries containing certain critical minerals or battery components from a foreign entity of concern from the definition of the term ''new clean vehicle.'' In particular, amended section 30D(d)(7) provides that the term ''new clean vehicle'' does not include (A) any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in section 30D(e)(1)(A)) were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or (B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in section 30D(e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined). These rules will be addressed in future guidance.

C. Final Assembly Requirement

As described in section II.B of the Background section of this preamble, the IRA requires new clean vehicles to undergo final assembly in North America to be eligible for the section 30D credit. This requirement is applicable to vehicles sold after August 16, 2022. See section 13401(k)(2) of the IRA. New section 30D(d)(5) defines ''final assembly'' as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with

the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

D. Elimination of Phaseout

The IRA eliminates the phaseout of the section 30D credit for vehicles made by manufacturers that have sold at least 200,000 vehicles eligible for the credit for use in the United States after December 31, 2009. Pursuant to section 13401(d) of the IRA this limitation does not apply to vehicles sold after December 31, 2022. See section 13401(k)(5) of the IRA.

E. Special Rules

The IRA adds four new special rules under section 30D(f) applicable to vehicles placed in service after December 31, 2022. First, section 30D(f)(8) permits only one section 30D credit to be claimed for each vehicle identification number (VIN). Second, section 30D(f)(9) requires taxpayers to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Third, section 30D(f)(10) denies the section 30D credit to certain high-income taxpayers. More specifically, section 30D(f)(10)(A) provides that no credit is allowed for any taxable year if (i) the lesser of (I) the modified adjusted gross income of the taxpayer for such taxable year, or (II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (ii) the threshold amount (Modified AGI Limitation). New section 30D(f)(10)(B) provides that the threshold amount is (i) in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), $300,000, (ii) in the case of a head of household (as defined in section 2(b) of the Code), $225,000, and (iii) in the case of any other taxpayer, $150,000. New section 30D(f)(10)(C) defines ''modified adjusted gross income'' as adjusted gross income (AGI) increased by any amount excluded from gross income under sections 911, 931, or 933.

Fourth, section 30D(f)(11) excludes from the section 30D credit vehicles that exceed certain manufacturer's suggested retail price thresholds. New section 30D(f)(11)(A) provides that no credit is allowed for a vehicle with a manufacturer's suggested retail price in excess of the applicable limitation. New section 30D(f)(11)(B) provides that the applicable limitation for each vehicle classification is as follows: in the case of a van, $80,000; in the case of a sport utility vehicle, $80,000; in the case of a pickup truck, $80,000; and in the case of any other vehicle, $55,000. New section 30D(f)(11)(C) authorizes the Secretary to prescribe such regulations or other guidance as the Secretary determines necessary to determine vehicle classifications using criteria similar to that employed by the Environmental Protection Agency and the Department of the Energy to determine size and class of vehicles.

Section 13401(i)(4) of the IRA amended section 6213(g)(2) to provide the IRS with math error authority for the omission of a correct VIN included on the return as required under section 30D(f)(9).

Amended section 30D(g) provides rules for transfer of the credit from the taxpayer to certain registered dealers applicable to vehicles placed in service after December 31, 2023. Those rules will be addressed in future guidance.

Amended section 30D(h) provides that no credit is allowed with respect to any vehicle placed in service after December 31, 2032.

F. IRA Applicability Dates

Section 13401(k) of the IRA specifies various applicability dates for its amendments to section 30D. As noted previously, except as provided in section 13401(k)(2) through (5) of the IRA, the amendments made by section 13401 of the IRA apply to vehicles placed in service after December 31, 2022. Section 13401(k)(2) of the IRA provides that the amendments made by section 13401(b) of the IRA relating to final assembly apply to vehicles sold after the date of enactment of the IRA (August 16, 2022). Section 13401(k)(3) of the IRA provides that the amendments made by section 13401(a) and (e) of the IRA relating to the per vehicle credit amount dollar limitation and Critical Minerals and Battery Components Requirements apply to vehicles placed in service after the date on which the proposed guidance described in new section 30D(e)(3)(B) is issued by the Secretary. Section 13401(k)(4) of the IRA provides that the amendments made by section 13401(g) of the IRA relating to transfers of the section 30D credit apply to vehicles placed in service after December 31, 2023. Section 13401(k)(5) of the IRA provides that the amendment made by section 13401(d) of the IRA eliminating the manufacturer limitation applies to vehicles sold after December 31, 2022.

Section 13401(l) of the IRA provides a transition rule for a taxpayer who purchased or entered into a written binding contract to purchase a new qualified plug-in electric drive motor vehicle (as defined in section 30D(d)(1) of the Code, as in effect on the day before the date of enactment of the IRA (August 15, 2022)) after December 31, 2021, and before the date of enactment of the IRA (August 16, 2022), and placed such vehicle in service on or after the date of enactment of the IRA. The transition rule provides that such a taxpayer may elect (at such time, and in such form and manner as the Secretary may prescribe) to treat such vehicle as having been placed in service on the day before the date of enactment of the IRA.

III. Prior Guidance, Request for Comments, and Other Documents Relating to the New Clean Vehicle Credit

A. Notice 2022–46

On October 5, 2022, the Treasury Department and the IRS published Notice 2022–46, 2022–43 I.R.B. 302. The notice requested general comments on issues arising under section 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals; (3) battery components; (4) applicable values; (5) foreign entities of concern; (6) recordkeeping and reporting; (7) tax-exempt entities; (8) registered dealers and eligible entities; (9) the final assembly requirement; (10) vehicle classifications; (11) elections to transfer and advance payments; and (12) recapture. The Treasury Department and the IRS received 884 comments from industry participants, environmental groups, individual consumers, and other stakeholders. The Treasury Department and the IRS appreciate the commenters' interest and engagement on these issues. These comments have been carefully considered in the preparation of the proposed regulations.

B. Revenue Procedure 2022–42

On December 12, 2022, the Treasury Department and the IRS published Revenue Procedure 2022–42, 2022–52 I.R.B. 565, providing guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W of the Code, and to report certain information regarding vehicles produced by such manufacturers that may be eligible for these credits. Information required to be reported includes certifications regarding the Critical Minerals and Battery Components Requirements, as required in sections 30D(e)(1)(A) and (e)(2)(A), once those requirements are applicable. In addition, Revenue Procedure 2022–42 provides the procedures for sellers of new clean vehicles or previously-owned clean vehicles to report certain information to the IRS and the purchasers of such clean vehicles.

C. Notices 2023–1 and 2023–16 and 30D White Paper

On December 29, 2022, the Treasury Department and the IRS published Notice 2023–1, 2023–3 I.R.B. 373, which describes definitions for certain terms in section 30D that the Treasury Department and the IRS intended to include in proposed regulations. The Treasury Department also released a white paper on the anticipated direction, as of December 29, 2022, of the proposed guidance on the Critical Minerals and Battery Components Requirements and the process for determining whether vehicles qualify under these requirements (30D White Paper). See ''Anticipated Direction of Forthcoming Proposed Guidance on Critical Mineral and Battery Component Value Calculations for the New Clean Vehicle Credit,'' Dec. 29, 2022, *https://home.treasury.gov/system/files/136/30DWhite-Paper.pdf* (last accessed March 28, 2023).

On February 3, 2023, the Treasury Department and the IRS published Notice 2023–16, 2023–8 I.R.B. 479, which modifies Notice 2023–1 by revising the vehicle classification standard that the Treasury Department and the IRS intend to provide in proposed regulations.

D. Proposed Guidance Described in Section 30D(e)(3)(B)

The publication of these proposed regulations in the **Federal Register** is the issuance of the proposed guidance described in section 30D(e)(3)(B) (as added by section 13401(e) of the IRA). Pursuant to section 13401(a), (e), and (k)(3) of the IRA, the critical minerals and battery components requirements of section 13401(a) and (e) of the IRA amend section 30D with respect to vehicles placed in service after the date on which these proposed regulations are published in the **Federal Register**. Accordingly, the Critical Minerals and Battery Components Requirements apply to vehicles placed in service after April 17, 2023, the date of publication in the **Federal Register**.

Explanation of Provisions

I. General Rules

Section 30D(a) and proposed § 1.30D–1(a) provide that there is allowed as a credit against the tax imposed by chapter 1 for the taxable year an amount equal to the sum of the credit amounts determined under section 30D(b) with respect to each new clean vehicle placed in service by the taxpayer during the taxable year.

Section 30D(c) and proposed § 1.30D–1(b) provide that the section 30D credit may be allowed as a general business credit or a personal credit depending on whether the property is of a character subject to an allowance for depreciation (depreciable vehicle).

Section 30D(c)(1) and proposed § 1.30D–1(b)(1) provide that so much of the credit that would be allowed to a taxpayer under section 30D(a) for any taxable year with respect to all new clean vehicles placed in service by the taxpayer during the taxable year (determined without regard to section 30D(c) and proposed § 1.30D–1(b)(1)) that is attributable to one or more depreciable vehicles will be treated as a current year general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). Depreciable vehicles may also be eligible for the credit for qualified commercial clean vehicles under section 45W. However, under section 45W(d)(3), no credit is allowed under section 45W for a vehicle for which a section 30D credit was allowed to any taxpayer for any taxable year. In addition, proposed § 1.30D–1(b)(2) would require the apportionment of any section 30D credit with respect to a depreciable vehicle the business use of which is less than 50 percent of a taxpayer's total use of the vehicle for the taxable year in which the vehicle is placed in service. The portion of the section 30D credit corresponding to the percentage of the taxpayer's business use of the depreciable vehicle would be treated as a general business credit under section 30D(c)(1) and proposed § 1.30D–1(b)(1), and the portion of the section 30D credit corresponding to the percentage of the taxpayer's personal use of such vehicle would be treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) and proposed § 1.30D–1(b)(3).

Section 30D(c)(2) and proposed § 1.30D–1(b)(3) provide that the section 30D credit allowed for any taxable year (determined after application of section 30D(c)(1) and proposed § 1.30D–1(b)(1)) is treated as a nonrefundable personal credit allowable under subpart A of part IV of subchapter A of chapter 1 (subpart A) for such taxable year. Section 26 of the Code limits the aggregate amount of credits allowed to a taxpayer by subpart A based on the taxpayer's tax liability. Under section 26(a), the aggregate amount of credits allowed to a taxpayer by subpart A cannot exceed the sum of (i) the taxpayer's regular tax liability (as defined in section 26(b)) for the taxable year reduced by the foreign tax credit allowable under section 27 of the Code, and (ii) the alternative minimum tax imposed by section 55(a) for the taxable year.

II. Definitions

Proposed § 1.30D–2 clarifies the definitions of certain terms related to the statutory requirements of the section 30D credit. The definitions contained in proposed § 1.30D–2 were substantially described in Notice 2023–1, as modified by Notice 2023–16.

A. Final Assembly

Under section 30D(d)(1)(G) and section 13401(k)(2) of the IRA, any vehicle sold after August 16, 2022, must undergo its final assembly in North America to be eligible for the section 30D credit. Section 30D(d)(5) defines ''final assembly'' as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

Proposed § 1.30D–2(b) would provide that, for purposes of section 30D(d)(5) of the Code, ''final assembly'' means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. To establish where final assembly of a new clean vehicle occurred, the taxpayer could rely on the following information: (1) the vehicle's plant of manufacture as reported in the vehicle identification number (VIN) pursuant to 49 CFR 565; or (2) the final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3).

The vehicle's plant of manufacture as reported in the VIN means the plant where the manufacturer affixes the VIN. See 49 CFR 565.12. The plant of manufacture is reported in the VIN pursuant to 49 CFR 565.15(d)(2). The Department of Energy, Alternative Fuels Data Center (AFDC), and the Department of Transportation, National Highway Traffic Safety Administration (NHSTA), each provide a VIN decoder to the public, which can be used to identify a vehicle's plant of manufacture. AFDC, VIN Decoder, *https://afdc.energy.gov/laws/electric-vehicles-for-tax-credit* (last accessed

March 28, 2023); NHTSA, VIN Decoder, *https://www.nhtsa.gov/vin-decoder* (last accessed March 28, 2023).

Labeling requirements in 49 CFR 583.5 require the final assembly point to be reported on the label affixed to a passenger motor vehicle. Final assembly point means the plant, factory, or other place, which is a building or series of buildings in close proximity, where a new passenger motor vehicle is produced or assembled from passenger motor vehicle equipment and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle whether or not such component parts are permanently installed in or on such vehicle. For multi-stage vehicles, the final assembly point is the location where the first stage vehicle is assembled. 49 CFR 583.4(b)(5).

B. North America

Proposed § 1.30D–2(d) would provide that for purposes of section 30D(d)(1)(G), ''North America'' means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, Appendix A, § 1(1). The territory described in 19 CFR part 182, Appendix A, § 1(1), which provides rules of origin regulations for the United States-Mexico-Canada Agreement, is defined as (a) for Canada, the following zones or waters as determined by its domestic law and consistent with international law: (i) The land territory, air space, internal waters, and territorial sea of Canada, (ii) the exclusive economic zone of Canada, and (iii) the continental shelf of Canada; (b) for Mexico, (i) the land territory, including the states of the Federation and Mexico City, (ii) the air space, and (iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the *United Nations Convention on the Law of the Sea,* done at Montego Bay on December 10, 1982; and (c) for the United States, (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico, (ii) the foreign trade zones located in the United States and Puerto Rico, and (iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea,* the United States may exercise sovereign rights or jurisdiction.

C. Manufacturer's Suggested Retail Price (MSRP)

Section 30D(f)(11)(A) provides that no section 30D credit is allowed for a vehicle with an MSRP in excess of the applicable limitation. Section 30D(f)(11)(B) provides that the ''applicable limitation'' for each vehicle classification is as follows: in the case of a van, $80,000; in the case of a sport utility vehicle, $80,000; in the case of a pickup truck, $80,000; and in the case of any other vehicle, $55,000.

Proposed § 1.30D–2(c) would provide that for purposes of section 30D(f)(11)(A), ''manufacturer's suggested retail price'' means the sum of: (A) the retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1); and (B) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to the dealer, which is not included within the price of such automobile as stated pursuant to 15 U.S.C. 1232(f)(1), as described in 15 U.S.C. 1232(f)(2). This price information is reported on the label that is affixed to the windshield or side window of the vehicle, as described in 15 U.S.C. 1232.

D. Vehicle Classifications

For purposes of applying the MSRP limitation under section 30D(f)(11)(A), section 30D(f)(11)(C) authorizes the Secretary to prescribe such regulations or other guidance as the Secretary determines necessary to determine vehicle classifications using criteria similar to that employed by the Environmental Protection Agency (EPA) and the Department of Energy to determine size and class of vehicles.

The Treasury Department and the IRS originally announced an intent to propose use of the vehicle classification standards in 40 CFR 600.002 in Notice 2023–1; however, in Notice 2023–16, the Treasury Department and the IRS modified the expected vehicle classification standard set forth in Notice 2023–1 to instead provide that a vehicle's vehicle classification is expected to be determined consistent with the fuel economy labeling regime described in 40 CFR 600.315–08. Although the EPA vehicle classification standards in both regimes are similar, the fuel economy labeling regime provides for EPA discretion to assign so-called ''crossover'' vehicles to a class on a case-by-case basis, taking into account consumer perspective and the marketing segment targeted by the manufacturer. EPA, ''Fuel Economy Labeling of Motor Vehicles: Revisions to Improve Calculation of Fuel Economy Estimates,'' 71 FR 77872, 77913 (Dec. 27, 2006). In addition, the proposed adoption of the fuel economy labeling regime would align the vehicle classification standards for purposes of the section 30D credit with the classification displayed on the vehicle label and on the consumer-facing website *FuelEconomy.gov*, making it easier for consumers to know which vehicles qualify under the applicable MSRP limitation.

Proposed § 1.30D–2(g) would provide that for purposes of section 30D(f)(11)(B), a vehicle's vehicle classification is to be determined consistent with the rules and definitions provided in 40 CFR 600.315–08 for vans, sport utility vehicles, pickup trucks, and other vehicles. Specifically, ''van'' means a vehicle classified as a van or minivan under 40 CFR 600.315–08(a)(2)(iii) and (iv), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii); ''sport utility vehicle'' means a vehicle classified as a small sport utility vehicle or standard sport utility vehicle under 40 CFR 600.315–08(a)(2)(v) and (vi), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii); ''pickup truck'' means a vehicle classified as a small pickup truck or standard pickup truck under 40 CFR 600.315–08(a)(2)(i) and (ii), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii); and ''other vehicle'' means any vehicle classified in one of the classes of passenger automobiles listed in 40 CFR 600.315–08(a)(1), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii).

E. Placed in Service

Proposed § 1.30D–2(e) would provide that for purposes of the section 30D credit, a new clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle. This proposed definition is consistent with the meaning of ''placed in service'' for purposes of other provisions of the Code under which property is considered to be ''placed in service'' when the property is ''placed in a condition or state of readiness and availability for a specifically assigned function'' and as ''the date on which the owner of the vehicle took actual possession of the vehicle.'' *See* §§ 1.46–3(d)(1)(ii) and (4)(i), 1.179–4(e) and 145.4051–1(c)(2); *see also* § 1.1250–4(b)(2); *Consumers Power Co.* v. *Commissioner,* 89 T.C. 710 (1987); *Noell*

v. *Commissioner,* 66 T.C. 718, 728–729 (1976).

III. The Critical Minerals and Battery Components Requirements

Section 30D(e) of the Code provides requirements for critical minerals and battery components with respect to the battery from which the electric motor of a new clean vehicle draws electricity. The Critical Mineral and Battery Component Requirements apply to applicable critical minerals and battery components, respectively, contained in a battery as defined in proposed § 1.30D–3(c)(3).

A. Critical Minerals Requirement

Proposed § 1.30D–3(a) would provide the rules for determining compliance with the Critical Minerals Requirement. In general, proposed § 1.30D–3(a) is consistent with the framework for the Critical Minerals Requirement that was described in the 30D White Paper. Proposed § 1.30D–3(a) would provide a three-step process for determining the percentage of the value of the applicable critical minerals in a battery that contribute toward meeting the Critical Minerals Requirement.

i. Step 1: Determine Procurement Chains

In the first step for determining compliance with the Critical Minerals Requirement, the manufacturer would need to determine the procurement chain or chains for each applicable critical mineral. Proposed § 1.30D–3(c)(14) would define a ''procurement chain'' as a common sequence of extraction, processing, or recycling activities that occur in a common set of locations, concluding in the production of constituent materials. Proposed § 1.30D–3(c)(14) would further clarify that sources of a single applicable critical mineral may have multiple procurement chains if, for example, one source of the applicable critical mineral undergoes the same extraction, processing, or recycling process in different locations. Each applicable critical mineral procurement chain would need to be evaluated separately pursuant to proposed § 1.30D–3(a)(3)(ii).

ii. Step 2: Identify Qualifying Critical Minerals

In the second step for determining compliance with the Critical Minerals Requirement, each applicable critical mineral procurement chain in the battery would need to be evaluated to determine whether critical minerals procured from the chain have been (1) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (2) recycled in North America. Applicable critical minerals that satisfy this requirement are considered qualifying critical minerals. Proposed § 1.30D–3(c)(17) would define ''qualifying critical mineral'' as an applicable critical mineral that is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America. Proposed § 1.30D–3(c)(17) would use a ''50% of value added test'' to determine whether this definition is satisfied. Thus, an applicable critical mineral would be treated as extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if: (1) 50 percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or (2) 50 percent or more of the value added to the applicable critical mineral by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect. An applicable critical mineral would be treated as recycled in North America if 50 percent or more of the value added to the applicable critical mineral by recycling is derived from recycling that occurred in North America.

The 30D White Paper explained the likely need for transition rules that would provide manufacturers time to develop the necessary capability to certify compliance with the Critical Minerals Requirement throughout their supply chains—especially given the complexity of battery supply chains and the detailed tracking that would be required—while moving towards more secure and resilient critical mineral supply chains. The proposed 50% of value added test would serve that purpose for vehicles placed in service in 2023 and 2024. For later years, however, the Treasury Department and the IRS anticipate moving to a more stringent test for determining if an applicable critical mineral was extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect, or whether an applicable critical mineral was recycled in North America. This more stringent test would reflect the potential for more detailed tracking throughout manufacturers' supply chains, which may be necessary to certify compliance with the foreign entity of concern requirements described in section 30D(d)(7)(A) (applicable for vehicles placed in service after December 31, 2024).

The Treasury Department and the IRS specifically request comment on the 50% of value added test, and the best approach for adopting a more stringent test for vehicles placed in service in 2025 and later years. For example, under one approach, the standard of 50 percent or more of the value added to the applicable critical mineral for extraction, processing, or recycling in the definition of qualifying critical mineral, could increase incrementally over time (similar to the incremental increase in the applicable critical minerals percentages in section 30D(e)(1)(B) and proposed § 1.30D–3(a)(2)).

Notably, the 50% of value added test would need to be applied separately for each procurement chain of an applicable critical mineral pursuant to proposed § 1.30D–3(a)(3)(ii). For example, lithium that undergoes initial processing activities in a plant in Country A and then is transferred to a plant in Country B to undergo final processing activities, culminating in the lithium being incorporated into a constituent material, would be analyzed under this step together with other lithium moving through the same procurement chain. However, if some of the lithium in the prior example instead undergoes final processing activities in a plant in Country C instead of Country B, then there would be two procurement chains for lithium: (1) Country A to Country B and (2) Country A to Country C.

Proposed § 1.30D–3(c)(8) would define ''extraction'' as the activities performed to extract or harvest minerals or natural resources from the ground or a body of water, including, but not limited to, by operating equipment to extract minerals or natural resources from mines and wells, or to extract or harvest minerals or natural resources from the waste or residue of prior extraction. Extraction would conclude when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in applicable critical mineral processing. Extraction would include the beneficiation or other physical processes that allow the extracted materials, including ores, clays, and brines, to become transportable. Extraction would include the physical processes involved in refining. Extraction would not include the chemical and thermal processes involved in refining.

Proposed § 1.30D–3(c)(13) would define ''processing'' as the non-physical processes involved in refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing would begin when chemical or thermal processes, or the combination of them, are used on extracted minerals or natural resources or manmade minerals or resources to create a new product that, through subsequent steps in the applicable critical minerals supply chain, will be processed into a final constituent material. Processing would include the chemical or thermal processes involved in refining. Processing would not include the physical processes involved in refining.

Proposed § 1.30D–3(c)(6) would define ''constituent materials'' as materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components. Constituent materials could include, but would not be limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell. The definition of constituent materials describes the materials that distinguish the steps of extraction, processing, and recycling of critical minerals from the subsequent steps of manufacturing and assembly of battery components. Constituent materials would be the final products relevant for calculating the value of the applicable critical minerals in the battery.

Constituent materials would mark the end of processing as the point at which no further chemical, physical, or thermal processes are needed to create the final product that is then used in battery component manufacturing. Constituent materials would similarly mark the end of recycling as the point at which no further transformations are needed to create the final product that is then used in battery component manufacturing. All constituent materials contain applicable critical minerals. Once the final constituent material is created, it then is used as an input to a battery component. Some battery components could be made entirely of inputs that do not contain constituent materials. Inputs used to manufacture battery components that do not contain any applicable critical minerals (for example, solvents, conductive additives, etc.) would not be considered to be constituent materials.

Proposed § 1.30D–3(c)(19) would define ''recycling'' as the series of activities during which recyclable materials containing applicable critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity. All physical, chemical, and thermal treatments or modifications that convert recycled feedstocks to specification grade constituent materials would be included in recycling. This definition would align with the current methods of direct, hydrometallurgical, or pyrometallurgical recycling that are utilized commercially for reuse of materials for battery applications.

Proposed § 1.30D–3(c)(24) would define ''value,'' with respect to property, as the arm's-length price that was paid or would be paid for the property by an unrelated purchaser determined in accordance with the principles of section 482 of the Code and regulations thereunder.

Proposed § 1.30D–3(c)(25) would define ''value added,'' with respect to recycling, extraction, or processing of an applicable critical mineral as the increase in the value of the applicable critical mineral attributable to the relevant activity.

Proposed § 1.30D–3(c)(11) would define ''North America'' as the territory of the United States, Canada, and Mexico as defined in 19 CFR. part 182, Appendix A, § 1(1).

Proposed § 1.30D–3(c)(7) would define the term ''country with which the United States has a free trade agreement in effect'' and list the countries with which the United States has a ''free trade agreement in effect.'' The term free trade agreement is not defined in the IRA or in the Code. The proposed definition takes into account the term's meaning, use and context in the statute. The IRA's amendments to section 30D expand the incentives for taxpayers to purchase new clean vehicles and for vehicle manufacturers to increase their reliance on supply chains in the United States and in countries with which the United States has reliable and trusted economic relationships. The Treasury Department and the IRS recognize that more secure and resilient supply chains are essential for our national security, our economic security, and our technological leadership. The Treasury Department and the IRS propose to identify the countries with which the United States has free trade agreements in effect for purposes of section 30D consistent with the statute's purposes of promoting reliance on such supply chains and of providing eligible consumers with access to tax credits for the purchase of new clean vehicles.

Based on these considerations, the Treasury Department and the IRS propose criteria the Secretary would consider in identifying these countries. As set forth in proposed § 1.30D–3(c)(7)(i), those criteria would include whether an agreement between the United States and another country, as to the critical minerals contained in electric vehicle batteries or more generally, and in the context of the overall commercial and economic relationship between that country and the United States: (A) reduces or eliminates trade barriers on a preferential basis, (B) commits the parties to refrain from imposing new trade barriers, (C) establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections), and/or (D) reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions on exports.

Applying those factors, the proposed regulations include countries with which the United States has comprehensive free trade agreements (that is, agreements covering substantially all trade in goods and services between the parties, including trade in critical minerals). These are Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. In addition, the Treasury Department and the IRS also propose to include additional countries that the Secretary identifies after considering the factors listed in proposed § 1.30D–3(c)(7)(i). One example of such a country is Japan, with which the United States recently concluded a Critical Minerals Agreement (CMA) [1] containing robust obligations to help ensure free trade in critical minerals, including a commitment to refrain from imposing duties on exports of critical minerals that are currently essential to the electric vehicle battery supply chain, a commitment for the United States and Japan to confer on investments in this sector that may affect national security, and detailed undertakings related to the

[1] Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains, concluded March 28, 2023, *https://ustr.gov/sites/default/files/2023-03/US%20Japan%20Critical%20Minerals%20Agreement%202023%2003%2028.pdf.*

enforcement of labor and environmental laws related to trade in those critical minerals. The CMA was concluded in the context of an earlier trade agreement the United States concluded with Japan in 2019,[2] a related 2019 agreement on digital trade,[3] and the U.S.-Japan Partnership on Trade announced in November 2021.[4] The Treasury Department and the IRS have consulted with the U.S. Trade Representative in applying the proposed factors here.

Based on an evaluation of the criteria in proposed § 1.30D–3(c)(7)(i), the Treasury Department and the IRS would make any necessary amendments to the list in proposed § 1.30D–3(c)(7)(ii), including adding any additional countries as any new qualifying international agreements enter into force and the Secretary determines that the factors have been met. The Treasury Department and the IRS would similarly make any necessary amendments based on the modification, termination, or expiration of any previously identified free trade agreements. Proposed § 1.30D–3(c)(7)(iii) would provide that the list of countries in proposed § 1.30D–3(c)(7)(ii) may be revised and updated through appropriate publication in the **Federal Register** or in the *Internal Revenue Bulletin.* The treatment of any given country under this overall approach is independent from the inclusion or exclusion of any other.[5]

The Treasury Department and the IRS seek comment on the proposed criteria for identifying countries with which the United States has free trade agreements in effect, other potential approaches for identifying those countries, and the list of countries set forth in proposed § 1.30D–3(c)(7)(ii).

iii. Step 3: Calculate Qualifying Critical Mineral Content

The third step for determining compliance with the Critical Minerals Requirement would involve the calculation of the percentage of the value of qualifying critical minerals contained in a battery. The proposed regulations refer to this percentage as the ''qualifying critical mineral content'' and define that term under proposed § 1.30D–3(c)(18) as the percentage of the value of the applicable critical minerals contained in the battery from which the electric motor of a new clean vehicle draws electricity that were extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or were recycled in North America. Under proposed § 1.30D–3(a)(3)(i), qualifying critical mineral content would be calculated as the percentage that results from dividing the total value of qualifying critical minerals by the total value of critical minerals. Proposed § 1.30D–3(c)(23) would define ''total value of qualifying critical minerals'' as the sum of the values of all the qualifying critical minerals contained in a battery described in proposed § 1.30D–3(a)(1). Proposed § 1.30D–3(c)(22) would define ''total value of critical minerals'' as the sum of the values of all applicable critical minerals contained in a battery described in proposed § 1.30D–3(a)(1).

Proposed § 1.30D–3(a)(3)(iii) would require qualified manufacturers to select a date for determining the values associated with the total value of qualifying critical minerals (determined separately for each procurement chain) and the total value of critical minerals. Such date would need to be after the final processing or recycling step for the applicable critical minerals relevant to the certification described in section 30D(e)(1)(A) of the Code. This date would need to be uniformly applied for all applicable critical minerals contained in the battery. Proposed § 1.30D–3(a)(15) would define a qualified manufacturer as a manufacturer described in section 30D(d)(3) of the Code.

Proposed § 1.30D–3(a)(3)(iv) would provide that a qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying critical mineral content for batteries in a group of vehicles, a qualified manufacturer could average the qualifying critical mineral content calculation over a limited period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and proposed § 1.30D–2(b)) within North America. The Treasury Department and the IRS seek comment on whether to include any more specific conditions or limitations on this ability to average these calculations

The percentage of qualifying critical minerals content that is calculated in Step 3 would ultimately be compared with the relevant applicable critical minerals percentage provided in proposed § 1.30D–3(a)(2) to determine whether a vehicle satisfies the Critical Minerals Requirement described in section 30D(e)(1)(A) of the Code.

B. Battery Components Requirement

Proposed § 1.30D–3(b) would provide the rules for determining compliance with the Battery Components Requirement. In general, proposed § 1.30D–3(b) is consistent with the framework for the Battery Components Requirement that was described in the 30D White Paper. Proposed § 1.30D–3(b) would provide a four-step process for determining the percentage of the value of the battery components in a battery that contribute toward meeting the Battery Components Requirement.

i. Step 1: Identify Components That Are Manufactured or Assembled in North America

In the first step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine whether each battery component in a battery was manufactured or assembled in North America. Such components are referred to in the proposed regulations as ''North American battery components'' and are defined in proposed § 1.30D–3(c)(12) as a battery component substantially all of the manufacturing or assembly of which occurs in North America, without regard to the location of the manufacturing or assembly activities of the components that make up the particular battery component.

Proposed § 1.30D–3(c)(3) would define ''battery,'' for purposes of a new clean vehicle, as a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term ''battery'' would not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches. This definition of battery is consistent with the statute because battery modules and cells are the sources ''from which the electric

[2] Trade Agreement Between the United States of America and Japan, concluded October 7, 2019, *https://ustr.gov/sites/default/files/files/agreements/japan/Trade_Agreement_between_the_United_States_and_Japan.pdf.*

[3] Agreement Between the United States of America and Japan Concerning Digital Trade, concluded October 7, 2019, *https://ustr.gov/sites/default/files/files/agreements/japan/Agreement_between_the_United_States_and_Japan_concerning_Digital_Trade.pdf.*

[4] Office of United States Trade Representative, United States and Japan Announce the Formation of the U.S.-Japan Partnership on Trade, Nov. 17, 2021, *https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/november/united-states-and-japan-announce-formation-us-japan-partnership-trade-0.*

[5] This independent treatment is consistent with proposed § 1.30D–3(c)(e).

motor of such vehicle draws electricity.'' Sections 30D(e)(1)(A) and (2)(A). The battery module is the end point for the purpose of calculating the value of battery components.

Proposed § 1.30D–3(c)(4) would define ''battery cell'' as a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity. This definition of battery cell would encompass the smallest combination of battery components necessary for the function of energy storage.

Proposed § 1.30D–3(c)(5) would define ''battery component'' as a component that forms part of a battery and which is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components would include, but not be limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials would not be considered a type of battery component, although constituent materials could be manufactured or assembled into battery components. Some battery components could be made entirely of inputs that do not contain constituent materials. Battery components would include any piece of the assembled battery cell that contribute to electrochemical energy storage.

Proposed § 1.30D–3(c)(10) would define ''manufacturing,'' with respect to a battery component, as the industrial and chemical steps taken to produce a battery component. Manufacturing would use industrial and chemical steps starting with constituent materials and other battery components that do not contain constituent materials to create a new battery component.

Proposed § 1.30D–3(c)(2) would define ''assembly,'' with respect to battery components, as the process of combining battery components into battery cells and battery modules.

ii. Step 2: Determine the Incremental Value of Each Battery Component and North American Battery Components

In the second step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine the incremental value for each battery component. The resulting incremental value for a battery component would be attributable to North America if the battery component is a ''North American battery component'' as defined in proposed § 1.30D–3(c)(12).

Proposed § 1.30D–3(c)(9) would define ''incremental value,'' with respect to a battery component, as the value (as defined in proposed § 1.30D–3(c)(24)) determined by subtracting from the value of that battery component the value of the manufactured or assembled battery components, if any, that are contained in that battery component.

Proposed § 1.30D–3(c)(20) would define ''total incremental value of North American battery components'' as the sum of the incremental values of each North American battery component contained in a battery described in proposed § 1.30D–3(b)(1).

iii. Step 3: Determine the Total Incremental Value of Battery Components

In the third step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to total the incremental value of battery components. Proposed § 1.30D–3(c)(21) would define ''total incremental value of battery components'' as the sum of the incremental values of each battery component contained in a battery described in proposed § 1.30D–3(b)(1). The total incremental value of battery components could also be calculated by totaling the value of each battery module in the battery.

iv. Step 4: Calculate the Qualifying Battery Component Content

In the fourth step for determining compliance with the Battery Components Requirement, qualified manufacturers would need to determine the qualifying battery component content. Proposed § 1.30D–3(c)(16) would define ''qualifying battery component content'' as the percentage of the value of the battery components contained in the battery from which the electric motor of a new clean vehicle draws electricity that were manufactured or assembled in North America. Proposed § 1.30D–3(b)(3)(i) would provide that the qualifying battery component content is the percentage that results from dividing the total incremental value of North American battery components (determined in step 2) by the total incremental value of battery components (determined in step 3).

Proposed § 1.30D–3(b)(3)(ii) would require qualified manufacturers to select a date for determining the values associated with the total incremental value of North American battery components and the total incremental value of battery components. Such date would need to be after the last manufacturing or assembly step for the battery components relevant to the certification described in section 30D(e)(2)(A) of the Code. This date must be uniformly applied for all battery components contained in the battery.

Proposed § 1.30D–3(b)(3)(iii) would provide that a qualified manufacturer may determine qualifying battery component content based on the incremental values of the battery components actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying battery component content for batteries in a group of vehicles, a qualified manufacturer could average the qualifying battery component content calculation over a limited period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and proposed § 1.30D–2(a)) within North America. The Treasury Department and the IRS seek comment on whether to include any more specific conditions or limitations on this ability to average these calculations.

The percentage of qualifying battery component content that would be calculated in Step 4 would ultimately be compared with the relevant applicable battery components percentage provided in proposed § 1.30D–3(b)(2) to determine whether a vehicle satisfies the Battery Components Requirement described in section 30D(e)(2)(A) of the Code.

The Treasury Department and the IRS request comments on the Critical Mineral and Battery Component Requirements as they would be implemented in proposed § 1.30D–3, including the distinction between processing of applicable critical minerals and manufacturing and assembly of battery components, and related definitions.

C. Excluded Entities

Section 30D(d)(7) of the Code excludes from the definition of ''new clean vehicle'' any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in section 30D(e)(1)(A)) were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or any vehicle placed in service after December 31, 2023, with

respect to which any of the components contained in the battery of such vehicle (as described in section 30D(e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined). The Treasury Department and the IRS intend to issue guidance with respect to section 30D(d)(7) at a later date.

IV. Special Rules

Proposed § 1.30D–4 would provide special rules with respect to the section 30D credit.

A. No Double Benefit

Section 30D(f)(2) and proposed § 1.30D–4(a)(1) would provide that the amount of any deduction or other credit allowable under chapter 1 for a vehicle for which a section 30D credit is allowable must be reduced by the amount of the section 30D credit allowed under section 30D(a) for such vehicle determined without regard to section 30D(c), which may treat all or a portion of the aggregate credit allowed under section 30D(a) as a current year general business credit under section 38(b).

Proposed § 1.30D–4(a)(2) would provide that a section 30D credit that has been allowed with respect to a vehicle in a taxable year before the taxable year in which a credit under section 25E is allowable for that vehicle does not reduce the amount of the allowable section 25E credit. Accordingly, a taxpayer who otherwise satisfies the requirements of section 25E would be eligible to claim the section 25E credit for a vehicle for which another taxpayer previously claimed the section 30D credit.

Proposed § 1.30D–4(a)(3) would provide that no credit is allowed under section 45W with respect to any vehicle for which a credit was allowed under section 30D. This rule, which is based on section 45W(d)(3), precludes both the section 30D credit and the section 45W credit from being allowed for the same vehicle, whether in the same or different taxable years.

B. Limitation Based on Modified Adjusted Gross Income

Section 30D(f)(10) and proposed § 1.30D–4(b) would provide that no section 30D(a) credit is allowed for any taxable year if (i) the lesser of (I) the modified AGI of the taxpayer for such taxable year or (II) the modified AGI of the taxpayer for the preceding taxable year exceeds (ii) the threshold amount (Modified AGI Limitation). The threshold amount is $300,000 in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), $225,000 in the case of a head of household (as defined in section 2(b) of the Code), and $150,000 for all other taxpayers. ''Modified adjusted gross income'' is defined in section 30D(f)(10)(C) as the taxpayer's AGI increased by any amount excluded from gross income under sections 911, 931, or 933 of the Code. Proposed § 1.30D–4(b)(4) provides that if the taxpayer's filing status changes (for example, from single to head of household) in this two-year period, the taxpayer satisfies the Modified AGI Limitation if the taxpayer's modified AGI does not exceed the threshold amount in either taxable year based on the applicable filing status for that taxable year.

Proposed § 1.30D–4(b)(5)(i) would provide that, except as provided in proposed § 1.30D–4(b)(5)(ii), in the case of a new clean vehicle that is placed in service by a corporation or other taxpayer that is not an individual for whom AGI is computed under section 62, the Modified AGI Limitation does not apply. Corporations and such other taxpayers do not have AGI computed under section 62, so the special rule in section 30D(f)(10) establishing a Modified AGI Limitation does not apply to these taxpayers.

Proposed § 1.30D–4(b)(5)(ii) would provide that in the event that the new clean vehicle is placed in service by a partnership or an S corporation, and the section 30D credit is claimed by individuals who are direct or indirect partners of that partnership or shareholders of that S corporation, the Modified AGI Limitation will apply to those partners or shareholders. The Treasury Department and the IRS request comments on whether a similar rule should be provided for trusts or other types of entities that place in service a new clean vehicle.

C. Multiple Owners and Passthrough Entity Ownership of a Single Vehicle

In certain instances, multiple taxpayers may purchase, place in service, and be titled as owners of a single vehicle. For example, a married couple that files separate tax returns may jointly purchase and take possession of a new clean vehicle that qualifies for the section 30D credit and both spouses may be titled as owners of the vehicle. However, the structure of section 30D provides for one taxpayer to claim the section 30D credit per vehicle placed in service. See generally section 30D(a), (b), (f)(8), (f)(9) and section 6213(g)(2)(T) of the Code. Section 30D does not contain rules for allocation or proration of the section 30D credit with respect to a single vehicle to multiple taxpayers placing that vehicle in service, and such an allocation or proration would present challenges from a tax administration perspective.

Proposed § 1.30D–4(c)(1) would provide that, except as provided in proposed § 1.30D–4(c)(2), the amount of the section 30D credit attributable to a new clean vehicle may be claimed on only one tax return. In the event multiple owners place in service a new clean vehicle, no allocation or proration of the credit would be available. Proposed § 1.30D–4(c)(3)(i) would provide that the name and taxpayer identification number of the owner claiming the credit under section 30D(a) should be listed on the seller's report pursuant to section 30D(d)(1)(H). Accordingly, multiple owners of a new clean vehicle would inform the seller which owner will claim the section 30D credit so that the seller can identify that taxpayer on the seller's report. The credit would be allowed only on the tax return of the owner listed in the seller's report.

Proposed § 1.30D–4(c)(2) would provide that in the case of a new clean vehicle placed in service by a partnership or S corporation, while the partnership or S corporation is the vehicle owner, the section 30D credit is allocated among the partners of the partnership under § 1.704–1(b)(4)(ii) or among the shareholders of the S corporation under sections 1366(a) and 1377(a) of the Code and claimed on the tax returns of the partners or shareholder(s). Proposed § 1.30D–4(c)(3)(i) would provide that in the case of a new clean vehicle placed in service by a partnership or S corporation, the name and tax identification number of the partnership or S corporation that placed the new clean vehicle in service should be listed on the seller's report pursuant to section 30D(d)(1)(H).

V. Severability

If any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Effect on Other Documents

This proposed rulemaking hereby makes IRS Notices 2023–1, 2023–3 I.R.B. 373 and 2023–16, 2023–8 I.R.B. 479 obsolete.

Proposed Applicability Dates

Proposed § 1.30D–1 is proposed to apply to new clean vehicles placed in service after the date of publication of

the Treasury Decision adopting these rules as final rules in the **Federal Register**.

Proposed § 1.30D–2 is proposed to apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. The amendments made to section 30D by the IRA generally apply to vehicles placed in service after December 31, 2022, with certain exceptions. The definitions in proposed § 1.30D–2 were substantially described in Notice 2023–1, which was released on December 29, 2022.[6] The definitions in proposed § 1.30D–2 generally relate to statutory rules applicable to vehicles placed in service on or after January 1, 2023. These proposed regulations are proposed to apply to vehicles placed in service on or after January 1, 2023, for taxable years ending after the date these proposed regulations are published in the **Federal Register** to improve certainty for taxpayers and to provide clear rules for tax administration.

Proposed § 1.30D–3 is proposed to apply to new clean vehicles placed in service after April 17, 2023 for taxable years ending after April 17, 2023. Pursuant to section 13401(a), (e), and (k)(3) of the IRA, the critical minerals and battery components requirements of section 13401(a) and (e) of the IRA amend section 30D with respect to vehicles placed in service after the date on which these proposed regulations are published in the **Federal Register**. Accordingly, the Critical Minerals and Battery Components Requirements in proposed § 1.30D–3 are proposed to apply to vehicles placed in service after the date of publication of these proposed regulations for taxable years ending after the date of publication of these proposed regulations.

Proposed § 1.30D–4 is proposed to apply to new clean vehicles placed in service after the date of publication of the Treasury Decision adopting these rules as final rules in the **Federal Register**.

Taxpayers may rely on these proposed regulations for vehicles placed in service prior to the date final regulations are published in the **Federal Register**, provided the taxpayer follows the proposed regulations in their entirety, and in a consistent manner.

[6] Notice 2023–16, released February 3, 2023, modified Notice 2023–1, regarding the vehicle classification standard set forth in Notice 2023–1 in a manner that allowed additional new clean vehicles to be eligible for the section 30D credit. Notice 2023–16 provided that taxpayers could rely on these modified expected definitions for new clean vehicles placed in service on or after January 1, 2023.

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *https://www.irs.gov.*

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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

These proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

II. Paperwork Reduction Act

Any collection burden associated with rules described in these proposed regulations is previously accounted for in OMB Control Number 1545–2137. These proposed regulations do not alter previously accounted for information collection requirements and do not create new collection requirements. OMB Control Number 1545–2137 covers Form 8936 and Form 8936–A regarding electric vehicle credits, including the new requirement in section 30D(f)(9) to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Revenue Procedure 2022–42 describes the procedural requirements for qualified manufacturers to make periodic written reports to the Secretary to provide information related to each vehicle manufactured by such manufacturer that is eligible for the section 30D credit as required in section 30D(d)(3), including the critical mineral and battery component certification requirements in sections 30D(e)(1)(A) and (e)(2)(A). In addition, Revenue Procedure 2022–42 also provides the procedures for sellers of new clean vehicles to report information required by section 30D(d)(1)(H) for vehicles to be eligible for the section 30D credit. The collections of information contained in Revenue Procedure 2022–42 are described in that document and were submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act under control number 1545–2137.

The requirement to determine the final assembly location in proposed § 1.30D–2(b) by relying on (1) the vehicle's plant of manufacture as reported in the vehicle identification number (VIN) pursuant to 49 CFR 565 or (2) the final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3) is accounted for by the Department of Transportation in OMB Control Numbers 2127–0510 and 2127–0573.

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 control number assigned by the Office of Management and Budget.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

The proposed regulations affect two types of business entities: (1) qualified manufacturers that must trace and report on their critical minerals and battery components in order to certify that their new clean vehicles qualify for the section 30D credit, and (2) businesses that may earn the section 30D credit when purchasing and placing in service a new clean vehicle.

While the tracking and reporting of critical minerals and battery components is likely to involve significant administrative costs, according to public filings, all qualified manufacturers had total revenues above $1B in 2022. There are a total of 21 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the

section 30D credit.[7] Pursuant to Revenue Procedure 2022–42 and following the publication of these proposed regulations, qualified manufacturers will also have to certify that their vehicles qualify under the Critical Minerals and Battery Components Requirements. The proposed regulations provide definitions and general rules for the section 30D credit, including rules for qualified manufacturers to comply with the Critical Mineral and Battery Component Requirements. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for qualified manufacturers for consistent application of critical minerals and battery components calculations and for taxpayers purchasing new clean vehicles that qualify for the section 30D credit. The Treasury Department and the IRS have determined that qualified manufacturers do not meet the applicable definition of small entity.

Business purchasers of clean vehicles who take the section 30D credit must satisfy reporting requirements that are largely the same as those faced by individuals accessing the section 30D credit to purchase clean vehicles. Taxpayers will continue to file Form 8936, *Qualified Plug-In Electric Drive Motor Vehicle Credit,* to claim the section 30D credit. As was the case for the section 30D credit prior to amendments made by the IRA, taxpayers can rely on qualified manufacturers to determine if the vehicle being purchased qualifies for the section 30D credit and the credit amount. The estimated burden for individual and business taxpayers filing this form is approved under OMB control number 1545–0074 and 1545–0123. To make it easier for a taxpayer to determine the potential section 30D credit available for a specific vehicle, the proposed regulations provide business entities with tools and definitions to ascertain whether any vehicles purchased would be eligible for the credit. The VIN reporting required by section 30D(f)(9) and described in the proposed regulations was included in prior section 30D reporting.

Accordingly, the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

[7] The list of manufacturers is available at the following IRS website: *https://www.irs.gov/credits-deductions/manufacturers-and-models-for-new-qualified-clean-vehicles-purchased-in-2023-or-after#:~:text=If%20you%20bought%20and%20placed,Internal%20Revenue%20Code%20Section%2030D.*

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $198 million. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency (to the extent practicable and permitted by law) from promulgating any regulation that has federalism implications, unless the agency meets the consultation and funding requirements of section 6 of the Executive order, if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including their economic impact and any alternative approaches that should be considered during the rulemaking process. In addition, the Treasury Department and the IRS request comments on the specific issues noted in the previous sections of this preamble.

Any comments submitted, whether electronically or on paper, will be made available at *https://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments as prescribed in this preamble under the **DATES** heading. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of the proposed regulations is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.30D–1 also issued under 26 U.S.C. 30D.

Section 1.30D–2 also issued under 26 U.S.C. 30D.

Section 1.30D–3 also issued under 26 U.S.C. 30D.

Section 1.30D–4 also issued under 26 U.S.C. 30D and 26 U.S.C. 45W(d)(3).

■ **Par 2.** Sections 1.30D–0, 1.30D–1, 1.30D–2, 1.30D–3, and 1.30D–4 are added to read as follows:

Sec.

* * * * *

1.30D–0 Table of contents.

1.30D–1 Credit for new clean vehicles.

1.30D–2 Definitions for purposes of section 30D.

1.30D–3 Critical mineral and battery component requirements.

1.30D–4 Special rules.

* * * * *

§ 1.30D–0 Table of contents.

This section lists the captions contained in §§ 1.30D–1 through 1.30D–4.

§ 1.30D–1 Credit for new clean vehicles.

(a) In general.

(b) Treatment of credit.

(1) Business credit treated as part of general business credit.

(2) Apportionment of section 30D credit.

§ 1.30D–1 Credit for new clean vehicles.

(a) *In general.* Section 30D(a) of the Internal Revenue Code (Code) allows as a credit against the tax imposed by chapter 1 of the Code (chapter 1) for the taxable year of a taxpayer an amount equal to the sum of the credit amounts determined under section 30D(b) with respect to each new clean vehicle purchased by the taxpayer that the taxpayer places in service during the taxable year. For purposes of the section 30D regulations (as defined in § 1.30D–2(f)), the term *section 30D credit* means the credit allowable to a taxpayer for a taxable year under section 30D(a) and the section 30D regulations with respect to all vehicles placed in service by the taxpayer during the taxable year. Section 1.30D–2 provides definitions that apply for purposes of section 30D and the section 30D regulations. Section 1.30D–3 provides rules regarding the critical mineral and battery component requirements of section 30D(e). Section 1.30D–4 provides guidance regarding the limitations and special rules in section 30D(f).

(b) *Application with other credits*—(1) *Business credit treated as part of general business credit*—(i) *In general.* Section 30D(c)(1) requires that so much of the section 30D credit that would be allowed under section 30D(a) for any taxable year (determined without regard to section 30D(c) and this paragraph (b)) that is attributable to a depreciable vehicle must be treated as a general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). In the case of a depreciable vehicle the use of which is 50 percent or more business use in the taxable year such vehicle is placed in service, the section 30D credit that would be allowed under section 30D(a) for that taxable year (determined without regard to section 30D(c) and this paragraph (b)) that is attributable to such depreciable vehicle must be treated as a general business credit under section 38 of the Code that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). See paragraph (b)(2) of this section for rules applicable in the case of a depreciable vehicle the use of which is less than 50 percent business use in the taxable year such vehicle is placed in service. See paragraph (b)(3) of this section for rules applicable to a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) or paragraphs (b)(2)(ii) or (b)(3) of this section.

(ii) *Depreciable vehicle.* For purposes of this paragraph (b), a *depreciable vehicle* is a vehicle of a character subject to an allowance for depreciation.

(2) *Apportionment of section 30D credit.* In the case of a depreciable vehicle the business use of which is less than 50 percent of a taxpayer's total use of the vehicle for the taxable year in which the vehicle is placed in service, the taxpayer's section 30D credit for that taxable year with respect to that vehicle must be apportioned as follows:

(i) The portion of the section 30D credit corresponding to the percentage of the taxpayer's business use of the vehicle is treated as a general business credit under section 30D(c)(1) and paragraph (b)(1) of this section (and not allowed under section 30D(a) or paragraph (b)(3) of this section).

(ii) The portion of the section 30D credit corresponding to the percentage of the taxpayer's personal use of the vehicle is treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2) and paragraph (b)(3) of this section.

(3) *Personal credit limited based on tax liability.* Section 26 of the Code limits the aggregate amount of credits allowed to a taxpayer by subpart A of part IV of subchapter A of chapter 1 (subpart A) based on the taxpayer's tax liability. Under section 26(a), the aggregate amount of credits allowed to a taxpayer by subpart A cannot exceed the sum of the taxpayer's regular tax liability (as defined in section 26(b)) for the taxable year reduced by the foreign tax credit allowable under section 27 of the Code, and the alternative minimum tax imposed by section 55(a) for the taxable year. Section 30D(c)(2) provides that the section 30D credit allowed under section 30D(a) for any taxable year (determined after application of

section 30D(c)(1) and paragraphs (b)(1) and (2) of this section) is treated as a credit allowable under subpart A for such taxable year, and the section 30D credit allowed under section 30D(a) is therefore subject to the limitation imposed by section 26.

(c) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(d) *Applicability date.* This section applies to new clean vehicles placed in service after [DATE OF PUBLICATION OF FINAL RULE].

§ 1.30D–2 Definitions for purposes of section 30D.

(a) *In general.* The definitions in paragraphs (b) through (g) of this section apply for purposes of section 30D of the Internal Revenue Code (Code) and the section 30D regulations.

(b) *Final assembly* means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. To establish where final assembly of a new clean vehicle occurred for purposes of the requirement in section 30D(d)(1)(G) that final assembly of a new clean vehicle occur within North America, the taxpayer may rely on the following information:

(1) The vehicle's plant of manufacture as reported in the vehicle identification number pursuant to 49 CFR 565; or

(2) The final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3).

(c) *Manufacturer's suggested retail price* means the sum of the prices described in paragraphs (c)(1) and (2) of this section as reported on the label that is affixed to the windshield or side window of the vehicle, as described in 15 U.S.C. 1232.

(1) The retail price of the automobile suggested by the manufacturer as described in 15 U.S.C. 1232(f)(1).

(2) The retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to the dealer, which is not included within the price of such automobile as stated pursuant to 15 U.S.C. 1232(f)(1), as described in 15 U.S.C. 1232(f)(2).

(d) *North America* means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, appendix A, section 1(1).

(e) *Placed in service.* A new clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle.

(f) *Section 30D regulations* means § 1.30D–1, this section, and §§ 1.30D–3 and 1.30D–4.

(g) *Vehicle classifications*—(1) *In general.* The vehicle classification of a new clean vehicle is to be determined consistent with the rules and definitions provided in 40 CFR 600.315–08 and this paragraph (g) for vans, sport utility vehicles, and pickup trucks, and other vehicles.

(2) *Van* means a vehicle classified as a van or minivan under 40 CFR 600.315–08(a)(2)(iii) and (iv), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii).

(3) *Sport utility vehicle* means a vehicle classified as a small sport utility vehicle or standard sport utility vehicle under 40 CFR 600.315–08(a)(2)(v) and (vi), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii).

(4) *Pickup truck* means a vehicle classified as a small pickup truck or standard pickup truck under 40 CFR 600.315–08(a)(2)(i) and (ii), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii).

(5) *Other vehicle* means any vehicle classified in one of the classes of passenger automobiles listed in 40 CFR 600.315–08(a)(1), or otherwise so classified by the Administrator of the EPA pursuant to 40 CFR 600.315–08(a)(3)(ii).

(h) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(i) *Applicability date.* This section applies to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023.

§ 1.30D–3 Critical mineral and battery component requirements.

(a) *Critical minerals requirement*—(1) *In general.* The critical minerals requirement described in section 30D(e)(1)(A) of the Internal Revenue Code (Code), with respect to the battery from which the electric motor of a new clean vehicle draws electricity, is met if the qualifying critical mineral content of such battery is equal to or greater than the applicable critical minerals percentage (as defined in paragraph (a)(2) of this section), as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary of the Treasury or her delegate (Secretary).

(2) *Applicable critical minerals percentage.* For purposes of paragraph (a)(1) of this section, section 30D(e)(1)(B) provides the *applicable critical minerals percentage,* which is based on the year in which a vehicle is placed in service by the taxpayer and set forth in paragraphs (a)(2)(i) through (v) of this section.

(i) In the case of a vehicle placed in service after April 17, 2023, and before January 1, 2024, the applicable critical minerals percentage is 40 percent.

(ii) In the case of a vehicle placed in service during calendar year 2024, the applicable critical minerals percentage is 50 percent.

(iii) In the case of a vehicle placed in service during calendar year 2025, the applicable critical minerals percentage is 60 percent.

(iv) In the case of a vehicle placed in service during calendar year 2026, the applicable critical minerals percentage is 70 percent.

(v) In the case of a vehicle placed in service after December 31, 2026, the applicable critical minerals percentage is 80 percent.

(3) *Determining qualifying critical mineral content*—(i) *In general.* Qualifying critical mineral content with respect to a battery described in paragraph (a)(1) of this section is calculated as the percentage that results from dividing:

(A) The total value of qualifying critical minerals, by

(B) The total value of critical minerals.

(ii) *Separate determinations required for each procurement chain.* The portion of an applicable critical mineral that is a qualifying critical mineral must be determined separately for each procurement chain.

(iii) *Time for determining value.* A qualified manufacturer must select a date for determining the values described in paragraphs (a)(3)(i)(A) and (B) of this section. Such date must be after the final processing or recycling step for the applicable critical minerals relevant to the certification described in section 30D(e)(1)(A).

(iv) *Application of qualifying critical mineral content to vehicles.* A qualified manufacturer may determine qualifying critical mineral content based on the value of the applicable critical minerals actually contained in the battery of a specific vehicle. Alternatively, for

purposes of calculating the qualifying critical mineral content for batteries in a group of vehicles, a qualified manufacturer may average the qualifying critical mineral content calculation over a period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and § 1.30D–2(b)) within North America.

(b) *Battery components requirement*—(1) *In general.* The battery components requirement described in section 30D(e)(2)(A) of the Code, with respect to the battery from which the electric motor of a new clean vehicle draws electricity, is met if the qualifying battery component content of such battery is equal to or greater than the applicable battery components percentage (as defined in paragraph (b)(2) of this section), as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary.

(2) *Applicable battery components percentage.* For purposes of paragraph (b)(1) of this section, section 30D(e)(2)(B) provides the *applicable battery components percentage,* which is based on the year in which a vehicle is placed in service by the taxpayer as set forth in paragraphs (b)(2)(i) through (vi) of this section.

(i) In the case of a vehicle placed in service after April 17, 2023, and before January 1, 2024, the applicable battery components percentage is 50 percent.

(ii) In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable battery components percentage is 60 percent.

(iii) In the case of a vehicle placed in service during calendar year 2026, the applicable battery components percentage is 70 percent.

(iv) In the case of a vehicle placed in service during calendar year 2027, the applicable battery components percentage is 80 percent.

(v) In the case of a vehicle placed in service during calendar year 2028, the applicable battery components percentage is 90 percent.

(vi) In the case of a vehicle placed in service after December 31, 2028, the applicable battery components percentage is 100 percent.

(3) *Determining qualifying battery component content*—(i) *In general.* Qualifying battery component content with respect to a battery described in paragraph (b)(1) of this section is calculated as the percentage that results from dividing—

(A) The total incremental value of North American battery components, by

(B) The total incremental value of battery components.

(ii) *Time for determining value.* A qualified manufacturer must select a date for determining the incremental values described in paragraphs (b)(3)(i)(A) and (B) of this section. Such date must be after the last manufacturing or assembly step for the battery components relevant to the certification described in section 30D(e)(2)(A) of the Code.

(iii) *Application of qualifying battery component content to vehicles.* A qualified manufacturer may determine qualifying battery component content based on the incremental values of the battery components actually contained in the battery of a specific vehicle. Alternatively, for purposes of calculating the qualifying battery component content for batteries in a group of vehicles, a qualified manufacturer may average the qualifying battery component content calculation over a period of time (for example, a year, quarter, or month) with respect to vehicles from the same model line, plant, class, or some combination of thereof, with final assembly (as defined in section 30D(d)(5) of the Code and § 1.30D–2(b)) within North America.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Applicable critical mineral* means an applicable critical mineral as defined in section 45X(c)(6) of the Code.

(2) *Assembly,* with respect to battery components, means the process of combining battery components into battery cells and battery modules.

(3) *Battery,* for purposes of a new clean vehicle, means a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term *battery* does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

(4) *Battery cell* means a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

(5) *Battery component* means a component that forms part of a battery and which is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not considered a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

(6) *Constituent materials* means materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components. Constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

(7) *Country with which the United States has a free trade agreement in effect*—(i) *In general.* The term ''country with which the United States has a free trade agreement in effect'' means any of those countries identified in paragraph (c)(7)(ii) of this section or that the Secretary may identify in the future. The criteria the Secretary will consider in determining whether to identify a country under this paragraph (c)(7) include whether an agreement between the United States and that country, as to the critical minerals contained in electric vehicle batteries or more generally, and in the context of the overall commercial and economic relationship between that country and the United States:

(A) Reduces or eliminates trade barriers on a preferential basis;

(B) Commits the parties to refrain from imposing new trade barriers;

(C) Establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections); and/or

(D) Reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions.

(ii) *Free trade agreements in effect.* The countries with which the United States currently has a free trade agreement in effect are: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Japan, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.

(iii) *Updates.* The list of countries in paragraph (c)(7)(ii) may be revised and updated through appropriate guidance published in the **Federal Register** or in the *Internal Revenue Bulletin* (see § 601.601(d) of this chapter).

(8) *Extraction* means the activities performed to extract or harvest minerals or natural resources from the ground or a body of water, including, but not limited to, by operating equipment to extract or harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction concludes when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction includes the physical processes involved in refining. Extraction does not include the chemical and thermal processes involved in refining.

(9) *Incremental value,* with respect to a battery component, means the value determined by subtracting from the value of that battery component the value of the manufactured or assembled battery components, if any, that are contained in that battery component.

(10) *Manufacturing,* with respect to a battery component, means the industrial and chemical steps taken to produce a battery component.

(11) *North America* means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, appendix A, section 1(1).

(12) *North American battery component* means a battery component substantially all of the manufacturing or assembly of which occurs in North America, without regard to the location of the manufacturing or assembly activities of any components that make up the particular battery component.

(13) *Processing* means the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

(14) *Procurement chain* means a common sequence of extraction, processing, or recycling activities that occur in a common set of locations with respect to an applicable critical mineral, concluding in the production of constituent materials. Sources of a single applicable critical mineral may have multiple procurement chains if, for example, one source of the applicable critical mineral undergoes the same extraction, processing, or recycling process in different locations.

(15) *Qualified manufacturer* means a manufacturer described in section 30D(d)(3) of the Code.

(16) *Qualifying battery component content* means the percentage of the value of the battery components contained in the battery from which the electric motor of a new clean vehicle draws electricity that were manufactured or assembled in North America.

(17) *Qualifying critical mineral* means an applicable critical mineral that is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America.

(i) An applicable critical mineral is extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, if:

(A) Fifty (50) percent or more of the value added to the applicable critical mineral by extraction is derived from extraction that occurred in the United States or in any country with which the United States has a free trade agreement in effect; or

(B) Fifty (50) percent or more of the value added to the applicable critical mineral by processing is derived from processing that occurred in the United States or in any country with which the United States has a free trade agreement in effect.

(ii) An applicable critical mineral is recycled in North America if 50 percent or more of the value added to the applicable critical mineral by recycling is derived from recycling that occurred in North America.

(18) *Qualifying critical mineral content* means the percentage of the value of the applicable critical minerals contained in the battery from which the electric motor of a new clean vehicle draws electricity that were extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America.

(19) *Recycling* means the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

(20) *Total incremental value of North American battery components* means the sum of the incremental values of each North American battery component contained in a battery described in paragraph (b)(1) of this section.

(21) *Total incremental value of battery components* means the sum of the incremental values of each battery component contained in a battery described in paragraph (b)(1) of this section.

(22) *Total value of critical minerals* means the sum of the values of all applicable critical minerals contained in a battery described in paragraph (a)(1) of this section.

(23) *Total value of qualifying critical minerals* means the sum of the values of all the qualifying critical minerals contained in a battery described in paragraph (a)(1) of this section.

(24) *Value,* with respect to property, means the arm's-length price that was paid or would be paid for the property by an unrelated purchaser determined in accordance with the principles of section 482 of the Code and regulations thereunder.

(25) *Value added,* with respect to recycling, extraction, or processing of an applicable critical mineral, means the increase in the value of the applicable critical mineral attributable to the relevant activity.

(d) *Excluded entities.* [IRS will address excluded entities in the final rule.]

(e) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(f) *Applicability date.* This section applies to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023.

§ 1.30D–4 Special rules.

(a) *No double benefit*—(1) *In general.* Under section 30D(f)(2) of the Internal Revenue Code (Code), the amount of any deduction or other credit allowable under chapter 1 of the Code for a vehicle for which a credit is allowable under section 30D(a) must be reduced by the amount of the section 30D credit allowed for such vehicle (determined without regard to section 30D(c)).

(2) *Application to credit for previously-owned clean vehicles under section 25E.* A section 30D credit that has been allowed with respect to a vehicle in a taxable year before the year in which a credit under section 25E of the Code is allowable for that vehicle does not reduce the amount allowable under section 25E.

(3) *Application to credit for qualified clean vehicles under section 45W.* Pursuant to section 45W(d)(3) of the

Code, no credit is allowed under section 45W with respect to any vehicle for which a credit was allowed under section 30D.

(b) *Limitation based on modified adjusted gross income*—(1) *In general.* No credit is allowed under section 30D(a) for any taxable year if—

(i) The lesser of—

(A) The modified adjusted gross income of the taxpayer for such taxable year, or

(B) The modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds

(ii) The threshold amount.

(2) *Threshold amount.* For purposes of paragraph (b)(1) of this section, the threshold amount applies to individual taxpayers based on the return filing status for the taxable year, as set forth in paragraphs (b)(2)(i) through (iii) of this section.

(i) In the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), the threshold amount is $300,000,

(ii) In the case of a head of household (as defined in section 2(b) of the Code), the threshold amount is $225,000.

(iii) In the case of a taxpayer not described in paragraph (b)(2)(i) or (ii) of this section, the threshold amount is $150,000.

(3) *Modified adjusted gross income.* For purposes of section 30D(f)(10) and this paragraph (b), the term *modified adjusted gross income* means adjusted gross income (as defined in section 62 of the Code) increased by any amount excluded from gross income under section 911, 931, or 933 of the Code.

(4) *Special rule for change in filing status.* If the taxpayer's filing status for the taxable year differs from the taxpayer's filing status in the preceding taxable year, the taxpayer satisfies the limitation described in paragraph (b)(1) of this section if the taxpayer's modified AGI does not exceed the threshold amount in either year based on the applicable filing status for that taxable year.

(5) *Application to taxpayers other than individuals*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, the modified adjusted gross income limitation of this paragraph (b) does not apply in the case of a new clean vehicle placed in service by a corporation or other taxpayer that is not an individual for whom adjusted gross income is computed under section 62.

(ii) *Application to passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, where the section 30D credit is claimed by individuals who are direct or indirect partners of that partnership or shareholders of that S corporation, the modified adjusted gross income limitation of this paragraph (b) will apply to those partners or shareholders.

(c) *Multiple owners and passthrough entity ownership of a single vehicle*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, the amount of the section 30D credit attributable to a new clean vehicle may be claimed on only one tax return. In the event a new clean vehicle is placed in service by multiple owners, no allocation or proration of the section 30D credit is available.

(*2*) *Passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, while the partnership or S corporation is the vehicle owner, the section 30D credit is allocated among the partners of the partnership under § 1.704–1(b)(4)(ii) or among the shareholders of the S corporation under sections 1366(a) and 1377(a) of the Code and claimed on the tax returns of the ultimate partners' or of the S corporation shareholder(s).

(3) *Seller reporting*—(i) *In general.* The name and taxpayer identification number of the vehicle owner claiming the section 30D credit must be listed on the seller's report pursuant to section 30D(d)(1)(H). The credit will be allowed only on the tax return of the owner listed in the seller's report.

(ii) *Passthrough entities.* In the case of a new clean vehicle placed in service by a partnership or S corporation, the name and tax identification number of the partnership or S corporation that placed the new clean vehicle in service must be listed on the seller's report pursuant to section 30D(d)(1)(H).

(4) *Example.* A married couple jointly purchases and places in service a new clean vehicle that qualifies for the section 30D credit and puts both of their names on the title. When the couple prepares to file their Federal income tax return, they choose to file using the married filing separately filing status. The section 30D credit may only be claimed by one of the spouses on that spouse's tax return, and the other spouse may not claim any amount of the section 30D credit with respect to that new clean vehicle. The spouse that claims the section 30D credit must be the same spouse listed on the seller report received pursuant to section 30D(d)(1)(H).

(d) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(e) *Applicability date.* This section applies to new clean vehicles placed in service after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–06822 Filed 3–31–23; 8:45 am]

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POSTAL SERVICE™

39 CFR Part 20

International Mailing Services: Proposed Price Changes

AGENCY: Postal Service™.

ACTION: Proposed rule; request for comments.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect changes coincident with the recently announced mailing services price adjustments.

DATES: We must receive your comments on or before May 17, 2023.

ADDRESSES: Mail or deliver comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW, RM 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, to: *PCFederalRegister@usps.gov,* with a subject line of ''July 9, 2023, International Mailing Services Proposed Price Changes.'' Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at 202–268–6592 or Kathy Frigo at 202–268–4178.

SUPPLEMENTARY INFORMATION:

International Price and Service Adjustments

On April 10, 2023, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective on July 9, 2023. The Postal Service proposes to revise Notice 123, *Price List,* available on Postal Explorer® at *https://*

pe.usps.com, to reflect these new price changes. The new prices are or will be available under Docket Number R–2023–2 on the Postal Regulatory Commission's website at *www.prc.gov.*

This proposed rule describes the price changes for the following market dominant international services:

- First-Class Mail International (FCMI) service
- International extra services and fees

First-Class Mail International

The Postal Service plans to increase prices for single-piece FCMI postcards, letters, and flats by approximately 3.6%. The proposed price for a single-piece postcard will increase to $1.50 worldwide. The First-Class Mail International letter nonmachinable surcharge will remain at $0.40. The proposed FCMI single-piece letter and flat prices will be as follows:

LETTERS

Weight not over	Price groups			
(oz.)	1	2	3–5	6–9
1	$1.50	$1.50	$1.50	$1.50
2	1.50	2.27	2.80	2.60
3	2.15	3.00	4.10	3.69
3.5	2.75	3.76	5.40	4.78

FLATS

Weight not over	Price groups			
(oz.)	1	2	3–5	6–9
1	$3.00	$3.00	$3.00	$3.00
2	3.29	3.90	4.23	4.17
3	3.57	4.78	5.45	5.33
4	3.82	5.67	6.71	6.49
5	4.10	6.56	7.93	7.65
6	4.37	7.44	9.16	8.82
7	4.65	8.34	10.39	9.97
8	4.92	9.22	11.61	11.13
12	6.29	11.13	14.08	13.54
15.994	7.65	13.05	16.54	15.93

International Extra Services and Fees

The Postal Service plans to increase prices for certain market dominant international extra services including:

- Certificate of Mailing
- Registered Mail™.
- Return Receipt
- Customs Clearance and Delivery Fee
- International Business Reply™ Mail Service

CERTIFICATE OF MAILING

	Fee
Individual pieces:	
Individual article (PS Form 3817)	$1.95
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.95
Firm mailing sheet (PS Form 3665), per piece (minimum 3) First-Class Mail International only	0.57
Bulk quantities:	
For first 1,000 pieces (or fraction thereof)	$10.90
Each additional 1,000 pieces (or fraction thereof)	1.40
Duplicate copy of PS Form 3606	1.95

Registered Mail

Fee: $20.25.

Return Receipt

Fee: $5.65.

Customs Clearance and Delivery

Fee: per piece $8.30.

International Business Reply Service

Fee: Cards $2.10; Envelopes up to 2 ounces $2.65.

Following the completion of Docket No. R2023–2, the Postal Service will adjust the prices for products and services covered by the International Mail Manual. These prices will be on Postal Explorer at *pe.usps.com.*

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), set out in this **SUPPLEMENTARY INFORMATION** section, which is incorporated by reference in the *Code of Federal Regulations* in accordance with 39 CFR 20.1, and to associated changes to Notice 123, *Price List.*

The Postal Service will publish an appropriate update to Notice 123, *Price List* of the IMM, to reflect these changes following the completion of the notice and comment period for this proposed rule. The Postal Service annually

publishes an amendment to 39 CFR part 20 to finalize updates to the IMM.

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–07977 Filed 4–14–23; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1036, 1037, 1054, 1065, and 1074

[EPA–HQ–OAR–2022–0985; FRL–10827–01–OAR]

Public Hearing for Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a two-day virtual public hearing to be held May 2 and May 3, 2023, on its proposal titled ''Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3,'' which was signed by Administrator Regan on April 11, 2023. An additional session may be held on May 4, 2023, if necessary to accommodate the number of testifiers that sign up to testify. In its proposal, EPA is proposing to promulgate new Greenhouse Gas (GHG) standards for heavy-duty highway vehicles starting in model year (MY) 2028 through MY 2032 and to revise certain GHG standards for MY 2027 that were established previously under EPA's Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 rule. Finally, as part of this action, EPA is proposing to revise its regulations addressing preemption of state regulation of locomotives.

DATES: EPA will hold a virtual public hearing on May 2 and May 3, 2023. An additional session may be held on May 4, 2023, if necessary to accommodate the number of testifiers that sign-up to testify. Please refer to the **SUPPLEMENTARY INFORMATION** section of this document for additional information on the proposal, the public hearing, and registration. See EPA's heavy-duty GHG website at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-greenhouse-gas-emissions-standards-heavy* for any updates to the scheduled hearing as EPA does not intend to publish a document in the **Federal Register** announcing updates.

ADDRESSES: The virtual public hearing will be held on May 2 and May 3, 2023. All hearing attendees (including those who do not intend to provide testimony) should notify EPA of their intent to attend or speak at the hearing by preregistering by April 26, 2023, preferably by email to *EPA-HD-Hearings@epa.gov,* or by contacting the contact person listed under **FOR FURTHER INFORMATION CONTACT** below. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Amy Kopin, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4173; email address: *EPA-HD-Hearings@epa.gov*.

SUPPLEMENTARY INFORMATION: Under its Clean Air Act section 202 authority, EPA is proposing new, more stringent GHG emissions standards for heavy-duty vehicles. Specifically, EPA is proposing new GHG standards for heavy-duty highway vehicles starting in MY 2028 through MY 2032 and to revise certain GHG standards for MY 2027 that were established previously under EPA's Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 rule (''HD GHG Phase 2''). EPA is also proposing to update discrete elements of the Averaging Banking and Trading program, including a proposal to eliminate the last model year of the HD GHG Phase 2 advanced technology incentive program for certain types of electric highway heavy-duty vehicles. EPA is proposing to add warranty requirements for batteries and other components of zero-emission vehicles and to require customer-facing battery state-of-health monitors for plug-in hybrid and battery electric vehicles. EPA is also proposing additional revisions and clarifying and editorial amendments to certain highway heavy-duty vehicle provisions of 40 CFR part 1037 and certain test procedures for heavy-duty engines in 40 CFR parts 1036 and 1065. Finally, as part of this action, EPA is proposing to revise its regulations addressing preemption of state regulation of locomotives.

The ''Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3'' proposed rule was signed on April 11, 2023 and will be published in the **Federal Register**. The pre-publication version is available at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-greenhouse-gas-emissions-standards-heavy*.

EPA is hosting a separate hearing for the ''Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles'' (LMDV) proposed rule that was signed on April 11, 2023. For more information on the LMDV rule and how to attend the LMDV hearing visit the light-duty vehicle GHG rule website at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-multi-pollutant-emissions-standards-model*.

Participation in Virtual Public Hearing

To register to speak at the virtual hearing or attend the hearing (including those who do not intend to provide testimony) please notify EPA by April 26, 2023, preferably by email to *EPA-HD-Hearings@epa.gov,* or by contacting the contact person listed under **FOR FURTHER INFORMATION CONTACT**. While preregistration by April 26, 2023, is preferred, registration will be open through the last day of the hearing. However, we request that you register by April 26, 2023, if you are requesting special accommodations and describe your needs. To the extent possible, EPA will work to accommodate requests to register or testify received after April 26, 2023, although EPA may not be able to arrange special accommodations without advanced notice. Instructions and a link to join the hearing will be provided via email to all participants that register.

Each speaker will have a maximum of three minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. EPA recommends submitting the text of your oral comments as written comments to the rulemaking docket for this action (Docket ID EPA–HQ–OAR–2022–0985); please clearly mark your submittal as hearing testimony. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

The testimony provided will be transcribed and included as a part of the record in the docket for this rulemaking. Additional written comments may be submitted to the rulemaking docket, which may be accessed via *www.regulations.gov*. Do not include, either in testimony or written comments submitted directly to the docket, any information you consider to be sensitive information, including but not limited to Confidential Business Information

(CBI)/Proprietary Business Information (PBI), medical information about someone other than yourself, or any information whose disclosure is restricted by an applicable authority. Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about how to submit sensitive information such as CBI/PBI, or multimedia submissions; and general guidance on making effective comments.

Please note that any updates made to any aspect of the hearing logistics, including a potential additional session on May 4, 2023, will be posted online at the heavy-duty vehicle GHG rule website (*https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-greenhouse-gas-emissions-standards-heavy*). While EPA expects the hearing to go forward as set forth above, please monitor our website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

EPA will provide participants with the option to enable live closed captioning services and if requested, Spanish interpretation during the hearing. If you are requesting special accommodations, please pre-register for the hearing and describe your needs by April 26, 2023. EPA may not be able to arrange accommodations without advanced notice.

How can I get copies of the proposed action and other related information?

EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0985. EPA has also developed a website for this proposal, which is available at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-greenhouse-gas-emissions-standards-heavy*. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

William Charmley,

Director, Assessment and Standards Division, Office of Transportation and Air Quality.

[FR Doc. 2023–07964 Filed 4–14–23; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 88, No. 73
Monday, April 17, 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–2021–0081]

Deregulation of Chrysanthemum White Rust and the Importation of Chrysanthemum spp. Cuttings, and In Vitro Plantlets, and Synonymous Genera From Certain Countries Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared an economic evaluation (EE) relative to deregulating chrysanthemum white rust (CWR) fungus as a quarantine pest. Based on the conclusions of this EE, we are proposing that CWR would no longer be subject to eradication if detected domestically. Additionally, we have prepared a pest risk analysis regarding the importation of *Chrysanthemum* spp. and synonymous genera cuttings and *in vitro* plantlets under a systems approach from Belgium, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Ethiopia, Germany, Guatemala, Kenya, Mexico, the Netherlands, Nicaragua, Panama, Spain, Tanzania, Tunisia, Uganda, the United Kingdom, and Vietnam, which are all CWR-affected countries, into the continental United States. We have also prepared a pest risk analysis regarding the importation of cuttings, *in vitro* plantlets, and plants with roots of the same *Chrysanthemum* spp. and synonymous genera from Canada under a separate protocol. We are making the EE and the pest risk analyses available for review and comment.

DATES: We will consider all comments that we receive on or before June 16, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and enter APHIS–2021–0081 in the Search field.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0081, 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 *http://www.regulations.gov* by entering APHIS–2021–0081 in the Search field, 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: Ms. Indira Singh, Senior Regulatory Policy Specialist, PPQ, APHIS, USDA, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; phone: (301) 851–2020; email: *Indira.Singh@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Chrysanthemum white rust (CWR) is a fungal disease caused by the basidiomycete *Puccinia horiana,* Henn. The Animal and Plant Health Inspection Service (APHIS) currently considers CWR a quarantine pest.[1] Under international standards, a quarantine pest is defined as a pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.'' [2]

Because CWR is currently considered a quarantine pest, APHIS' policy [3] provides that any CWR detection domestically triggers an eradication protocol requiring complete destruction of symptomatic plants and those nearby. The policy also requires fungicidal treatments be applied to asymptomatic plants. Affected growers or entities bear the CWR eradication expense.

APHIS has also placed regulatory restrictions and prohibitions on the importation of host material for CWR in order to prevent its introduction into the United States through such importation. The regulations in 7 CFR 319.37–1 through 319.37–23 govern the importation of plants for planting into the United States. Section 319.37–4 of the regulations provides that certain taxa of plants for planting are not authorized for importation into the United States pending pest risk analysis (NAPPRA) to prevent the introduction of quarantine pests into the United States.

Currently, *Chrysanthemum* spp. and synonymous genera (*Archanthemis marschalliana, Argyranthemum* spp., *Brachanthemum fruticulosum, Coleostephus multicaulis, C. myconis, Dendranthema spp., Glebionis spp., Heteranthemis spp., Hulteniella integrifolia, Leucanthemella spp., Leucanthemopsis spp., Leucanthemum* spp., *Mauranthemum paludosum, Nipponanthemum nipponicum, Nivellea nivellei, Opisthopappus taihangensis, Pentzia incana, Plagius* spp., *Rhodanthemum* spp., *Tanacetum* spp., *Tripleurospermum* spp., and *Xylanthemum* spp.) cuttings and *in vitro* plantlets from Belgium, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Ethiopia, Germany, Guatemala, Kenya, Mexico, the Netherlands, Nicaragua, Panama, Spain, Tanzania, Tunisia, Uganda, the United Kingdom, and Vietnam are NAPPRA. They were added to the NAPPRA list due to the risk that such importation may pose of introducing CWR. Additionally, cuttings, *in vitro* plantlets, and plants with roots of the same genera from Canada are also currently NAPPRA due to CWR.

Paragraph (e) of § 319.37–4 describes the process for removing taxa from the NAPPRA list. After receiving a request to remove taxa from the NAPPRA list, APHIS will conduct a pest risk analysis (PRA) in response to such a request and make the PRA available for public review and comment. Following the close of the comment period, we will review all comments received and

[1] See, *e.g.,* Chapter 6 of the Plants for Planting Manual, which indicates that Chrysanthemum spp. are not authorized pending pest risk analysis, or NAPPRA, from countries in which CWR is known to exist due to CWR risk. To access the manual, go to: *https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf.*

[2] See International Standards for Phytosanitary Measures No. 5, ''Glossary of Phytosanitary Terms'' found at *https://www.fao.org/3/mc891e/mc891e.pdf.*

[3] See *https://www.aphis.usda.gov/plant_health/plant_pest_info/cwr/downloads/cwrplan.pdf.*

announce our decision regarding the request in a subsequent notice.

In accordance with this process, the 20 countries referenced above submitted a request to remove *Chrysanthemum* spp. and synonymous genera cuttings and *in vitro* plantlets from NAPPRA, and we prepared a pest list regarding the quarantine pests that could follow the pathway on the importation of these commodities into the continental United States. Likewise, the national plant protection organization of Canada made a similar request with regard to the importation of cuttings, *in vitro* plantlets, and plants with roots of these genera, and again, we prepared a pest list regarding such importation. However, because CWR was among the quarantine pests on these pest lists, based on longstanding APHIS policy, we were not able to take further action at the time.

This notice announces that we have reevaluated that policy. Since CWR was first discovered in the United States in 1977, detections that reappeared several times were believed eradicated. This belief, along with our assumption that the economic consequences of CWR establishment outweighed the costs of control, undergirded our determination that CWR was of quarantine significance.

Evolving biological research has indicated, however, that CWR can be systemic and survive in below-ground parts. Accordingly, APHIS has undertaken an economic evaluation (EE) that analyzes CWR's regulatory status in light of this evolving biological research. The EE concludes that the U.S. eradication policy for CWR appears to be no longer technically and economically justified and recommends that it no longer be considered of quarantine significance.

Based on the recommendations of the EE, we are proposing to change APHIS policy so that CWR would no longer be considered of quarantine significance if detected domestically or on imported plants for planting.

Based on the conclusions of the EE and the pest lists, we have developed a commodity import evaluation document (CIED) that recommends a systems approach to mitigate the quarantine pest risk associated with the importation of *Chrysanthemum* spp. and synonymous genera (*Archanthemis marschalliana, Argyranthemum* spp., *Brachanthemum fruticulosum, Coleostephus multicaulis, C. myconis, Dendranthema* spp., *Glebionis* spp., *Heteranthemis* spp., *Hulteniella integrifolia, Leucanthemella* spp., *Leucanthemopsis* spp., *Leucanthemum* spp., *Mauranthemum paludosum, Nipponanthemum nipponicum, Nivellea nivellei, Opisthopappus taihangensis, Pentzia incana, Plagius* spp., *Rhodanthemum* spp., *Tanacetum* spp., *Tripleurospermum* spp., and *Xylanthemum* spp.) cuttings and *in vitro* plantlets from Belgium, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Ethiopia, Germany, Guatemala, Kenya, Mexico, the Netherlands, Nicaragua, Panama, Spain, Tanzania, Tunisia, Uganda, the United Kingdom, and Vietnam. The CIED also proposes a systems approach to mitigate the quarantine pest risk associated with the importation of cuttings, *in vitro* plantlets, and plants with roots of these genera from Canada.

In accordance with paragraph (e) of § 319.37–4, we are announcing the availability of our pest lists, CIED, and EE for public review and comment. These documents may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of these documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments that we receive, we will announce our decision regarding whether to no longer consider CWR a quarantine pest domestically and for purposes of our plants for planting regulations. If we determine that it should no longer be considered of quarantine significance, we will also announce our decision regarding the importation of *Chrysanthemum* spp. and synonymous genera (*Archanthemis marschalliana, Argyranthemum* spp., *Brachanthemum fruticulosum, Coleostephus multicaulis, C. myconis, Dendranthema* spp., *Glebionis* spp., *Heteranthemis* spp., *Hulteniella integrifolia, Leucanthemella* spp., *Leucanthemopsis* spp., *Leucanthemum* spp., *Mauranthemum paludosum, Nipponanthemum nipponicum, Nivellea nivellei, Opisthopappus taihangensis, Pentzia incana, Plagius* spp., *Rhodanthemum* spp., *Tanacetum* spp., *Tripleurospermum* spp., and *Xylanthemum* spp.) cuttings and *in vitro* plantlets from Belgium, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Ethiopia, Germany, Guatemala, Kenya, Mexico, the Netherlands, Nicaragua, Panama, Spain, Tanzania, Tunisia, Uganda, the United Kingdom, and Vietnam into the continental United States, and the importation of cuttings, *in vitro* plantlets and plants with roots for planting of *Chrysanthemum* spp. and the specified synonymous genera from Canada under a systems approach in a subsequent notice.

If finalized, the requirements of the systems approach will be added to the Plants for Planting Manual in accordance with paragraph (a) of § 319.37–20.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of April 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–07895 Filed 4–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0013]

General Conference Committee of the National Poultry Improvement Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to renew charter.

SUMMARY: In accordance with the Federal Advisory Committee Act, United States Department of Agriculture's (USDA) gives notice of the Secretary of Agriculture's intent to renew the charter for the General Conference Committee of the National Poultry Improvement Plan (Committee) for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Elena Behnke, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922–3496; *Elena.Behnke@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The General Conference Committee of the National Poultry Improvement Plan was established in 1971. The committee is governed in accordance with the Federal Advisory Committee Act (FACA) and the regulations of title 9, Code of Federal Regulations (9 CFR), section 147.43. The duties of the committee involve assisting the Department in planning, organizing, and conducting the National Poultry Improvement Plan (NPIP) Biennial Conference. Between Plan Conferences,

the committee represents the cooperating States in:

- Advising the Department on administrative procedures and interpretations of the Plan provisions contained in 9 CFR.
- Helping the Department evaluate comments on proposed Plan amendments.
- Recommending to the Secretary any changes in Plan provisions when postponement until the next Plan Conference would seriously impair program operations.
- Serving as a forum for the study of poultry health problems.

The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health. The committee meets at least annually. In the even years, the committee meets in conjunction with the NPIP Biennial Conference. The NPIP Biennial Conference is the only national meeting where the industry, State and Federal government consider poultry health issues on a routine basis. The committee members are elected at the NPIP Biennial conference by State delegates from their respective regions. There are seven members with a 4-year staggered term. The poultry industry elects the members of the Committee. The members represent six geographic areas with one member-at-large. The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members.

Dated: April 11, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–07954 Filed 4–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Mark Twain National Forest, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and/or virtual meeting will be held on June 27, 2023, 1:00 p.m.–4:00 p.m., Central Daylight Time (CDT).

Written and Oral Comments: Anyone wishing to provide in-person and/or virtual oral comments must pre-register by 4:30 p.m. CDT on June 19, 2023. Written public comments will be accepted by 4:30 p.m. CDT on June 19, 2023. Comments submitted after this date will be provided to the Agency, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person and virtually at the Mark Twain National Forest Supervisor's Office, located at 401 Fairgrounds Road, Rolla, Missouri 65401. The public may also join virtually via webcast, teleconference, videoconference, and/or Homeland Security Information Network (HSIN) virtual meeting at: *https://origin-fs.fs.usda.gov/main/mtnf/workingtogether/advisorycommittees.* For RAC information and meeting details, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *kimberly.houf@usda.gov or* via mail (*i.e.,* postmarked) to Kimberly Houf, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 4:30 p.m. CDT on June 19, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *kimberly.houf@usda.gov* or via mail (*i.e.,* postmarked) to Kimberly Houf, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401.

FOR FURTHER INFORMATION CONTACT: Michael Crump, Designated Federal Officer (DFO), by phone at 573–341–7413 or email at *michael.crump@usda.gov* or Kimberly Houf, RAC Coordinator, at 573–261–9714 or email at *kimberly.houf@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Forest representatives on recreation fee change proposals;
2. Discussion and Q&A;
3. RAC-made recommendations on fee changes; and
4. Approve meeting minutes.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring 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 or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee

have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: April 11, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–07956 Filed 4–14–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Arizona Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Southern Arizona Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Coronado National Forest within Pima, Pinal, Maricopa, Santa Cruz, and Cochise Counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: A virtual meeting will be held on May 25, 2023, 9–11 a.m. Mountain Standard Time (MST).

Written and Oral Comments: Anyone wishing to provide virtual oral comments must pre-register by 5 p.m. MST on May 19, 2023. Written public comments will be accepted by 5 p.m. MST on May 19, 2023. Comments submitted after this date will be provided to the Agency, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held virtually. The public may also join virtually via the Teams app or the internet (*https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2U0NjVhZTMtMzkwNi00MDZhLWJkNzItZjk2MTliYzE1ZWUw%40thread.v2/0?context=%7b%22Tid%22%3a%22ed5b36e7-01ee-4ebc-867e-e03cfa0d4697%22%2c%22Oid%22%3a%22ed632e13-c6bb-45ec-b137-84a7ceafe4ed%22%7d*) or call in at 202–650–0123 with conference ID 636116642#. RAC information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/coronado/workingtogether/advisorycommittees or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *dana.backer@usda.gov or* via mail (*i.e.,* postmarked) to Dana Backer, 300 W Congress Blvd., Tucson, AZ 85701. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 5:00 p.m. MST on May 19, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *dana.backer@usda.gov* or via mail (*i.e.,* postmarked) to Dana Backer, 300 W Congress Blvd., Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Kerwin Dewberry, Designated Federal Officer (DFO), by phone at 520–388–8300 or email at *kerwin.dewberry@usda.gov* or Dana Backer, RAC Coordinator at 520–388–8424 or email at *dana.backer@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review recommendations for Canelo Hills Recreation fee proposal;
2. Discuss the utilization of Secure Rural Schools funds from 2021 and 2022;
3. Elect a Chairperson; and
4. Approve meeting minutes.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring 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 or call USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: April 11, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–08076 Filed 4–14–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Delaware Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission

on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Delaware Advisory Committee to the Commission will hold virtual meetings on the first Wednesday of each month beginning at 1:00 p.m. and ending at approximately 2:00 p.m. ET (may end sooner than 2:00 p.m. if business concludes) as follows: May 3, June 7, July 3, August 2 and September 6, 2023. The purpose of the meetings is to continue discussions on reviewing and voting to approve the Committee's report on COVID 19 health disparities and people of color in Delaware.

DATES: 1st Wednesday of the month at 1:00 p.m. ET: 5/3/23, 6/7/23, 7/5/23, 8/2/23, and 9/6/23.

Meeting Link (Audio/Visual): https://tinyurl.com/2sstbf6v; password: USCCR–DE.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 160 832 3278#.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 1–202–530–8468.

SUPPLEMENTARY INFORMATION: Members of the public may attend these Committee meetings through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make brief statements as time allows. Per the Federal Advisory Committee Act, public minutes of the meetings will include a list of persons who attend the meetings. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Evelyn Bohor, *ebohor@usccr.gov*, at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following each meeting. Written comments may be emailed to the attention of Ivy Davis at *ero@usccr.gov.* Persons who desire additional information may contact Evelyn Bohor at *ebohor@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Delaware Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact Evelyn Bohor at *ebohor@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Project Planning, Report Discussion, and Potential Report Vote
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Dated: April 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08036 Filed 4–14–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold various virtual briefings via ZoomGov platform on the dates and times listed below. The purpose of these briefings is to gather testimony on physical accessiability in the state of Washington.

DATES: These meetings will take place on:

- Monday, June 26, 2023, from 12:00 p.m.–2:00 p.m. PT
- Tuesday, June 27, 2023, from 10:00 a.m.–12:00 p.m. PT
- Tuesday, June 27, 2023, from 2:00 p.m.–4:00 p.m. PT

Zoom Registertion Link For All Three Briefings:

https://www.zoomgov.com/meeting/register/vJItduygpzgvHTPizdMONsSBk2ic6s4Xovc.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, DFO, at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf or hard of hearing. To request additional accommodations, please email *bpeery@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Opening Remarks
II. Panelists Remarks
III. Committee Q&A
IV. Public Comment
V. Adjournment

Dated: April 11, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–07967 Filed 4–14–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Government in Sunshine Act (5 U.S.C.

552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of April.

DATES: Friday, April 21, 2023, 12 p.m. EST.

ADDRESSES: Meeting to take place virtually and is open to the public via livestream on the Commission's YouTube page: *https://www.youtube.com/user/USCCR/videos.*

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202–376–8371; *publicaffairs@usccr.gov*.

SUPPLEMENTARY INFORMATION: This business meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 21, 2023, is *https://www.streamtext.net/player?event=USCCR.* Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda
II. Business Meeting
  A. Discussion and Vote on Presidential Designation of Commissioner Rochelle Mercedes Garza as Chairperson and Victoria Frances Nourse as Vice Chair of the U.S. Commission on Civil Rights
  B. Discussion and vote on Changing Friday, May 19th USCCR Business Meeting to Thursday May 18th
  C. Management and Operations
  • Staff Director's Report
III. Adjourn Meeting

Dated: April 13, 2023.

Angelia Rorison,

USCCR Media and Communications Director.

[FR Doc. 2023–08180 Filed 4–13–23; 4:15 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of virtual business meeting.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a virtual business meeting of the Guam Advisory Committee. The meeting scheduled for Tuesday, April 18, 2023, at 9:00 a.m. (ChST) is cancelled. The notice is in the **Federal Register** of Monday, March 27, 2023, in FR Doc. 2023–06298 in the first and second columns of page 18114.

FOR FURTHER INFORMATION CONTACT: Liliana Schiller, *lschiller@usccr.gov,* (202) 770–1856.

Dated: April 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08039 Filed 4–14–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold various virtual business meetings via ZoomGov platform on the dates and times listed below. The purpose of these meetings is for the Committee to plan for upcoming panels on physical accessiability.

DATES: These meetings will take place on:

• Monday, May 8, 2023, from 11:00 a.m.–12:00 p.m. PT
• Tuesday, June 13, 2023, from 11:00 a.m.–12:00 p.m. PT

May 8th ZOOM Registration Link: https://www.zoomgov.com/meeting/register/vJIsce2uqzIjGC9uZeD0atDY5h2i8tIoEyE

June 13th ZOOM Registration Link: https://www.zoomgov.com/meeting/register/vJItcemhqDwpG10Xx84nOEpwS45GUyaT5nw

FOR FURTHER INFORMATION CONTACT: Brooke Peery, DFO, at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf or hard of hearing. To request additional accommodations, please email *bpeery@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: April 11, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–07968 Filed 4–14–23; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2022]

Foreign-Trade Zone (FTZ) 75; Authorization of Production Activity; TSMC Arizona Corporation; (Semiconductor Wafers); Phoenix, Arizona

On December 13, 2022, TSMC Arizona Corporation submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 75O, in Phoenix, Arizona.

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 79856, December 28, 2022). On April 12, 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: April 12, 2023.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2023–08065 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–61–2022]

Foreign-Trade Zone (FTZ) 61; Authorization of Production Activity; Boehringer Ingelheim Animal Health Puerto Rico LLC; (Pharmaceutical Products/Canine); Barceloneta, Puerto Rico

On December 13, 2022, Boehringer Ingelheim Animal Health Puerto Rico LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 61AC in Barceloneta, Puerto Rico.

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 78045, December 21, 2022). On April 12, 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: April 12, 2023.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2023–08064 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Final Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa) had no shipments of polyethylene retail carrier bags (PRCBs) from the People's Republic of China (China) to the United States during the period of review (POR), August 1, 2021, through July 31, 2022.

DATES: Applicable April 17, 2023.

FOR FURTHER INFORMATION CONTACT: Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2023, Commerce published the preliminary results of the 2021–2022 administrative review of the antidumping duty order on PRCBs from China.[1] We invited parties to comment on the *Preliminary Results*.[2] No party submitted comments or requested that Commerce hold a hearing. Commerce conducted this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The products covered by the *Order* are PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the *Order* excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of this *Order.* Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this *Order* is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that Nozawa had no shipments of subject merchandise during the POR.[4] We received no comments from interested parties with respect to this claim. Therefore, because we have not received any information to contradict our preliminary no-shipments determination, or any comment in opposition to our preliminary finding, Commerce continues to find that Nozawa had no shipments during the POR.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[5] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the China-wide entity rate (*i.e.,* 77.57 percent) [6] is not subject to change as a result of this review.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, Commerce did not calculate a weighted-average dumping margin for Nozawa, the sole mandatory

[1] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Determination of No Shipments and Rescission of Review in Part; 2021–2022,* 88 FR 10090 (February 16, 2023) (*Preliminary Results*).

[2] *Id.*

[3] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China,* 69 FR 48201 (August 9, 2004) (*Order*).

[4] *See Preliminary Results,* 88 FR at 10090–10091.

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] *See Order,* 69 FR at 48203.

respondent remaining in this review,[7] or for the China-wide entity. Therefore, there are no calculations to disclose for these final results.

Assessment Rates

Because we have determined that Nozawa had no shipments of subject merchandise in this review, Commerce will instruct U.S. Customs and Border Protection (CBP) to liquidate any suspended entries that entered under Nozawa's case number at the China-wide entity rate (*i.e.,* 77.57 percent).[8]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PRCBs from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 77.57 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter (or, if unidentified, that of the China-wide entity). These cash deposit requirements, when imposed, shall remain in effect until further notice.

[7] Commerce rescinded the review in part with respect to Crown Polyethylene Products (International) Ltd., the only other mandatory respondent subject to this review. *See Preliminary Results.*

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(1) and 19 CFR 351.221(b)(5).

Dated: April 11, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–08028 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 230302–0062]

RIN 0693–XC126

National Cybersecurity Center of Excellence Mitigating Cybersecurity Risk in Telehealth Smart Home Integration

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide letters of interest describing products and technical expertise to support and demonstrate security platforms for the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project. Participation in the project is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than May 17, 2023.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *hit_nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Interested parties can access the letter of interest template by visiting *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration* and completing the letter of interest webform. NIST will announce the completion of the selection of participants and inform the public that it will no longer accept letters of interest for this project at *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration*. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign an NCCoE consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at *https://nccoe.nist.gov/library/nccoe-consortium-crada-example*.

FOR FURTHER INFORMATION CONTACT: Ronald Pulivarti via email to *hit_nccoe@nist.gov;* or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project are available at *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration*.

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity and privacy tools and technologies. The NCCoE brings together experts from industry, government, and academia

under one roof to develop practical, interoperable cybersecurity and privacy approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity and privacy products and services.

Process: NIST is soliciting responses from all sources of relevant security and privacy capabilities (see below) to enter into an NCCoE Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project. The full project can be viewed at: *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration*.

Interested parties can access the template for a letter of interest by visiting the project website at *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration* and completing the letter of interest webform. On completion of the webform, interested parties will receive a letter of interest template, which the party must complete, certify as accurate, and submit to NIST by email or hardcopy. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the project objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or desired requirements listed below, up to the number of participants in each category necessary to carry out this project. Once the project participant selection process is complete, NIST will post a notice on the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project website at *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration* announcing the completion of the project participant selection and informing the public that it is no longer accepting letters of interest for this project. There may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into an NCCoE consortium CRADA with NIST (for reference, see **ADDRESSES** section above).

Project Objective

The NCCoE will build an environment that will model patients' use of smart speakers in a telehealth ecosystem. The project's goal is to identify and mitigate cybersecurity and privacy risks associated with these ecosystems. The NCCoE environment will implement a ''four-domain'' ecosystem where solution components will be deployed in a patient's home, a cloud-hosted service provider, a health technology integration solution, and a healthcare delivery organization where each of these groupings represents a respective ''domain.'' This project will apply concepts established in the NIST Risk Management Framework, NIST Cybersecurity Framework, and the NIST Privacy Framework to identify both cybersecurity and privacy challenges affecting the ecosystem. This project will describe risk assessment methodologies and will apply cybersecurity and privacy controls to mitigate risks that may be found in the ecosystem. The project environment will use commercially available technology and capabilities that enable patient-centric use cases described in the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project description available at: *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration*. The project will result in a publicly available NIST Cybersecurity Practice Guide as a Special Publication 1800-series document that will describe an overview of the ecosystem, practical measures for health delivery organizations that include risk assessment approaches, mitigating control selection, reference architecture, and a detailed description on the lab environment construction.

Requirements for Letters of Interest: Each responding organization's letter of interest should identify which security and privacy platform component(s) or desired requirement(s) it is offering. Letters of interest should not include company proprietary information, and all components and desired requirements must be commercially available.

Components are listed in section 3 of the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project description at *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration*. Components will align with each of the four domains that constitute the modelled ecosystem: the patient home environment, a cloud-hosted service provider, a health technology integration solution, and a healthcare delivery organization. Components for the respective domains include, but are not limited to:

- *Patient Home Environment*

  - *Smart home devices:* Devices (*e.g.,* smart speakers) that have audio input and output capabilities. These devices are enabled to accept vocalized commands involving natural language processing, speech-to-text, and text-to-speech that allow the user to access internet-hosted resources.

  - *Personal firewall:* An application that controls network traffic to and from a computer, permitting or denying communications based on a security policy.

  - *Wireless access point router:* A device that performs the functions of a router and includes the ability for components to connect to the patient's network infrastructure, including having internet communications.

  - *Internet router:* A device that provides a demarcation point for broadband communications access (*e.g.,* cable, digital subscriber line [DSL], wireless, long-term-evolution [LTE], 5G) and presents an Ethernet interface to allow internet access via the broadband infrastructure. It may include wireless access point functionality or may allow for wireless access point routers to route network traffic through the internet router.

- *Cloud-Hosted Service Provider*

  - *Voice assist platform:* An environment that allows the cloud-hosted service provider and other organizations to develop applications that operate with smart home devices such as smart speakers. The voice assist platform enables applications by providing a natural language processing feature.

  - *Cloud platform:* A hosting environment where voice-enabled applications may be hosted and made available for patients to interact with health information systems.

- *Health Technology Integration Solution*

  - *Telehealth integration applications:* Code and applications that enable patient-driven functionality to interface with clinical systems. These should provide application logic that meets prevailing regulatory compliance requirements.

- *Healthcare Delivery Organization*
  - *Electronic health record (EHR) system:* A system that includes patient health history information.
  - *Patient portal:* A patient-facing application that allows the patient to retrieve their medical history information, schedule visitations, and request prescription refills.
  - *Network access control:* A capability or service that discovers and accurately identifies devices connected to wired networks, wireless networks, and Virtual Private Networks (VPNs) and provides network access controls to ensure that only authorized individuals with authorized devices can access the systems and data that the access policy permits.
  - *Network firewall:* A network security device that monitors and controls incoming and outgoing network traffic, based on defined security rules.
  - *VPN:* A secure endpoint access solution that delivers secure remote access through virtual private networking.

Each responding organization's letter of interest should identify how their products address one or more of the following desired requirements in section 3 of the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project description at *https://www.nccoe.nist.gov/healthcare/mitigating-cybersecurity-risk-telehealth-smart-home-integration.* The NCCoE intends to apply both the NIST Cybersecurity Framework and the NIST Privacy Framework. Both Frameworks apply a Function-Category-Subcategory paradigm. In this project, the NCCoE will use the Function and Category level concepts from both Frameworks to identify cybersecurity and privacy risk mitigation approaches. The NCCoE applies the Function and Category labelling found in both Frameworks. The Cybersecurity Framework labels Functions with a two-character identifier (*e.g.,* the Function ''Identify'' is indicated by ''ID''). Categories are labelled with the two-character identifier for the Function followed by a dot and a corresponding two-character identifier for the Category (*e.g.,* the Category ''Asset Management'' within the Function ''Identify'' is indicated by ''ID.AM''). Functions and Categories derived from the NIST Privacy Framework follow the same labelling conventions as those in the Cybersecurity Framework, except that ''-P'' is added to the character identifiers (*e.g.,* the Function ''Identify'' is indicated by ''ID–P'', and the Category ''Inventory and Mapping'' within the Function ''Identify'' is indicated by ''ID.IM–P'').

Below are the desired requirements for this project; numbered items represent the Functions by which the NCCoE will examine this project, and the sub-bulleted points represent the corresponding Categories. The NCCoE will leverage these Functions and Categories in identifying cybersecurity and privacy risks and the corresponding risk mitigation approaches. All descriptions are specific to this project.

1. *IDENTIFY (ID and ID–P):* Organizations should ensure that they are aware of actors, components, integrating systems, and processes that are within or affect the environment. When examining a system, organizations should consider an enterprise view of the system's business value, drivers, outputs, and impact.
   - *Risk Assessment (ID.RA; ID.RA–P):* In context of this project, risk assessment activities examine a holistic reference architecture. Activities include assessing cybersecurity threats, vulnerabilities, problematic data actions, and both cybersecurity and privacy risks.

2. *CONTROL (CT–P):* These activities enable organizations or individuals to manage data with sufficient granularity to manage privacy risks.
   - *Data Processing Management (CT.DM–P):* Data processing uses standardized formats to increase manageability and effectively manage privacy risk.
   - *Disassociated Processing (CT.DP–P):* Data processing solutions permit selective collection or disclosure of data elements.

3. *COMMUNICATE (CM–P):* These activities enable organizations to convey design and build solution components to support predictability in data processing.
   - *Data Processing Awareness (CM.AW–P):* promotes a reliable understanding of data processes and privacy risks for both organizations and individuals that:
     - allows the patient visibility into how their data are processed and by which parties; and
     - enables traceability so that organizations and individuals understand where data originates and travels in the data processing ecosystem and information lifecycle.

4. *PROTECT (PR and PR–P):* These activities support the ability to develop and implement appropriate safeguards based on risk.
   - *Identity Management, Authentication, and Access Control (PR.AC; PR.AC–P):* includes user account management and remote access that:
     - implements controls that limit access to information systems, devices, and data only to authorized individuals, processes, and devices;
     - controls and audits accounts, *e.g.,* administering and monitoring users, processes, and devices;
     - controls (and audits) access by external accounts and devices;
     - enforces least privilege for all (internal and external) accounts; and
     - enforces least functionality.
   - *Data Security (PR.DS; PR.DS–P):* includes data confidentiality, integrity, and availability assurance, as well as protecting individuals' privacy by:
     - securing data-at-rest and data-in-transit, *i.e.,* communications between the smart home device and clinical systems should include data and hardware integrity and protections against unauthorized access and data leaks;
     - validating that cryptographic modules meet appropriate standards such as NIST Federal Information Processing Standards (FIPS) 140–2;
     - configuring systems to provide only essential functions; and
     - protecting communication and control networks.

5. *DETECT (DE):* These activities enable timely discovery of a cybersecurity event.
   - *Anomalies and Events (DE.AE):* this category ensures that the control environment establishes a baseline of expected behavior, monitors for unusual activity, and alerts appropriate individuals for event management.

In their letters of interest, responding organizations need to acknowledge the importance of and commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security and privacy platform components.

2. Support for development and demonstration of *the Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project for the healthcare sector in NCCoE facilities, which will be conducted in a manner consistent with the following standards and guidance: NISTIR 8228, NIST FIPS 140–3, NIST SP 800–41 Revision 1, NIST SP 800–52 Revision 2, NIST SP 800–57 Part 1 Revision 5, NIST SP 800–77 Revision 1, NIST SP 800–95, NIST SP 800–121, NIST SP 800–144, NIST SP 800–146, and NIST SP 1800–1.

Additional details about the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project are available at: *https://www.nccoe.nist.gov/healthcare/*

mitigating-cybersecurity-risk-telehealth-smart-home-integration.

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the NCCoE consortium CRADA in the development of the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security and privacy platform and its performance characteristics sufficient to permit other organizations to develop and deploy security and privacy platforms that meet the security and privacy objectives of the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project. These descriptions will be public information.

Under the terms of the NCCoE consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security and privacy platform documentation, and demonstration activities.

The dates of the project demonstration of the *Mitigating Cybersecurity Risk in Telehealth Smart Home Integration* project capability will be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/*. The expected outcome of the demonstration is to provide guidance on smart home device integration with healthcare information systems. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *https://nccoe.nist.gov/*.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–08079 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC923]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Hubard (Permit No. 26593), Jennifer Skidmore (Permit Nos. 21419, 26689, 26716, and 27102), Shasta McClenahan, Ph.D. (Permit Nos. 26622 and 27049), Amy Hapeman (Permit No. 22156–03), and Courtney Smith, Ph.D. (Permit No. 21059); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *https://www.federalregister.gov* and search on the permit number provided in table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
21059–01	0648–XF378	Philip N. Hooge, Ph.D., Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, AK 99826.	83 FR 17655, April 23, 2018	March 29, 2023.
21419–01	0648–XG029	Shannon Atkinson, Ph.D., University of Alaska Fairbanks, 17101 Point Lena Loop Road, Juneau, AK 99801.	83 FR 21765, May 10, 2018	March 8, 2023.
22156–03	0648–XC712	Douglas Nowacek, Ph.D., Nicholas School of the Environment, Duke University Marine Laboratory, 135 Duke Marine Lab Road, Beaufort, NC 28516.	88 FR 4156, January 24, 2023 ...	March 15, 2023.
26593	0648–XC409	Adam A. Pack, Ph.D., University of Hawaii at Hilo, 200 West Kawili Street, Hilo, HI 96720.	87 FR 59063, September 29, 2022.	March 13, 2023.
26622	0648–XC250	Randall Wells, Ph.D., Chicago Zoological Society's Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236.	87 FR 48157, August 8, 2022	March 9, 2023.
26689	0648–XC425	Elsie Sunderland, Ph.D., Harvard University, 29 Oxford Street, Pierce Hall No. 127, Cambridge, MA 02138.	87 FR 60125, October 4, 2022 ...	March 30, 2023.
26716	0648–XC455	Kathleen Hunt, Ph.D., George Mason University, Department of Biology, 8936 Center Street, Manassas, VA 20110.	87 FR 66162, November 2, 2022	March 31, 2023.
27049	0648–XC753	Cristy Rocio Gonzalez Barrientos, D.V.M., Texas A&M University, 2711 Wilderness Drive North, College Station, TX 77845.	88 FR 9254, February 13, 2023	March 28, 2023.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS—Continued

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
27102	0648–XC721	Institute for Marine Sciences, 115 McAllister Way, Ocean Health Building, Santa Cruz, CA 95060 (Responsible Party: Logan Pallin, Ph.D.).	88 FR 7688, February 6, 2023 ...	March 27, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: April 12, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–08031 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC910]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public hybrid (in person/virtual) meetings.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold public hybrid meetings to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION.**

DATES: The SSC public hybrid meetings will be held on Wednesday, May 3, 2023, from 9 a.m. to 5 p.m. (AST), May 4, 2023, from 9 a.m. to 5 p.m. (AST), and Friday, May 5, 2023, from 9 a.m. to 12 p.m. (AST).

ADDRESSES: The meetings will be held at the Courtyard by Marriott Isla Verde Resort, 7012 Boca de Cangrejos Avenue, Carolina, Puerto Rico 00979.

You may join the SSC public hybrid meetings via Zoom by entering the following address: *https://us02web.zoom.us/j/82869224079?pwd=VU43dFFTelRwVGFEUGh1dmp4Y2YzZz09.*

Meeting ID: 828 6922 4079.

Passcode: 481994.

One tap mobile

+12532158782,,82869224079#,,,,*481994# US (Tacoma)

+13017158592,,82869224079#,,,,*481994# US (Washington DC)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 USs

+1 309 205 3325 US

+1 929 205 6099 US (New York)

+1 253 205 0468 US

Meeting ID: 828 6922 4079.

Passcode: 481994.

Find your local number: https://us02web.zoom.us/u/kejhDuUaUC.

In case of problems with ZOOM please join the meetings via GoToMeeting:

Please join my meeting from your computer, tablet or smartphone. *https://meet.goto.com/991924029.*

You can also dial in using your phone.

(For supported devices, tap a one-touch number below to join instantly.)

United States: +1 (669) 224–3412.

-One-touch: tel: +16692243412,,991924029#.

Access Code: 991–924–029.

FOR FURTHER INFORMATION CONTACT: Liajay Rivera-García, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

May 3, 2023

9 a.m.–10:30 a.m.

—Roll Call

—Overview of SSC's Research Priorities Work to Date

10:30 a.m.–12 p.m.

—Research Priorities

12 p.m.–1 p.m.

—Lunch

1 p.m.–5 p.m.

—Continuation of Research Priorities

—Other Business

May 4, 2023

9 a.m.–10:30 a.m.

—Roll Call

—SEDAR 80 USVI Queen Triggerfish—Adyan Rios, SEFSC Caribbean Fisheries Branch

10:30 a.m.–10:45 a.m.

—Break

10:45 a.m.–12 p.m.

—Continuation on SEDAR 80 USVI Queen Triggerfish—Adyan Rios, SEFSC Caribbean Fisheries Branch

—Recommendations to CFMC

12 p.m.–1:30 p.m.

—Lunch

1:30 p.m.–2:30 p.m.

—Spiny Lobster Terms of Reference—Kevin McCarthy, SEFSC Caribbean Fisheries Branch

2:30 p.m.–2:40 p.m.

—Break

2:40 p.m.–3:40 p.m.

—SSC Recommendations to CFMC

3:40 p.m.–5 p.m.

—SEDAR 84 Volunteers

—SEDAR Research Priorities

—Other Business

May 5, 2023

9 a.m.–10:30 a.m.

—Roll Call

—Update on Research Priorities

10:30 a.m.–12 p.m.

—Finalize Research Priorities

—Other Business

12 p.m.

—Adjourn

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The SSC public hybrid meetings will begin on May 3, 2023, at 9 a.m. AST, and will end on May 5, 2023, at 12 noon, AST. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair. In addition, the meeting may be completed prior to the date established in this notice.

Special Accommodations

For any additional information on this public virtual meeting, please contact Liajay Rivera-Garcia, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 403–8337.

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

Dated: April 12, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08086 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC911]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of hybrid meetings.

SUMMARY: The Caribbean Fishery Management Council's (Council) Ecosystem-Based Fishery Management Technical Advisory Panel (EBFM TAP) will hold hybrid meetings to address the items on the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The EBFM TAP hybrid meetings will be held on Wednesday, May 3rd, 2023, from 9 a.m. to 5 p.m. (AST), May 4th, 2023, from 9 a.m. to 5 p.m. (AST), and Friday May 5th, 2023, from 9 a.m. to 12 p.m. (AST).

ADDRESSES: The meetings will be held at Courtyard Isla Verde Beach Resort, 7012 Boca de Cangrejos Avenue, Carolina, Puerto Rico.

The hybrid meetings can be joined as follows:

Join ZOOM EBFM TAP Meetings: https://us02web.zoom.us/j/89615647315?pwd=ODVMU0liUi9PekpEMnE2aE5aNFFBUT09.

Meeting ID: 896 1564 7315.

Passcode: 303561.

One tap mobile

+13602095623,,89615647315#,,,,*303561# US

+13863475053,,89615647315#,,,,*303561# US

Dial by your location

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 939 945 0244 Puerto Rico

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

Meeting ID: 896 1564 7315.

Passcode: 303561.

Find your local number: https://us02web.zoom.us/u/kejhDuUaUC.

In case of problems with ZOOM please join the hybrid meetings via GoToMeeting:

Please join my meeting from your computer, tablet or smartphone. *https://meet.goto.com/307547125.*

You can also dial in using your phone.

(For supported devices, tap a one-touch number below to join instantly.)

United States: +1 (571) 317–3116.

—*One-touch:* tel:+15713173116,,307547125#.

Access Code: 307–547–125.

More phone numbers: (For supported devices, tap a one-touch number below to join instantly.)

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or *inroomlink.goto.com.*

Meeting ID: 307 547 125.

Or dial directly: 307547125@67.217.95.2 or 67.217.95.2##307547125.

FOR FURTHER INFORMATION CONTACT: Liajay Rivera-García, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

May 3, 2023

9 a.m.–10 a.m.

—Roll Call

—Overview FEP Development

—Other Themes for Discussion

10 a.m.–10:10 a.m.

—Break

10:10 a.m.–12 p.m.

—Stakeholder Perceptions of Environmental and Climate Change in the USVI—Tarsila Seara

12 p.m.–1 p.m.

—Lunch Break

1 p.m.–3 p.m.

—Working Group Framework and Content Generation Session—Introduction

3 p.m.–3:15 p.m.

—Break

3:15 p.m.–5 p.m.

—Working Group Framework and Content Generation Session—Ecosystems and Ecosystems Services

May 4, 2023

9 a.m.–10:30 a.m.

—Working Group Framework and Content Generation Session—Ecosystems Indicators

10:30 a.m.–10:45 a.m.

—Break

10:45 a.m.–11:15 a.m.

—Working Group Framework and Content Generation Session—Ecosystem Indicators

11:15 a.m.–12:15 p.m.

—Working Group Framework and Content Generation Session—Use of Indicators in Management

12:15 p.m.–1:15 p.m.

—Lunch

1:15 p.m.–3:15 p.m.

—Working Group Framework and Content Generation Session—Use of Indicators in Management

3:15 p.m.–3:30 p.m.

—Break

3:30 p.m.–5 p.m.

—Working Group Framework and Content Generation Session—Plan Moving Forward

May 5, 2023

9 a.m.–10:30 a.m.

—Working Group Framework and Content Generation Session—Data Management & Coordination System Planning: Grants Available, Hosting Responsibility, Management Authority, etc.

10:30 a.m.–12 p.m.

—Future Planning and Coordination of Tasks:

—Meeting Schedule, Writing & Revisions Schedule, TAP Review

—Outcomes, Products, Deliverables and Deadlines

—Coordination of Working Group Leads and Independent Meeting Capacity and Infrastructure

—Schedule for SSC & TAP Review
—Other Business

12:00 p.m.

—Adjourn

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meetings will begin on May 3, 2023, at 9 a.m. AST, and will end on May 5, 2023, at 12 p.m. AST. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair.

Special Accommodations

For any additional information you may contact Liajay Rivera-Garcia, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 766–5926.

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

Dated: April 12, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08087 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC875]

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 public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Citizen Science Operations Committee via webinar May 4–5, 2023.

DATES: The Citizen Science Operations Committee meeting will be held via webinar on Thursday, May 4, 2023, from 1 p.m. until 4 p.m. and Friday, May 5, 2023, from 9 a.m. until 12 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar. There will be an opportunity for public comment at the beginning of the meeting.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Citizen Science Operations Committee serves as advisors to the Council's Citizen Science Program. Committee members include representatives from the Council's Citizen Science Advisory Panel Pool, NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, and the Council's Science and Statistical Committee. Their responsibilities include developing programmatic recommendations, reviewing policies, providing program direction/multi-partner support, identifying citizen science research needs, and providing general advice.

Agenda items include: a Citizen Science Program and Project update; discussion of Committee membership; the Citizen Science Program's project portal tool; the Council's Citizen Science Program initial evaluation plan, including discussing and providing input on phase 3 of the evaluation to gather information from a broader group of fishermen, scientists, and managers; and other business.

Special Accommodations

These meetings are 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: April 12, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08085 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC915]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to WesternGeco for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from April 12, 2023 through April 1, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact

on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

WesternGeco plans to conduct a 3D ocean bottom node (OBN) survey in the Green Canyon, Garden Banks, and Walker Ridge protraction areas, including approximately 616 lease blocks. Approximate water depths of the survey area range from 55 to 2,000 meters (m). See section F of the LOA application for a map of the area.

WesternGeco anticipates using two triple source vessels, towing airgun array sources consisting of 28 elements, with a total volume of 5,240 cubic inches (in^3). Please see WesternGeco's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by WesternGeco in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern. The planned 3D OBN survey will involve two source vessels sailing along survey lines approximately 70–80 km in length. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although WesternGeco is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 130 km^2 per day, meaning that the coil proxy is most representative of the effort planned by WesternGeco in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to differences between the airgun array planned for use (28 elements, 5,240 in^3) and the proxy array modeled for the rule.

The survey will take place over approximately 85 days, including 65 days of sound source operation. The survey plan includes approximately 57 days within Zone 5 and approximately 8 days within Zone 2. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

generate a take estimate for certain marine mammal species produces results that are inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

Rice's whales (formerly known as GOM Bryde's whales) [3] are mostly found in a ''core habitat area'' located in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016). (Note that this core habitat area is outside the scope of the rule.) However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, 83 FR 29280 (June 22, 2018); 86 FR 5418 (January 19, 2021).

There are few data on Rice's whale occurrence outside of the northeastern GOM core habitat area. There were two sightings of unidentified large baleen whales (recorded as *Balaenoptera* sp. or Bryde's/sei whale) in 1992 in the western GOM during systematic survey effort and, more recently, a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). There were five potential sightings of Rice's whales by protected species observers (PSOs) aboard industry geophysical survey vessels west of New Orleans from 2010–2014, all within the 200–400 m isobaths (Rosel *et al.,* 2021). In addition, sporadic, year-round recordings of Rice's whale calls were made south of Louisiana within approximately the same depth range between 2016 and 2017 (Soldevilla *et al.,* 2022).

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. WesternGeco's planned activities will overlap this depth range, with approximately 19 percent of the area expected to be ensonified by the survey above root-mean-squared pressure received levels (RMS SPL) of 160 dB (referenced to 1 micropascal (re 1 μPa)) overlapping the 100–400 m isobaths. Therefore, while we expect take of Rice's whale to be unlikely, there is some reasonable potential for take of Rice's whale to occur in association with this survey. However, NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for Rice's whales would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected Rice's whale take (86 FR 5322, 5403, January 19, 2021).

Killer whales are the most rarely encountered species in the GOM, typically in deep waters (>700 m) of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically only in particularly deep water (>700 m). This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales for this survey

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as Rice's or killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018; 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of Rice's whales or killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to 2 animals for Rice's whale and up to 7 animals for killer whales).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	2	n/a	51	3.9
Sperm whale	1,499	634.4	2,207	28.7
Kogia spp	[3] 567	181.9	4,373	4.8
Beaked whales	6,617	668.3	3,768	17.7
Rough-toothed dolphin	1,261	361.9	4,853	7.5
Bottlenose dolphin	18,214	5,227.5	176,108	3.0
Clymene dolphin	3,202	918.9	11,895	7.7
Atlantic spotted dolphin	4,125	1,183.8	74,785	1.6
Pantropical spotted dolphin	14,529	4,170.0	102,361	4.1
Spinner dolphin	3,893	1,117.3	25,114	4.4
Striped dolphin	1,250	358.9	5,229	6.9
Fraser's dolphin	363	104.1	1,665	6.3
Risso's dolphin	941	277.6	3,764	7.4
Melon-headed whale	2,104	620.6	7,003	8.9
Pygmy killer whale	495	146.0	2,126	6.9
False killer whale	797	235.0	3,204	7.3
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	608	179.5	1,981	9.1

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 30 takes by Level A harassment and 537 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of WesternGeco's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to WesternGeco authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: April 11, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–08019 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC918]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem-Based Fishery Management Committee (EBFM) and Advisory Panel Chairs to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting will be held on Wednesday, May 3, 2023, at 10 a.m.

ADDRESSES: This meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; phone: (401) 739–3000. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7831902592862042 48.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Ecosystem-Based Fishery Management (EBFM) Committee and Advisory Panel Chairs will meet to review initial simulations and sample output from the Prototype Management Strategy Evaluation (pMSE). The simulations apply the management alternatives to a set of operating models to achieve objectives, all features that were identified at previous stakeholder workshops. The group will receive a short status report on applications for interested parties to develop and lead two online deep-dive workshops and one plenary meeting during August to mid-September. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 12, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08082 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Public Wireless Supply Chain Innovation Fund Program

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding the submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 16, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Carolyn Dunn, Grants Director, Innovation Fund, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4701, Washington, DC 20230, or by email to *innovationfund@ntia.gov.* Please reference *Innovation Fund Data Collection* in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be direct to Carolyn Dunn, Grants Director, Innovation Fund, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4701, Washington, DC 20230, or email at *innovationfund@ntia.gov* or via telephone at 202–482–4103.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Public Wireless Supply Chain Innovation Fund (Innovation Fund), authorized by Section 9202(a)(1) of the *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,* Public Law 116–283, 134 Stat. 3388 (Jan. 1, 2021) *(FY21 NDAA)* and appropriated by Div. A., Section 106 of the *CHIPS and Science Act of 2022,* Public Law 117–167, 136 Stat. 1392 (Aug. 9, 2022) provides funding for efforts that accelerate the development, deployment, and adoption of open and interoperable radio access networks (RAN) through a competitive grant program. NTIA will be publishing the program's Notice of Funding Opportunity (NOFO) at *www.grants.gov* to describe the requirements under which it will award grants for the Public

Wireless Supply Chain Innovation Fund. The NOFO requires award recipients to submit a Baseline Report 45 days after grant award. Award recipients must follow the reporting requirements described in Section A.01 Report Requirement of the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020). Additionally, in accordance with 2 CFR part 170, all recipients of a federal award made on or after October 1, 2010, must comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282).

NTIA will use the information collected from each award recipient to effectively administer and monitor the grant program to ensure the achievement of the Innovation Fund purposes and account for the expenditure of federal funds to deter waste, fraud, and abuse.

II. Method of Collection

Public Wireless Supply Chain Innovation Fund

The Baseline Report is a one-time collection of information from award recipients covering project plans and details about key outputs and outcomes that will be due within 45 days of the issuance of the award. NTIA will collect data through an electronic submission.

III. Data

OMB Control Number: 0660–XXXX.
Form Number(s): None.
Type of Review: Regular submission for new information collection.
Affected Public: Grant award recipients consisting of for-profit companies, non-profit companies, institutions of higher education, industry groups, and consortia including two or more such entities.
Estimated Number of Respondents: 30.
Estimated Time per Response: 20.
Estimated Total Annual Burden Hours: 600.
Estimated Total Annual Cost to Public: $28,638.
Respondent's Obligation: Mandatory.
Legal Authority: Section 9202(a)(1) of the *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,* Public Law 116–283, 134 Stat. 3388 (Jan. 1, 2021) (FY21 NDAA) and Div. A., Section 106 of the *CHIPS and Science Act of 2022,* Public Law 117–167, 136 Stat. 1392 (Aug. 9, 2022).

IV. Request for Comments

We are soliciting public comments to permit the Department to:

(a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility.

(b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

(c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected.

(d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–08011 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2022–0045]

USPTO AI Inventorship: Notice of Public AI Inventorship Listening Session—West Coast

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce.

ACTION: Notice of public listening session.

SUMMARY: The United States Patent and Trademark Office (USPTO) plays an important role in incentivizing and protecting innovation, including innovation enabled by artificial intelligence (AI), to ensure continued U.S. leadership in AI and other emerging technologies (ET). On February 14, 2023, the USPTO published a **Federal Register** Notice requesting comments regarding AI and Inventorship. The USPTO is announcing a public listening session on May 8, 2023, titled ''AI Inventorship Listening Session.'' The purpose of the listening session is to seek stakeholder input on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, as set forth in the questions posed in the **Federal Register** Notice of February 14, 2023.

DATES: The AI Inventorship Listening Session will be held on May 8, 2023, from 10 a.m. to 3 p.m. PT (1 p.m. to 6 p.m. ET). Anyone seeking to attend in-person or speak, in-person or virtually, at the listening session must register by 9 a.m. PT (12 p.m. ET) on May 2, 2023. Anyone seeking to attend virtually at the listening session must register by 2 p.m. PT (5 p.m. ET) May 7, 2023. Seating is limited for in-person attendance.

ADDRESSES:

The public AI Inventorship Listening Session will take place virtually and in-person at Stanford University, Paul Brest Hall, 555 Salvatierra Walk, Stanford, CA 94305. All major entrances to the building are accessible to people with disabilities. Registration is required for both virtual and in person attendance. Information on registration is available at *https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events*. Registrants must indicate whether they are registering as a listen-only attendee or as a speaker participant. More information about requests to participate as a speaker is provided below.

FOR FURTHER INFORMATION CONTACT: Aleksandr Kerzhner, Supervisory Patent Examiner, 571–270–1760 or Srilakshmi Kumar, Supervisory Patent Examiner, 571–272–7769. You can also send inquiries to *AIPartnership@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In June 2022, the USPTO announced the formation of the AI/ET Partnership, which provides an opportunity to bring stakeholders together through a series of engagements to share ideas, feedback, experiences, and insights on the intersection of intellectual property and AI/ET. To build on the AI/ET Partnership efforts, in February 2023, the USPTO issued a **Federal Register** Notice titled ''Request for Comments Regarding Artificial Intelligence and Inventorship,'' 88 FR 9492 (February 14, 2023) (available at *https://www.federalregister.gov/documents/2023/02/14/2023-03066/request-for-*

comments-regarding-artificial-intelligence-and-inventorship). The AI Inventorship Request for Comments (RFC) posed 11 questions for public comment on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, especially as AI plays a greater role in the innovation process. As indicated by the AI Inventorship RFC, the USPTO will hold stakeholder engagement sessions that will be announced in the **Federal Register** and posted on the AI/ET Partnership web page at *https://www.uspto.gov/aipartnership.* The USPTO is announcing the second of these stakeholder engagement sessions through this notice.

II. Public Listening Session

The USPTO will hold a public listening session on May 8, 2023 at Stanford University, Paul Brest Hall, 555 Salvatierra Walk, Stanford, CA 94305. The listening session will be held virtually and in person from 10 a.m. to 3 p.m. PT (1 p.m. to 6 p.m. ET). For registration, please visit *https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events.* Registrants must indicate whether they are registering as a listen-only attendee or as a speaker participant.

Requests to participate as a speaker must include:

1. The name of the person desiring to participate;
2. The organization(s) that person represents, if any;
3. Contact information (zip code, telephone number, and email address);
4. Information on the specific topic(s) or question(s) from the RFC of interest to the speaker (or their organization); and
5. Full text of comments to be articulated during the listening session (discussed further below).

Speaking slots are limited, preference will be given to speakers based on the specific topic or question(s) provided in the request to participate. Selected speakers may be grouped by topic. Topics and speakers will be announced a few days prior to the event and listening session. Speakers may attend virtually or in person and are required to submit their remarks for the listening session in advance through the Federal eRulemaking Portal at *https://www.regulations.gov.* We will inform each speaker in advance of their assigned time slot. Time slots will be at least three minutes but may be longer, depending on the number of speakers registered. USPTO personnel may reserve time to ask questions of particular speakers after the delivery of a speaker's remarks.

The listening session will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs to Sheila Sanchez at *disability.access@stanford.edu* as soon as possible or at least seven (7) business days prior to the listening session.

III. Questions From the AI Inventorship RFC for Discussion at Listening Session

The purpose of the listening session is to obtain public input from a broad group of stakeholders on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, as set forth in the questions presented in the **Federal Register** Notice titled ''Request for Comments Regarding Artificial Intelligence and Inventorship,'' 88 FR 9492 (February 14, 2023) (available at *https://www.federalregister.gov/documents/2023/02/14/2023-03066/request-for-comments-regarding-artificial-intelligence-and-inventorship*).

We encourage interested speakers to address the questions posed in the AI Inventorship RFC and to submit research and data that explain their comments on these questions. Official written comments to the questions raised in the AI Inventorship RFC should be submitted as outlined in the AI Inventorship RFC. For convenience, a list of the AI Inventorship RFC questions is provided below in their entirety.

1. How is AI, including machine learning, currently being used in the invention creation process? Please provide specific examples. Are any of these contributions significant enough to rise to the level of a joint inventor if they were contributed by a human?
2. How does the use of an AI system in the invention creation process differ from the use of other technical tools?
3. If an AI system contributes to an invention at the same level as a human who would be considered a joint inventor, is the invention patentable under current patent laws? For example:

a. Could 35 U.S.C. 101 and 115 be interpreted such that the Patent Act only requires the listing of the natural person(s) who invent(s), such that inventions with additional inventive contributions from an AI system can be patented as long as the AI system is not listed as an inventor?

b. Does the current jurisprudence on inventorship and joint inventorship, including the requirement of conception, support the position that only the listing of the natural person(s) who invent(s) is required, such that inventions with additional inventive contributions from an AI system can be patented as long as the AI system is not listed as an inventor?

c. Does the number of human inventors impact the answer to the questions above?

4. Do inventions in which an AI system contributed at the same level as a joint inventor raise any significant ownership issues? For example:

a. Do ownership rights vest solely in the natural person(s) who invented or do those who create, train, maintain, or own the AI system have ownership rights as well? What about those whose information was used to train the AI system?

b. Are there situations in which AI-generated contributions are not owned by any entity and therefore part of the public domain?

5. Is there a need for the USPTO to expand its current guidance on inventorship to address situations in which AI significantly contributes to an invention? How should the significance of a contribution be assessed?
6. Should the USPTO require applicants to provide an explanation of contributions AI systems made to inventions claimed in patent applications? If so, how should that be implemented, and what level of contributions should be disclosed? Should contributions to inventions made by AI systems be treated differently from contributions made by other (*i.e.,* non-AI) computer systems?
7. What additional steps, if any, should the USPTO take to further incentivize AI-enabled innovation (*i.e.,* innovation in which machine learning or other computational techniques play a significant role in the invention creation process)?
8. What additional steps, if any, should the USPTO take to mitigate harms and risks from AI-enabled innovation? In what ways could the USPTO promote the best practices outlined in the Blueprint for an AI Bill of Rights [1] and the AI Risk Management Framework [2] within the innovation ecosystem?
9. What statutory changes, if any, should be considered as to U.S. inventorship law, and what consequences do you foresee for those statutory changes? For example:

[1] See *https://www.whitehouse.gov/ostp/ai-bill-of-rights/.*

[2] See *https://www.nist.gov/itl/ai-risk-management-framework.*

a. Should AI systems be made eligible to be listed as an inventor? Does allowing AI systems to be listed as an inventor promote and incentivize innovation?

b. Should listing an inventor remain a requirement for a U.S. patent?

10. Are there any laws or practices in other countries that effectively address inventorship for inventions with significant contributions from AI systems?

11. The USPTO plans to continue engaging with stakeholders on the intersection of AI and intellectual property. What areas of focus (*e.g.,* obviousness, disclosure, data protection) should the USPTO prioritize in future engagements?

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–07953 Filed 4–14–23; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Notice of Hearing

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) will conduct a public hearing to receive views from interested parties about the Commission's agenda and priorities for fiscal year 2024, which begins on October 1, 2023, and for fiscal year 2025, which begins on October 1, 2024. We invite members of the public to participate.

DATES: The hybrid hearing will be held in person at CPSC's headquarters and remotely via webinar on May 10, 2023, beginning at 10 a.m. Eastern Daylight Time (EDT).

ADDRESSES: This year's hearing will be held as a hybrid meeting—in person at CPSC's headquarters and remotely via webinar. For individuals attending in person, the meeting will be held at CPSC's headquarters, located at 4330 East West Highway, 4th Floor—Hearing Room, Bethesda, MD 20814. Individuals who plan to attend the meeting remotely should pre-register for the webinar at *https://cpsc.webex.com/weblink/register/rba37185ac315e7e0cf5666a1960c4028.* After registering, you will receive a confirmation email containing information about joining the webinar. In person attendees do not need to register for the hearing. Requests to make oral presentations (in person or remotely) and the text of oral presentations and written comments should be sent by email to: *cpsc-os@cpsc.gov,* with the subject line, ''Agenda and Priorities FY 2024 and/or 2025.'' Requests to make oral presentations—in person or remotely—and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. EDT on April 28, 2023. The Commission will accept written comments as well. These also must be received by the Office of the Secretary not later than 5 p.m. EDT on April 28, 2023.

FOR FURTHER INFORMATION CONTACT: For information about the hearing, or to request an opportunity to make an oral presentation, whether in person or remotely, please send an email to Elaine Niedzwiecki, the Office of the Secretary, U.S. Consumer Product Safety Commission, at *eniedzwiecki@cpsc.gov:* telephone (301) 504–7666.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws the Commission administers, and to the extent feasible, select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that when establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

II. Registration for Remote Attendees

The hybrid public hearing will be held on May 10, 2023, at 10:00 a.m. EDT in person at CPSC's headquarters and remotely via CPSC Webinar.[1] All attendees who plan on joining remotely should pre-register for the Webinar by visiting *https://cpsc.webex.com/weblink/register/rba37185ac315e7e0cf5666a1960c4028* and filling in the information. After registering you will receive a confirmation email containing information about joining the webinar. Detailed instructions for hearing participants and other interested parties will be made available on the CPSC website on the public calendar: *https://www.cpsc.gov/Newsroom/Public-Calendar.*

[1] The Commission voted 4–0 to approve publication of this notice.

III. Oral Presentations (Both in Person at CPSC's Headquarters and Remotely via Webinar) and Submission of Written Comments

The Commission is preparing the agency's fiscal year 2024 Operating Plan and fiscal year 2025 Congressional Budget Request. Fiscal year 2024 begins on October 1, 2023, and fiscal year 2025 begins on October 1, 2024. Through this notice, the Commission invites the public to comment on the Commission's agenda and priorities that will be established in the fiscal year 2024 Operating Plan and the fiscal year 2025 Congressional Budget. Proposed priorities should be aligned with the agency's Strategic Plan for fiscal years 2023–2026, which is available at: *www.cpsc.gov/about-cpsc/agency-reports/performance-and-budget.*

Persons who desire to make oral presentations at the hearing on May 10, 2023—in person or remotely—should send an email to the Office of the Secretary, U.S. Consumer Product Safety Commission at *cpsc-os@cpsc.gov* not later than 5 p.m. EDT on April 28, 2023. Texts of intended oral presentations should be captioned ''Agenda and Priorities FY 2024, and/or 2025'' and must be received not later than 5 p.m. EDT on April 28, 2023. Oral presentations—in person or remotely—should be limited to approximately 10 minutes. The Commission reserves the right to impose further time limitations or other restrictions on presentations.

If you do not want to make an oral presentation, but would like to provide written comments, you may do so. Written comments should be captioned, ''Agenda and Priorities FY 2024 and/or 2025,'' and sent to Office of the Secretary, U.S. Consumer Product Safety Commission at *cpsc-os@cpsc.gov* not later than 5 p.m. EDT on April 28, 2023. There is no length restriction for written comments.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2023–07988 Filed 4–14–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2023–HQ–0006]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force 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 June 16, 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 Office of the CIO, Headquarters Air Force Safety Center, ATTN: Mr. Douglas MacCurdy, 9700 G. Ave., Kirtland AFB, NM 87117, at 505–846–0675.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Air Force Safety Automated System; AF Form 978; OMB Control Number 0701–0164.

Needs and Uses: The Air Force collects mishap and safety-related information via AF Form 978, Supervisor Mishap/Incident Report or direct input into the Air Force Safety Automated System (AFSAS), via the Mishap Worksheet, by an assigned investigator. If an investigator uses the AF Form 978, that information will be manually input into the AFSAS once completed. Information will be collected in the AFSAS from individuals (respondents) who were injured or directly involved in the Mishap, or were an eyewitness to the Mishap. On the top of each collection instrument, the OMB control number and expiration date, as well as our Privacy Act Statement are documented for review by respondents. Respondents do not have direct access to the AFSAS or collected information.

Information collected in the AFSAS is utilized directly by assigned Safety Managers and Investigators, to evaluate mishap events for prevention analysis. Each organization staff will compare the information against DoD standards to determine if safety is enforced and to evaluate the safety profile of their organization. Included will be specific recommendations for risk mitigation/reduction in order to preserve assets and save lives. The Air Force Safety Program addresses the maintenance of safe and healthful conditions in the workplace or the occupational environment. It is applicable to all Air Force civilian and military personnel and operations, aviation or occupational functions.

Affected Public: Business or other for-profit; individuals or households.

Annual Burden Hours: 200.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: April 12, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08049 Filed 4–14–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2023–HQ–0002]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, 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 May 17, 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: Automated Installation Entry (AIE) System; OMB Control Number 0702–0125.

Type of Request: Revision.

Number of Respondents: 1,210,476.

Responses per Respondent: 1.

Annual Responses: 1,210,476.

Average Burden per Response: 2 minutes.

Annual Burden Hours: 40,349.

Needs and Uses: The information collection requirement is necessary to verify the identity of an individual and determine the fitness of said individual requesting and/or requiring access to installations, and issuance of local access credentials. The information collection methodology involves the employment of technological collection of data via an electronic physical access control system (PACS) which provides the capability to rapidly and electronically authenticate credentials and validate an individual's authorization to enter an installation.

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: April 12, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08048 Filed 4–14–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2023–OS–0032]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of (OUSD(I&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(I&S) 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 June 16, 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 Michele DeMarion, Defense Counterintelligence and Security Agency (DCSA), 1137 Branchton Road, Boyers, PA 16018, (724) 794–5612 x5274.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Freedom of Information/Privacy Act Records Request for Background Investigations; OMB Control Number 0705–0001.

Needs and Uses: This collection is a renewal and revision to the collection under OMB Control Number 0705–0001, Freedom of Information/Privacy Act Records Request for Background Investigations approved in October 2019, when transferred from the Office of Personnel Management, National Background Investigations Bureau (OPM, NBIB) to the DCSA. The purpose of the collection is to enable the DCSA, Freedom of Information and Privacy (FOI/P) Office for Investigations, to locate applicable records and provide the requester responsive records pursuant to the Freedom of Information Act (5 U.S.C. 552), and/or the Privacy Act of 1974 (5 U.S.C. 552a). Authority to collect this information is contained in 5 U.S.C. 552, 5 U.S.C. 552a, 32 CFR 310, and 32 CFR 286.

Affected Public: Individuals and households.

Annual Burden Hours: 841.

Number of Respondents: 10,097.

Responses per Respondent: 1.

Annual Responses: 10,097.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

The Freedom of Information/Privacy Act Records Request for Background Investigations form, is an information collection completed by individuals submitting Freedom of Information Act (FOIA), Privacy Act, and Amendment record requests to DCSA's Freedom of Information and Privacy (FOI/P) Office for Investigations. DCSA's FOIP Office for Investigations utilizes the Freedom of Information/Privacy Act Records Request for Background Investigations to standardize collection of data elements specific to the types of record requests. Current record requests can be submitted to DCSA FOIP Office for Investigations in a format chosen by the requester. Often, requests are missing data elements which require contact with the requester, thereby adding time to the process. Standardization of the process will increase the volume of perfected requests received and strike an appropriate balance between the burden to the public in submitting a request and the DCSA FOIP Office for Investigations being able to fulfill FOIA, Privacy Act, and Amendment requests in an efficient manner.

Dated: April 12, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08083 Filed 4–14–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2023–OS–0030]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DoD 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 June 16, 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 Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Status of the Forces Survey of Active Duty Members; OMB Control Number 0704–0624.

Needs and Uses: The Status of Forces Active Duty Survey (SOFS–A) is an annual DoD-wide large-scale survey of active duty members that is used in evaluating existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of existing policies/programs. The survey assesses topics such as financial well-being, retention intention, stress, tempo, readiness, food security and suicide awareness. Data are aggregated by appropriate demographics, including Service, paygrade, gender, race/ethnicity, and other indicators. To be able to meet reporting requirements for DoD leadership, the Military Services, and Congress, the survey needs to be completed in 2023. The legal requirements for the SOFS–A can be found in the FY2016 NDAA, Title VI, Subtitle F, Subpart 661. This legal requirement mandates that the SOFS–A solicit information on financial literacy and preparedness. Results will be used by the Service Secretaries to evaluate and update financial literacy training and will be submitted in a report to the Committees on Armed Services of the Senate and the House of Representatives.

Affected Public: Individuals or households.

Annual Burden Hours: 4,125.

Number of Respondents: 16,500.

Responses per Respondent: 1.

Annual Responses: 16,500.

Average Burden per Response: 15 minutes.

Frequency: Annually.

The Status of Forces Active Duty Survey (SOFS–A) is a DoD-wide annual survey of active duty members that is used to evaluate existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of established policies/programs. The survey assesses topics such as financial well-being, satisfaction, readiness, stress, retention intention, food security, and suicide awareness.

Dated: April 12, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08045 Filed 4–14–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2023–OS–0033]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R), 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 June 16, 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 the Office of the Under Secretary of Defense (Personnel and Readiness, Military Community and Family Policy) Office of Special Needs, ATTN: Jennifer Funk, 1500 Defense Pentagon, Washington, DC 20301–1500, or call 571–372–6583.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: EFMP Family Support Feedback Tool; OMB Control Number 0704–FSFT.

Needs and Uses: The EFMP Family Support Feedback Tool gathers feedback from families about their recent experience with EFMP Family Support services. The use of the tool is voluntary and confidential for families. No personally identifiable information is stored. The response data will be used to help inform EFMP policy, programmatic improvements, and to identify potential training needs for EFMP Family Support Providers.

Affected Public: Individuals or households.

Annual Burden Hours: 83.33.

Number of Respondents: 250.

Responses per Respondent: 2.

Annual Responses: 500.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Dated: April 12, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08043 Filed 4–14–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2023–HQ–0012]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Marine Corps 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 June 16, 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 the Marine Corps Marathon Organization, P.O. Box 188, Quantico, VA 22134, ATTN: Ms. Angela Anderson, or call the Marine Corps Marathon Organization at 703–432–1159.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Marine Corps Marathon Race Applications; OMB Control Number 0712–0005.

Needs and Uses: The Marine Corps Marathon Organization (MCMO) is tasked with the management of the Marine Corps Marathon (MCM) races on behalf of the Marine Corps. The MCM Race Application collection is necessary to register individuals for MCM races, identify participants for timing and results purposes, determine award categories, and to ensure appropriate contact information is on file if emergency treatment is required. The collection serves a secondary purpose to foster marketing relationships for the Marine Corps and provide participation data for future event planning and promotion.

Affected Public: Individuals or households.

Annual Burden Hours: 4,883.

Number of Respondents: 58,600.

Responses per Respondent: 1.

Annual Responses: 58,600.

Average Burden per Response: 5 minutes.

Frequency: Annually.

Dated: April 12, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08047 Filed 4–14–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2023–HQ–0013]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Marine Corps Marine and Family Programs Division (MFP) 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 June 16, 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 AR Division, Headquarters Marine Corps, 3000 Marine Corps, Pentagon Rm. 2B253, Washington, DC 20350–3000, ATTN: Mr. Mark Kazzi, or call 571–256–8883.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Marine Corps Safety Needs Assessment; OMB Control Number 0712–LMSA.

Needs and Uses: The Defense Suicide Prevention Office (DSPO) has contracted the Center for Naval Analyses (CNA) to conduct a study titled ''Assessing the Implementation and Effectiveness of DOD's Lethal Means Safety (LMS) Outreach Materials.'' LMS, as defined by DoD Instruction 6400.09, is a non-clinical suicide prevention activity and process of ensuring highly lethal means of suicide or other prohibited abusive and harmful acts are out of reach during times of increased stress, when risk of such acts is heightened. Since Marine Corps suicide attempt rates are among the highest in the DoD, with most attempts occurring via firearm, there is a perception that existing LMS

messaging and training are not resonating with Marines.

In order to examine this trend within the Marine Corps and gather relevant baseline data for the larger DSPO initiative, CNA, in conjunction with the Marine Corps Marine and Family Programs Division (MFP), propose the information collection, ''Marine Corps Safety Needs Assessment'' survey. This voluntary survey examines current LMS program awareness, preferences for safety devices and locations, and the place of safety in Marine Corps culture. This survey will assist MFP in identifying, from the perspective of Marines, the reach of current LMS efforts and the acceptability of potential LMS activities. The results of the survey will be used by MFP and DSPO to better understand which LMS activities and messages resonate with Marines, as well as serve as a baseline data for future LMS activity effectiveness evaluations in accordance with the standards of practice framework prescribed by DoD Instruction 6490.16.

Affected Public: Individuals or households.

Annual Burden Hours: 2,262.

Number of Respondents: 9,048.

Responses per Respondent: 1.

Annual Responses: 9,048.

Average Burden per Response: 15 minutes.

Frequency: Once.

Dated: April 12, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08050 Filed 4–14–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

A Unified Data Framework for DOE Biological and Environmental Research

AGENCY: Office of Biological and Environmental Research (BER), Office of Science, Department of Energy (DOE).

ACTION: Request for information.

SUMMARY: The Biological and Environmental Research (BER) Program, as DOE's coordinating office for research on biological systems, bioenergy, environmental science, and Earth system science, is seeking input on the need and the structure of a unified data framework that links or integrates existing data activities within BER. Information produced in response to this request may be used by the BER Advisory Committee (BERAC) to help inform and recommend to BER a strategy for next-generation data management and analysis within a unified framework.

DATES: Written comments and information are requested on or before October 31, 2023.

ADDRESSES: Interested persons may submit comments by email only. Comments must be sent to *BERACRFI@science.doe.gov* with the subject line ''BER unified data''.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be submitted to Dr. Tristram O. West, (301) 903–5155, *Tristram.west@science.doe.gov.*

SUPPLEMENTARY INFORMATION: A charge was issued from the Director of Office of Science on October 13, 2022, to the BER Advisory Committee (BERAC) to (1) review the existing and anticipated capabilities in data management and supporting infrastructures that are relevant to the breadth of BER science and (2) recommend a strategy for next-generation data management and analysis within a unified framework. The Director's charge letter may be found here: *https://science.osti.gov/ber/berac/Reports/Current-BERAC-Charges.* Information collected through this request for information, in addition to other informational sources, may be used by BERAC to recommend strategies to further integrate and strengthen BER's data infrastructure in support of BER research. It may also be used by the BERAC in fulfilling its October 13, 2022, charge from the Director of the Office of Science to recommend a strategy for next-generation data management and analysis within a unified framework.

Request for Information

The objective of this request for information is to gather current and future science questions within BER's mission space that would require a more integrated data infrastructure for data access, processing, and use *spanning more than one* research area. Current BER research areas are provided online: *https://science.osti.gov/ber/Research.* Supported research includes Atmospheric Science; Earth and Environmental System Modeling; Environmental Science; Bioenergy and Bioproducts; and Plant and Microbial Genomics. Current data archives and activities that support BER research areas include, but are not limited to, ARM *https://www.arm.gov/,* ESS–DIVE *https://ess-dive.lbl.gov/,* ESGF *https://esgf.llnl.gov/,* KBase *https://www.kbase.us/,* NMDC *https://microbiomedata.org/,* MSD–LIVE *https://msdlive.org/,* and JGI *https://jgi.doe.gov/.*

Information is specifically requested on how a more unified data infrastructure may better facilitate current or future science questions, and what components or technologies are needed to develop a more unified data infrastructure. Answers or information related, but not limited, to the following questions are specifically requested:

1. Do you conduct research in one of the BER research areas (*i.e.,* Atmospheric Science; Earth and Environmental System Modeling; Environmental Science; Bioenergy and Bioproducts; or Plant and Microbial Genomics) and, if so, which area(s)? Please limit additional detail on your area(s) of research interest to a brief paragraph.

2. What new or existing research areas might benefit from improvements in data availability or access across research areas, potentially enabling scientific breakthroughs—and why?

3. What data improvements, including those of accessibility and integration, could facilitate new or existing research or scientific breakthroughs?

a. Are there current data sets that should be linked or integrated into existing data infrastructure to facilitate existing or new research? If so, which data sets should be so linked or integrated and why?

b. Are there current barriers to accessing or integrating data from (a) different DOE sources (*e.g.,* ARM, JGI, ESS–DIVE, MSD–LIVE) or from (b) different sources separately maintained by DOE and another Federal agency? If so, what are those barriers and how might they be addressed to allow for improved data access and integration?

c. What data infrastructure improvements would best support model-experiment feedbacks; facilitate data synthesis and analysis for multi-disciplinary research; and enable application of advanced statistical techniques, including artificial intelligence and machine learning? Please include a brief explanation as to how each identified improvement would support each of these listed tasks.

d. What current barriers need to be addressed in developing a unified infrastructure to promote greater use by a more diverse community of users, with a focus on improving diversity, equity, and inclusion within data usage and application?

While the questions provided above can help guide thinking on this topic, any input is welcome that may assist BERAC in developing a next-generation data infrastructure in support of BER mission science. The information provided through this request will assist

in developing specific strategies that the DOE Office of Science may implement.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on April 3, 2023, by Asmeret Asefaw Berhe, Director, Office of Science pursuant to delegated authority from the Secretary of Energy. The document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 12, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–08029 Filed 4–14–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy's (DOE, Office of Energy Efficiency and Renewable Energy (EERE)), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years with the Office of Management and Budget (OMB), the EERE Environmental Questionnaire (OMB No. 1910–5175).

DATES: Comments regarding this proposed information collection extension must be received on or before June 16, 2023. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Lisa Jorgensen at: U.S. Department of Energy, 15013 Denver West Parkway, Golden, CO 80401, or by email at *EEREEQComments@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the EERE Environmental Questionnaire should be directed to Lisa Jorgensen at *EEREEQComments@ee.doe.gov* or at (720) 356–1569. The EERE Environmental Questionnaire also is available for viewing in the *Golden Field Office Public Reading Room* at: *www.energy.gov/node/2299401.* If you have difficulty accessing this document, please contact Casey Strickland at (720) 356–1575.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5175;

(2) *Information Collection Request Title:* Office of Energy Efficiency and Renewable Energy (EERE) Environmental Questionnaire;

(3) *Type of Request:* Revision;

(4) *Purpose:* The DOE's EERE provides federal funding through federal assistance programs to businesses, industries, universities, and other groups for renewable energy and energy efficiency research and development and demonstration projects. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) requires that an environmental analysis be completed for all major Federal actions significantly affecting the environment including projects entirely or partly financed by federal agencies. To effectively perform environmental analyses for these projects, the DOE's EERE needs to collect project-specific information from federal financial assistance awardees. DOE's EERE has developed its Environmental Questionnaire to obtain the required information and ensure that its decision-making processes are consistent with NEPA as it relates to renewable energy and energy efficiency research and development and demonstration projects. Minor changes have been made to the Environmental Questionnaire to standardize the process for collecting places of performance associated with a financial assistance project in an extractable and reportable format to better understand what communities are directly impacted by the projects being funded. Most of the changes only separated and created discrete data entry fields for information that was already being collected within the existing Environmental Questionnaire. One new data field was added for foreign location identification. The average hours per response and annual estimated number of burden hours remain the same.

(5) *Annual Estimated Number of Total Responses:* 300;

(6) *Average Hours per Response:* 1.5;

(7) *Annual Estimated Number of Burden Hours:* 433; and

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* There is no cost associated with reporting and recordkeeping.

Statutory Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

Signing Authority

This document of the Department of Energy was signed on April 11, 2023, by Mathew Blevins, Director, Environment, Safety, and Health 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 upon publication in the **Federal Register**.

Signed in Washington, DC, on April 12, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–08026 Filed 4–14–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–679–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Hartree April 11 2023) to be effective 4/11/2023.
Filed Date: 4/11/23.
Accession Number: 20230411–5092.
Comment Date: 5 p.m. ET 4/24/23.

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.

Filings in Existing Proceedings

Docket Numbers: PR23–36–002.
Applicants: Enable Oklahoma Intrastate Transmission, LLC.
Description: § 284.123(g) Rate Filing: Supp. Revised Fuel Percentages April 1, 2023-March 31, 2024 to be effective 4/11/2023.
Filed Date: 4/11/23.
Accession Number: 20230411–5060.
Comment Date: 5 p.m. ET 4/18/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08037 Filed 4–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–71–000.
Applicants: Pixley Solar Energy LLC, Lazbuddie Wind Energy LLC, Flat Ridge 4 Wind, LLC, Flat Ridge 5 Wind Energy LLC, Algodon Solar Energy LLC, Chisholm Trail Solar Energy LLC, Public Service Company of Oklahoma.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Pixley Solar Energy LLC, et al.
Filed Date: 4/6/23.
Accession Number: 20230406–5230.
Comment Date: 5 p.m. ET 6/5/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1905–012.
Applicants: AZ721 LLC.
Description: Supplement to January 30, 2023, Notice of Change in Status of Amazon Energy LLC.
Filed Date: 4/6/23.
Accession Number: 20230406–5226.
Comment Date: 5 p.m. ET 4/27/23.

Docket Numbers: ER21–2678–005.
Applicants: Westlands Transmission, LLC.
Description: Compliance filing: Amendment of Compliance Filing (ER21–2678–004) to be effective 12/15/2022.
Filed Date: 4/10/23.
Accession Number: 20230410–5113.
Comment Date: 5 p.m. ET 5/1/23.

Docket Numbers: ER21–2678–006.
Applicants: Westlands Transmission, LLC.
Description: Compliance filing: Re-establish OBE'd Versions to Tariff Record ID (ER21–2678–) to be effective 10/13/2021.
Filed Date: 4/11/23.
Accession Number: 20230411–5147.
Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–213–001.
Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: Compliance filing: Duke Energy Progress, LLC submits tariff filing per 35: Order 676 Compliance Filing to be effective 2/23/2023.
Filed Date: 4/11/23.
Accession Number: 20230411–5171.
Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–326–001; ER23–327–001.
Applicants: Arroyo Energy Storage LLC,Arroyo Solar LLC.
Description: Notice of Change in Status of Arroyo Solar LLC, et al.
Filed Date: 4/6/23.
Accession Number: 20230406–5232.
Comment Date: 5 p.m. ET 4/27/23

Docket Numbers: ER23–628–001.
Applicants: Bellflower Solar 1, LLC.
Description: Compliance filing: Revised Rate Schedule to be effective 1/15/2023.
Filed Date: 4/11/23.
Accession Number: 20230411–5175.
Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–1022–000.
Applicants: System Energy Resources, Inc.
Description: Unit Power Sales Agreement Formula Rate Informational Filing of System Energy Resources, Inc.
Filed Date: 1/31/23.
Accession Number: 20230131–5319.
Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1511–000; TS23–3–000.
Applicants: Arroyo Solar LLC, Arroyo Solar LLC.
Description: Request for Temporary Waiver of Open-Access Requirements of Order Nos. 888, et al. of Arroyo Solar LLC.
Filed Date: 3/27/23.
Accession Number: 20230327–5270.
Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–1605–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6876; Queue No. AC2–141 to be effective 12/31/9998.
Filed Date: 4/10/23.
Accession Number: 20230410–5119.
Comment Date: 5 p.m. ET 5/1/23.

Docket Numbers: ER23–1606–000.
Applicants: NSTAR Electric Company.
Description: Tariff Amendment: Cancellation of Ocean State Power, LLC—Related Facilities Agreement to be effective 4/11/2023.
Filed Date: 4/11/23.
Accession Number: 20230411–5000.
Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–1607–000.
Applicants: NSTAR Electric Company.
Description: § 205(d) Rate Filing: Commonwealth Wind, LLC—Design and Engineering Agreement to be effective 4/12/2023.
Filed Date: 4/11/23.
Accession Number: 20230411–5020.
Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–1608–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6866; Queue No. AF2–254 to be effective 3/14/2023.

Filed Date: 4/11/23.

Accession Number: 20230411–5028.

Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–1609–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Delay Upcoming RPM Auctions, Requests for Waiver and Expedited Action to be effective 6/10/2023.

Filed Date: 4/11/23.

Accession Number: 20230411–5057.

Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–1610–000.

Applicants: Duke Energy Carolinas, LLC, Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii: DEF—Annual Update of Real Power Loss Factors to be effective 5/1/2023.

Filed Date: 4/11/23.

Accession Number: 20230411–5150.

Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER23–1611–000.

Applicants: AEP Ohio Transmission Company, Inc., American Electric Power Service Corporation, Ohio Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP Ohio Transmission Company, Inc. submits tariff filing per 35.13(a)(2)(iii: AEP submits revised SA No. 1672 ILDSA and Attachment 1 to be effective 5/1/2023.

Filed Date: 4/11/23.

Accession Number: 20230411–5159.

Comment Date: 5 p.m. ET 5/2/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–40–000.

Applicants: DTE Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DTE Electric Company.

Filed Date: 4/6/23.

Accession Number: 20230406–5229.

Comment Date: 5 p.m. ET 4/27/23.

Docket Numbers: ES23–41–000.

Applicants: ISO New England Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of ISO New England Inc.

Filed Date: 4/7/23.

Accession Number: 20230407–5164.

Comment Date: 5 p.m. ET 4/28/23.

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: April 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08038 Filed 4–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1595–000]

LRE Energy Services, 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 LRE Energy Services, 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 May 1, 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: April 10, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–08024 Filed 4–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1584–000]

Pearl River Solar Park LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pearl River Solar Park LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 1, 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: April 10, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–08025 Filed 4–14–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0212; FRL–10878–01–OGC]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA), notice is given of a proposed settlement agreement in *Center for Biological Diversity* v. *Environmental Protection Agency,* Case No. 22–1164 (D.C. Cir.). On July 20, 2022, the Center for Biological Diversity (CBD) filed a petition for review in the United States District Court for the District of Columbia alleging that the Environmental Protection Agency (EPA or the Agency) failed to comply with the consultation requirements of the Endangered Species Act (ESA), the CAA, and the Administrative Procedures Act (APA) in promulgating the *Renewable Fuel Standard (RFS) Program: RFS Annual Rules,* (July 1, 2022) (''2020–2022 RFS Annual Rule''). With the proposed settlement agreement, EPA would commit to complete its ESA consultation for the subsequent RFS rule proposed on December 30, 2022, the *Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes,* (December 30, 2022) (''2023–2025 RFS Set Rule''), and CBD would agree to dismiss its challenge to the 2020–2022 RFS Annual Rule.

DATES: Written comments on the proposed settlement agreement must be received by *May 17, 2023.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0212, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Settlement Agreement'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Meredith G. Miller, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–8572; email address *miller.meredith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Settlement Agreement

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2023–0212) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement, and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Settlement Agreement

The RFS program began in 2006 pursuant to the requirements of the Energy Policy Act of 2005 (EPAct) that were codified in CAA section 211(o). The statutory requirements were subsequently amended by the Energy Independence and Security Act of 2007 (EISA). The RFS statute sets forth annual, nationally applicable volume targets for biomass-based diesel through 2012, and for the other three categories of renewable fuel—total renewable fuel, advanced biofuel, and cellulosic biofuel—through 2022. *See* 42 U.S.C 7545(o)(2)(B)(i). For calendar years after which the statute provides volume targets, the statute directs EPA to determine the applicable volume targets in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the RFS program for prior years and an analysis of specific factors enumerated by 42 U.S.C. 7545(o)(2)(B)(ii) (*e.g.,* impacts on the environment and energy security, costs to consumers, etc.).

On July 1, 2022, EPA published the RFS annual rules for 2020, 2021, and 2022. *Renewable Fuel Standard (RFS) Program: RFS Annual Rules,* 87 FR 39600 (July 1, 2022) (''2020–2022 RFS Annual Rule''). On July 20, 2022, CBD filed a petition for review of the 2020–2022 RFS Annual Rule challenging whether EPA complied with the consultation requirements of ESA section 7(a)(2), 16 U.S.C. 1536(a)(2); the CAA, 42 U.S.C. 7545(o)(2)(B)(ii)(I); and the APA, 5 U.S.C. 706. On September 27, 2022, CBD filed a motion for summary vacatur of the 2020–2022 RFS Annual Rule. *Center for Biological Diversity* v. *Environmental Protection Agency,* Case No. 22–1164 (D.C. Cir.), Doc. 1966328.

Under the proposed settlement agreement, EPA would commit to complete its ESA section 7(a) consultation for the RFS rule subsequent to the 2020–2022 RFS Annual Rule that EPA proposed on December 30, 2023. *Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes,* 87 FR 80582 (December 30, 2022) (''2023–2025 RFS Set Rule''). If either the Fish and Wildlife Service or the National Marine Fisheries Service issues a biological opinion in connection with this ESA consultation, EPA would also agree to issue a determination addressing any conservation recommendations, terms and conditions of any incidental take statement, and/or reasonable and prudent alternatives within the time frames set forth in that biological opinion. CBD would agree to dismiss with prejudice its challenge to the 2020–2022 RFS Annual Rule within five days of receiving notice from EPA that it has terminated the ESA section 7(a) consultation for the 2023–2025 RFS Set Rule.

The proposed Settlement Agreement also includes standard language regarding resolution of costs and attorneys' fees, stipulation of extensions, lapses in appropriations, disputes in implementation, preservation of Agency discretion, and the CAA section 113(g) process.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CAA.

III. Additional Information About Commenting on the Proposed Settlement Agreement

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0212, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2023–08070 Filed 4–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10904–01–OW]

Public Environmental Financial Advisory Board Virtual Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) announces a public meeting of the Environmental Financial Advisory Board (EFAB). The meeting will be conducted in a virtual format via webcast. The purpose of the meeting will be for the EFAB to receive updates on the Greenhouse Gas Reduction Fund. Written public comments may be provided in advance. No oral public comments will be accepted during the meeting. Please see the **SUPPLEMENTARY INFORMATION** section for further details.

DATES: The meeting will be held on May 11, 2023, from 1 p.m. to 3 p.m. Eastern Time.

ADDRESSES: The meeting will be conducted in a virtual format via webcast only. Information to access the webcast will be provided upon registration in advance of each meeting.

FOR FURTHER INFORMATION CONTACT: Tara Johnson, Office of Wastewater Management, Office of Water, Environmental Protection Agency; telephone number: (202) 564–6186; email address: *efab@epa.gov.* General information concerning the EFAB is available at *https://www.epa.gov/waterfinancecenter/efab.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to EPA on innovative approaches to funding environmental programs, projects, and

activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public meeting via webcast for the following purpose: Receive updates on the Greenhouse Gas Reduction Fund.

Registration for the Meeting: To register for the meeting, please visit *https://www.epa.gov/waterfinancecenter/efab#meeting.* Interested persons who wish to attend the meeting via webcast must register by May 10, 2023. Pre-registration is strongly encouraged.

Availability of Meeting Materials: Meeting materials, including the meeting agenda and briefing materials, will be available on EPA's website at *https://www.epa.gov/waterfinancecenter/efab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to EPA.

Written Statements: Written statements should be received by May 8, 2023, so that the information can be made available to the EFAB for its consideration prior to the meeting. Written statements should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the meeting and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2023–07971 Filed 4–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1270; FR ID 136147]

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 (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 June 16, 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: 3060–1270.

Title: Protecting National Security Through FCC Programs.

Form Number: FCC Form 5640.

Type of Review: Revision of a currently-approved collection.

Respondents: Business or other for profit entities.

Number of Respondents and Responses: 3,500 respondents; 6,584 responses.

Estimated Time per Response: 0.5–12 hours.

Frequency of Response: Annual, semiannual, and recordkeeping requirements.

Obligation to Respond: Mandatory and required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1603–1604.

Total Annual Burden: 20,236 hours.

Total Annual Cost: $472,500.

Needs and Uses: The Communications Act of 1934, as amended, requires the ''preservation and advancement of universal service.'' 47 U.S.C. 254(b). The information collection requirements reported under this collection are the result of the Commission's actions to promote the Act's universal service goals.

On November 22, 2019, the Commission adopted the *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order, Order, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 11423 (2019) (*Report and Order*). The *Report and Order* prohibits future use of Universal Service Fund (USF) monies to purchase, maintain, improve, modify, obtain, or otherwise support any equipment or services produced or provided by a company that poses a national security threat to the integrity of communications networks or the communications supply chain.

On March 12, 2020, the President signed into law the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), Public Law 116–124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609), which, among other measures, directs the FCC to establish the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). This

program is intended to provide funding to providers of advanced communications service for the removal, replacement and disposal of certain communications equipment and services that poses an unacceptable national security risk (*i.e.,* covered equipment and services) from their networks. The Commission has designated two entities—Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE), along with their affiliates, subsidiaries, and parents—as covered companies posing such a national security threat. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation,* PS Docket No. 19–351, Memorandum Opinion and Order, 35 FCC Rcd 14435 (2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—ZTE Designation,* PS Docket No. 19–352, Memorandum Opinion and Order, DA 20–1399 (PSHSB rel. Nov. 24, 2020).

On December 10, 2020, the Commission adopted the Second Report and Order implementing the Secure Networks Act, which contained new information collection requirements. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*Second Report and Order*). These requirements allow the Commission to receive, review and make eligibility determinations and funding decisions on applications to participate in the Reimbursement Program that are filed by certain providers of advanced communications service. These information collection requirements also assist the Commission in processing funding disbursement requests and in monitoring and furthering compliance with applicable program requirements to protect against waste, fraud, and abuse. Participation in the Reimbursement Program is voluntary, but compliance with the information collection requirements is required to obtain Reimbursement Program support.

On August 3, 2021, the Wireline Competition Bureau (Bureau) released a Public Notice adopting procedures for filing and processing applications submitted for the Reimbursement Program. These procedures largely tracked the procedural rules previously adopted by the Commission in the *Second Report and Order,* but also adopted a new requirement that Reimbursement Program participants notify the Commission of changes in ownership, to ensure accurate information is on file for participants and to help protect the Reimbursement Program against waste, fraud, and abuse.

This submission proposes to revise this currently-approved collection by deleting an existing question on FCC Form 5640 and replacing it with a more detailed query. The new question will ask program participants to describe in detail how they have spent Reimbursement Program funds. The addition of this question will allow the Bureau to satisfy its statutory obligations to collect information about how Reimbursement Program funds have been spent, including detailed accounting of the covered communications equipment and services permanently removed and disposed of, and the replacement equipment or services purchased, rented, leased, or otherwise obtained using Reimbursement Program funds, as well as to combat waste, fraud, and abuse, as required under the Secure Networks Act. The Bureau determined that FCC Form 5640 required this revision in order to elicit the information necessary for the Bureau to better satisfy its statutory obligations.

This proposed addition will increase the information collected, and will impose an additional burden on respondents, which will vary with the number of invoices respondents submit during the relevant reporting period. However, this submission also reflects a decrease in the estimated total annual responses, total annual burden hours, and total annual costs for this collection. These adjustments are due to a reduction of the number of respondents for several categories of information to be collected on Form 5640, based on the Bureau's experience with the Reimbursement Program since this collection was first approved.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–08046 Filed 4–14–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Systemic Resolution Advisory Committee; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Systemic Resolution Advisory Committee (Committee) is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on a broad range of issues regarding the resolution of systemically important financial companies (covered companies) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Committee will continue to provide advice and recommendations on the effects on financial stability and economic conditions of a covered company's failure and how they arise, the effects on markets and stakeholders of the activities of a covered company, market understanding of the structures and tools available to the FDIC to facilitate an orderly resolution of a covered company, the application of such tools to nonbank financial entities, international coordination of planning and preparation for the resolution of internationally active covered companies, and harmonization of resolution regimes across international boundaries. The structure and responsibilities of the Committee are unchanged from when it was originally established in November 2011. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Debra A. Decker, Committee Management Officer of the FDIC, at (202) 898–8748.

Authority: 5 U.S.C. 1001 *et seq.*

Dated: April 11, 2023.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–07993 Filed 4–14–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: April 19, 2023; 10:00 a.m.

PLACE: This meeting will be held at the Federal Maritime Commission at the address below and also streamed live at Federal Maritime Commission's YouTube Channel.

Federal Maritime Commission, 800 North Capitol St. NW, 1st Floor Hearing Room, Washington, DC 20573

STATUS: Part of the meeting will be open to the public: held in-person at the Federal Maritime Commission for public attendants and also available to view streamed live on the Federal Maritime Commission's YouTube Channel. The rest of the meeting will be closed to the public.

The hearing will be held on April 19, 2023, at 10:00 a.m. in the Hearing Room of the Federal Maritime Commission and will be open for public observation. If technical issues prevent the Commission from live streaming, the Commission will post a recording of the public portion of the meeting on the Commission's YouTube Channel. Requests to register to attend the meeting in-person should be submitted to *secretary@fmc.gov* and contain ''April 19, 2023, Commission Meeting'' in the subject line. Interested members of the public have until 5:00 p.m. (Eastern) Monday, April 17, 2023, to register to attend in-person. Seating for members of the public is limited and will be available on a first-come, first-served basis for those who have registered in advance. Health and safety protocols for meeting attendees will depend on the COVID–19 Community Transmission Level for Washington DC as determined on Friday, April 14, 2023. Pre-registered attendees will be notified of any required health and safety protocols before the meeting and no later than Tuesday, April 18, 2023.

PORTIONS OPEN TO THE PUBLIC:

1. Commissioner Bentzel, Update on Maritime Transportation Data Initiative
2. Staff Briefing on Ocean Shipping Reform Act of 2022
3. Staff Briefing, Bureau of Enforcement, Investigations, and Compliance Update

PORTIONS CLOSED TO THE PUBLIC:

1. Staff Briefing, Bureau of Enforcement, Investigations, and Compliance Update

CONTACT PERSON FOR MORE INFORMATION: William Cody, Secretary, (202) 523–5725.

William Cody,

Secretary.

[FR Doc. 2023–07907 Filed 4–13–23; 11:15 am]

BILLING CODE 6730–02–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 May 1, 2023.

A. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Stavros Papastavrou and Sofia Elizabeth Papastavrou, as co-trustees of the Jennifer Papastavrou 2023 Trust fbo Stavros Papastavrou, and Jennifer Papastavrou and Nicole Katerina Papastavrou, as co-trustees of the Stavros Papastavrou 2023 Trust fbo Jennifer Papastavrou, all of Old Westbury, New York;* to join Stavros Papastavrou and form the Papastavrou Family Control Group, a group acting in concert, to acquire voting shares of of ServBanc Holdco, Inc., Phoenix, Arizona, and thereby indirectly acquire voting shares of of Allied First Bank, SB, Oswego, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–07942 Filed 4–14–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and of the Board's Regulation LL (12 CFR 238.31) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices 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 May 1, 2023.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291; or by email to *MA@mpls.frb.org*:

1. *The American Federal Bank and Affiliates Employee Stock Ownership Plan (ESOP) and the American Federal Bank Restricted Stock Plan and Trust (RSP), both of Fargo, North Dakota; Dean P. McCleary, Moorhead, Minnesota; Bryan J. Larson, Barnesville, Minnesota; Matthew J. Heinzen, and Steven P. Worwa, both of Fargo, North Dakota;* all individually and as co-trustees of the ESOP and RSP, as a group acting in concert to retain voting shares of American Federal Corporation and thereby indirectly retain voting shares of American Federal Bank, both of Fargo, North Dakota.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–07941 Filed 4–14–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 15, 2023.

A. *Federal Reserve Bank of Boston* (Eileen Leighton, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210—02204; or by email to *BOS.SRC.Applications.Comments@bos.frb.org*:

1. *Newburyport Five Cents Bancorp, MHC, and its wholly-owned subsidiary, Newburyport Five Cents Bancorp, Inc., both of Newburyport, Massachusetts;* to merge with Pentucket Bank Holdings, MHC, and Pentucket Bancorp, Inc., respectively, and thereby indirectly acquire Pentucket Bank, all of Haverhill, Massachusetts.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–07940 Filed 4–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHAC). CHAC consists of 18 experts in fields associated with public health, epidemiology, laboratory practice, immunology, infectious diseases, substance use disorder, behavioral science, health education, healthcare delivery, state health programs, clinical care, preventive health, medical education, health services and clinical research, health equity, and healthcare financing, who are selected by the Secretary, HHS.

DATES: Nominations for membership on CHAC must be received no later than October 1, 2023. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to *nchhstppolicy@cdc.gov* with the subject line ''CHAC 2024 Nomination.''

FOR FURTHER INFORMATION CONTACT: Marah Condit, MS, Committee Management Lead, Office of Policy, Planning, and Partnerships, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop US8–6, Atlanta, Georgia 30329–4027. Telephone: (404) 639–3423; Email: *MCondit@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Secretary, Department of Health and Human Services (HHS), and by delegation the Director, Centers for Disease Control and Prevention (CDC), and the Administrator, Health Resources and Services Administration (HRSA), are authorized by the Public Health Service Act to: (1) conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in preventing, suppressing, and treating communicable diseases and other preventable conditions and in promoting health and well-being; (3) assist public and non-profit private entities in preventing, controlling, and treating sexually transmitted diseases (STDs), including the human immunodeficiency virus (HIV); (4) improve health and achieve health equity through access to quality services and a skilled health workforce and innovative programs; (5) support healthcare services to persons with or who experience risk for HIV, viral hepatitis, and other STDs; (6) advance the education of health professionals and the public about HIV, viral hepatitis, and other STDs; and (7) adolescent and school health as it pertains to HIV, viral hepatitis, and STDs.

The CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHAC) meets at least two times each calendar year, or at the discretion of the Designated Federal Officers in consultation with the CHAC co-chairs.

HHS policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. The CHAC charter stipulates that the Committee must include at least four members who are persons with HIV. The Committee may also include representation from persons with lived experience, such as those who have experienced viral hepatitis, STDs, and drug use; state and local health and education agencies; HIV/viral hepatitis/STD community-based organizations; and the ethics or faith-based community.

Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning of

and annually during their terms. Individuals who are selected for appointment will be required to provide detailed information regarding their financial interests and, for example, any work they do for the federal government through research grants or contracts. Disclosure of this information is required in order for CDC ethics officials to determine whether there is a conflict between the SGE's public duties as a member of CHAC and the SGE's private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict.

CDC and HRSA review potential candidates for CHAC membership when a vacancy arises and provide a slate of nominees for consideration to the Secretary of HHS for final selection. CDC and HRSA each publish a **Federal Register** notice and will be using a joint process to nominate nominees on a rolling basis; thus, applications received by CDC will be shared with HRSA for consideration. Therefore, potential candidates need only apply in response to one of the **Federal Register** notices. HHS notifies selected candidates of their appointment near the start of the term in December 2024, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. Candidates should submit the following items:

- A letter of interest or personal statement from the nominee stating how the nominee's expertise would inform the work of CHAC
- A biographical sketch of the nominee (500 words or fewer)
- Current curriculum vitae or resume, including complete contact information (telephone numbers, mailing address, and email address)
- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*i.e.,* CDC, National Institutes of Health, Food and Drug Administration, etc.).

Nominations may be submitted directly by the individual seeking nomination or by the person/organization recommending the candidate. CDC and HRSA will collect and retain nominations received for up to two years to create a pool of potential CHAC nominees.

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. 2023–07997 Filed 4–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1294]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''The Maternal Mortality Review Information Application (MMRIA)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 11, 2023 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

The Maternal Mortality Review Information Application (MMRIA) (OMB Control No. 0920–1294, Exp. 04/30/2023)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) seeks a Revision to continue to collect information through the Maternal Mortality Review Information Application (MMRIA) for three additional years. MMRIA is a standardized data collection system that allows Maternal Mortality Review Committees (MMRCs) across the country to abstract relevant data (clinical and non-clinical) from a variety of sources, document committee decisions, and analyze data in order to better understand the contributing factors and preventability of pregnancy-related deaths and thus to develop recommendations for prevention.

Pregnancy-related deaths are defined as a death as a result of pregnancy or delivery complications, a chain of events initiated by pregnancy, or the aggravation of an unrelated condition by the physiologic effects of pregnancy. Considerable racial disparities exist, with persons who are non-Hispanic Native Hawaiian or Other Pacific Islander, non-Hispanic American Indian/Alaska Native and non-Hispanic

Black persons more likely to die from pregnancy-related complications than persons of other race-ethnicity classifications. Findings from analyses of aggregated MMRC data indicate that about four out of five pregnancy-related deaths are preventable.

Maternal Mortality Review is a process by which a multidisciplinary committee at the jurisdiction level identifies and reviews cases of death that occur during or within one year of end of pregnancy. Members of MMRCs typically represent public health, obstetrics and gynecology, maternal-fetal medicine, nursing, midwifery, forensic pathology, mental and behavioral health, community-based organizations, and other relevant partners. Through a partnership among the MMRC, state vital records office, and epidemiologists, deaths among females of reproductive age are examined to determine if they occurred during pregnancy or within one year of the end of pregnancy (*i.e.,* pregnancy-associated deaths). Through this process, potential cases of pregnancy-related deaths (*i.e.,* death from any cause related to or aggravated by pregnancy or its management) are then identified. Review committees access multiple sources of clinical and non-clinical information to understand the circumstances surrounding a death in order to determine pregnancy-relatedness and develop recommendations for action to prevent similar deaths in the future.

MMRIA is a standardized data collection system designed to support MMRC processes. Data are abstracted and entered into MMRIA from various sources, including death records, autopsy reports, birth and fetal death records, prenatal care records, emergency department visit records, hospitalization records, records from other medical office visits, medical transport records, social and environmental profiles, mental health profiles, and informant interviews. Case narratives for committee reviews are developed from the abstracted data entered into MMRIA to facilitate committee review, and committee decisions based on their review are also be entered into MMRIA.

The data collected in MMRIA is used to facilitate an understanding of the drivers of maternal mortality and complications of pregnancy and associated disparities and implement data driven recommendations.

The burden estimates presented here are applicable to the 39 jurisdictions with funding support (which support 40 reporting jurisdictions through the cooperative agreements Preventing Maternal Deaths: Supporting Maternal Mortality Review Committees (CDC–RFA–DP19–1908) and Preventing Maternal Mortality: Supporting Maternal Mortality Review Committees CDC–RFA–DP22–2211) and 13 remaining eligible jurisdictions that may apply to receive funding in FY23 (CDC–RFA–DP–23–0066). These jurisdictions are required to compile a defined set of information about pregnancy-related deaths into MMRIA. It is estimated that information will be collected for a total of 2,240 pregnancy-associated deaths on average, annually, among the 53 jurisdictions with current or potential funding support through CDC–RFA–DP19–1908, CDC–RFA–DP22–2211, and CDC–RFA–DP–23–0066. For 34 jurisdictions, it is estimated that on average, 15 hours of data abstraction are required for each death entered into MMRIA. The other 19 jurisdictions are able to participate in a process to reduce burden by which CDC uploads vital records information into MMRIA rather than jurisdiction staff manually abstracting vital records. For these 19 jurisdictions, the estimated average is 14 hours of abstraction for each death entered into MMRIA. For all jurisdictions with current or potential funding support through CDC–RFA–DP19–1908, CDC–RFA–DP22–2211, and CDC–RFA–DP–23–0066, an additional 24 minutes on average is needed to enter the committee decisions into MMRIA.

There are four changes that result in this request for revision, with the first three having an impact on the estimated burden for this revision. First, through additional congressional appropriations, an additional 15 jurisdictions are now funding recipients from the time of initial OMB PRA approval. An additional 13 jurisdictions are eligible to apply for FY 23 funding. Overall, this represents an increase from 25 to 53 respondents. Second, CDC estimates a higher number of pregnancy-associated deaths due to utilizing data from the Pregnancy Mortality Surveillance System (PMSS) rather than CDC WONDER for these estimates. PMSS estimates of pregnancy-associated deaths are more accurate due to more comprehensive and complete identification of these deaths through multiple case identification methods. Third, CDC has been working with the National Association for Public Health Statistics and Information Systems on an initiative that enables CDC to transfer vital records data associated with CDC identified pregnancy-associated deaths directly into a jurisdiction's instance of MMRIA, reducing manual data entry burden for the 19 respondents participating in the initiative. Fourth, to address user identified needs and increase data use for analysis by jurisdictions, a total of 60 new optional fields were added to MMRIA, three fields removed, and two fields combined into one. None of the added fields are required fields; 50 would only be relevant for specific causes of death or only when a specific type of record is available; the majority of new optional fields are drop down fields with minimal response burden.

The changes resulted in an overall increase of 21,932 burden hours. CDC requests OMB approval for an estimated annual burden of 33,482 hours. There is no cost for respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Jurisdictions with current or potential funding support through CDC–RFA–DP19–1908, CDC–RFA–DP22–2211, and CDC–RFA–DP–23–0066 who manually abstract all data into MMRIA.	MMRIA abstraction form.	34	42	15
Jurisdictions with current or potential funding support through CDC–RFA–DP19–1908, CDC–RFA–DP22–2211, and CDC–RFA–DP–23–0066 for which CDC is uploading vital records into MMRIA and jurisdiction staff abstract remaining data manually into MMRIA.	MMRIA abstraction form.	19	42	14

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
All jurisdictions with current or potential funding support through CDC–RFA–DP19–1908, CDC–RFA–DP22–2211, and CDC–RFA–DP–23–0066.	MMRIA committee decision form.	53	42	24/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–07995 Filed 4–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Council for the Elimination of Tuberculosis

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Advisory Council for the Elimination of Tuberculosis (ACET). ACET consists of 10 experts including the Chair in fields associated with public health, epidemiology, immunology, infectious diseases, pulmonary disease, pediatrics, tuberculosis, microbiology, and preventive health care delivery.

DATES: Nominations for membership on ACET must be received no later than August 31, 2023. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to *nchhstppolicy@cdc.gov* with the subject line ''ACET 2024 Nomination'' or faxed to (404) 639–8600.

FOR FURTHER INFORMATION CONTACT: Marah Condit, MS, Committee Management Lead, Office of Policy, Planning, and Partnerships, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop US8–6, Atlanta, Georgia 30329–4027. Telephone: (404) 639–3423; Email: *MCondit@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council for the Elimination of Tuberculosis (ACET) provides advice and recommendations regarding the elimination of tuberculosis (TB) to the Secretary, Department of Health and Human Services (HHS); the Assistant Secretary for Health, HHS; and the Director, Centers for Disease Control and Prevention (CDC). ACET (a) makes recommendations on policies, strategies, objectives, and priorities; (b) addresses development and application of new technologies; (c) provides guidance and review of CDC's TB prevention research portfolio and program priorities; and (d) reviews the extent to which progress has been made toward eliminating TB.

Nominations are sought for persons who have expertise and qualifications necessary to contribute to the accomplishment of the objectives of ACET. Nominees will be selected on the basis of their expertise in public health, epidemiology, immunology, infectious diseases, pulmonary disease, pediatrics, tuberculosis, microbiology, or preventive health care delivery. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACET objectives.

HHS policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. CDC reviews potential candidates for ACET membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July 2024, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, and email address).
- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*i.e.,* CDC, National Institutes of Health, Food and Drug Administration, etc.).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

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. 2023–07992 Filed 4–14–23; 8:45 am]

BILLING CODE 4163–18–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–PS–23–002, Enhancing Telehealth Strategies To Support Retention and Adherence to Antiretroviral Therapy (ART), and RFA–PS–23–003, Exploring Preferences for Long-Acting Antiretroviral Therapies (LA–ART) in a Community-Based Sample of Priority Populations Living With HIV Who Are Disproportionately Affected; Amended Notice of Closed 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–PS23–002, Enhancing Telehealth Strategies to Support Retention and Adherence to Antiretroviral Therapy (ART), and RFA–PS23–003, Exploring Preferences for Long-Acting Antiretroviral Therapies (LA–ART) in a Community-Based Sample of Priority Populations Living with HIV Who are Disproportionately Affected; May 11–12, 2023, 10 a.m.—5 p.m., EDT, teleconference, Centers for Disease Control and Prevention, 8 Corporate Boulevard, Room 1077, Atlanta, Georgia 30329, in the original **Federal Register** Notice. The meeting was published in the **Federal Register** on March 8, 2023, Volume 88, Number 45, page 14370.

The meeting is being amended to remove RFA–PS23–002, Enhancing Telehealth Strategies to Support Retention and Adherence to Antiretroviral Therapy (ART) and to remove the second day of the meeting. The notice should read as follows:

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)— RFA–PS23–003, Exploring Preferences for Long-Acting Antiretroviral Therapies (LA–ART) in a Community-Based Sample of Priority Populations Living with HIV Who are Disproportionately Affected.

Date: May 11, 2023.

Time: 10 a.m.–5 p.m., EDT.

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, Centers for Disease Control and Prevention, 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. 2023–07996 Filed 4–14–23; 8:45 am]

BILLING CODE 4163–18–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–PS23–001, Increasing PrEP Use Among Black Cisgender Women in the United States (HerPrEP) and RFA–PS23–005, Expanding Rapid Initiation of Antiretroviral Therapy in Non-Traditional Settings: Emergency Department; Amended Notice of Closed 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–PS–23–001, Increasing PrEP Use Among Black Cisgender Women in the United States (HerPrEP), and RFA–PS–23–005, Expanding Rapid Initiation of Antiretroviral Therapy in Non-traditional Settings: Emergency Department; May 24–25, 2023, 10 a.m.–5 p.m. EDT, Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Blvd., Atlanta, GA 30329 in the original **Federal Register** Notice. The meeting was published in the **Federal Register** on March 8, 2023, Volume 88, Number 45, pages 14372–14373.

The meeting is being amended to remove the second day of the meeting. The notice should read as follows:

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–PS–23–001, Increasing PrEP Use Among Black Cisgender Women in the United States (HerPrEP), and RFA–PS–23–005, Expanding Rapid Initiation of Antiretroviral Therapy in Non-traditional Settings: Emergency Department.

Date: May 24, 2023.

Time: 10 a.m.–5 p.m., EDT.

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, Centers for Disease Control and Prevention, 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. 2023–07991 Filed 4–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcomed to listen to the meeting by joining the teleconference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on June 14, 2023, from 11 a.m. to 1 p.m., EDT. Written comments must be received on or before June 7, 2023.

ADDRESSES: You may submit comments by mail to: Rashaun Roberts, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226. Telephone (513) 533–6800; Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2022, and will terminate on March 22, 2024.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Considered: The agenda will include discussions on the following: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; and plans for the August 2023 Advisory Board Meeting. Agenda items are subject to change as priorities dictate. For additional information, please contact toll free 1 (800) 232–4636.

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. 2023–08003 Filed 4–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10110, CMS–10537, CMS–10344 and CMS–10527]

Agency Information Collection Activities: Submission for OMB Review; 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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by *May 17, 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.

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 Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

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.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Elimination of Cost-Sharing for full benefit dual-eligible Individuals Receiving Home and Community-Based Services; *Use:* Section 1860 D–14 of the Social Security Act sets forth requirements for premium and cost-sharing subsidies for low-income beneficiaries enrolled in Medicare Part D. Based on this statute, 42 CFR 423.771, provides guidance concerning limitations for payments made by and on behalf of low-income Medicare beneficiaries who enroll in Part D plans. 42 CFR 423.771 (b) establishes requirements for determining a beneficiary's eligibility for full subsidy under the Part D program. Regulations set forth in 423.780 and 423.782 outline premium and cost sharing subsidies to which full subsidy eligible are entitled under the Part D program

Each month CMS deems individuals automatically eligible for the full subsidy, based on data from State Medicaid Agencies and the Social Security Administration (SSA). The SSA sends a monthly file of Supplementary Security Income-eligible beneficiaries to CMS. Similarly, the State Medicaid agencies submit Medicare Modernization Act files to CMS that identify full subsidy beneficiaries. CMS deems the beneficiaries as having full subsidy and auto-assigns these beneficiaries to bench mark Part D plans. Part D plans receive premium amounts based on the monthly assessments. *Form Number:* CMS–10344 (OMB control number 0938–1127); *Frequency:* Monthly; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 51; *Number of Responses:* 612; *Total Annual Hours:* 621. (For policy questions regarding this collection contact Roland Herrera at 410–786–0668).

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Eligibility Redetermination, Product Discontinuation and Renewal Notices; *Use:* Section 1411(f)(1)(B) of the Affordable Care Act directs the Secretary of Health and Human Services (the Secretary) to establish procedures to redetermine the eligibility of individuals for premium tax credits on a periodic basis in appropriate circumstances. Section 1321(a) of the Affordable Care Act provides authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, qualified health plans (QHPs) and other components of title I of the Affordable Care Act. Under section 2703 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and former section 2712 and section 2741 of the PHS Act, enacted by the Health Insurance Portability and Accountability Act of 1996, health insurance issuers in the group and individual markets must guarantee the renewability of coverage unless an exception applies.

The 2014 final rule ''Patient Protection and Affordable Care Act; Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs; Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges'' (79 FR 52994, September 5, 2014), provides that an Exchange may choose to conduct the annual redetermination process for a plan year (1) in accordance with the existing procedures described in 45 CFR 155.335; (2) in accordance with procedures described in guidance issued by the Secretary for the applicable benefit year; or (3) using an alternative procedure proposed by the Exchange and approved by the Secretary. The 2014 final rule established a renewal and reenrollment hierarchy at 45 CFR 155.335(j) to minimize potential enrollment disruptions. The 2016 final rule ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017'' (81 FR 12204, March 8, 2016) amended the enrollment hierarchy to further minimize potential disruptions of enrollee eligibility for cost-sharing reductions. The final rule ''Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024'' adopted changes to 45 CFR 155.335(j) to allow the Exchange, beginning in the 2024 plan year, to direct re-enrollment for enrollees who are eligible for cost-sharing reductions in accordance with § 155.305(g) from a bronze QHP to a silver QHP with a lower or equivalent premium after advance payments of the premium tax credit within the same product and QHP issuer, regardless of whether their current plan is available or not, if certain conditions are met (referred to here as the ''bronze to silver crosswalk policy'').

The guidance document ''Guidance on Annual Eligibility Redetermination and Re-enrollment for Exchange Coverage for 2019 and Later Years'' contains the procedures that the Secretary specified for the coverage year, as noted in (2) above, and specified that these procedures will be

used by all Exchanges using the Federal eligibility and enrollment platform, unless otherwise specified in future guidance or rulemaking.

The 2014 final rule also amended the requirements for product renewal and re-enrollment (or non-renewal) notices to be sent by QHP issuers in the Exchanges and specifies content for these notices. The guidance document ''Updated Federal Standard Renewal and Product Discontinuation Notices, and Enforcement Safe Harbor for Product Discontinuation Notices in Connection with the Open Enrollment Period for Coverage in the Individual Market in the 2020 Benefit Year'' provides standard notices for product discontinuation and renewal to be sent by issuers of individual market QHPs and issuers in the individual market.

The Federal standard notices to be sent by issuers of individual market QHPs and issuers in the individual market have been revised to improve consumer understanding and update out-of-date information, and to include language to reference the potential for a bronze to silver crosswalk under 45 CFR 155.335(j)(4). The revised notices in this information collection will be required for notices provided in connection with coverage beginning in the 2024 plan year.

Issuers in the small group market may use the draft Federal standard small group notices released in the June 26, 2014 bulletin ''Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market'', or any forms of the notice otherwise permitted by applicable laws and regulations. States that are enforcing the guaranteed renewability provisions of the Affordable Care Act may develop their own standard notices for product discontinuances, renewals, or both, provided the state-developed notices are at least as protective as the Federal standard notices. *Form Number:* CMS–10527 (OMB Control Number 0938–1254); *Frequency:* Annually; *Affected Public:* Private Sector, State Governments; *Number of Respondents:* 1,340; *Total Annual Responses:* 5,881; *Total Annual Hours:* 72,147. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371.)

Dated: April 12, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–08069 Filed 4–14–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #37]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: On April 10, 2023, we published a collection of information notice in the **Federal Register** concerning our revised Managed Care Rate Setting Guidance. The notice included an incorrect web address for obtaining copies of the supporting statement, the revised guide, and supporting documents.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 10, 2023, in FR Doc. 2023–07473, on page 21191, in the third column, correct the fourth paragraph under the **ADDRESSES** caption to read as follows:

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.*

Dated: April 12, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–08062 Filed 4–14–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2480]

Rare Disease Endpoint Advancement Pilot Program Workshop: Novel Endpoints for Rare Disease Drug Development; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a public workshop entitled ''Rare Disease Endpoint Advancement Pilot Program Workshop: Novel Endpoints for Rare Disease Drug Development.'' Convened by the Duke-Robert J. Margolis, MD Center for Health Policy (Duke-Margolis) and supported by a cooperative agreement between FDA and Duke-Margolis, the workshop will include discussions of the Rare Disease Endpoint Advancement (RDEA) Pilot Program and novel endpoint development for rare disease drug development.

DATES: The public workshop will be held virtually on June 7, 2023, and June 8, 2023, from 1 p.m. to 5 p.m., Eastern Time. Either electronic or written comments on this public workshop must be submitted by July 23, 2023. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held virtually using the Zoom platform. The link for the public workshop will be sent to registrants upon registration.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time on July 23, 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.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified as confidential, if submitted as detailed in ''*Instructions.*''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2480 for ''Rare Disease Endpoint Advancement Pilot Program Workshop: Novel Endpoints for Rare Disease Drug Development.'' 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: Mary Jo Salerno, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–0420, *RDEA.Meetings@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

This public workshop is intended to support the RDEA Pilot Program consistent with the requirements under section 3208 of the Food and Drug Omnibus Reform Act of 2022 (FDORA). Section 3208 of FDORA requires FDA to establish a pilot program to provide increased interaction with sponsors of rare disease drug development programs for purposes of advancing the development of efficacy endpoints, including surrogate and intermediate endpoints, for drugs intended to treat rare diseases. Section 3208 of FDORA also requires FDA to conduct up to three public workshops to discuss various topics relevant to the development of endpoints for rare diseases on or before September 30, 2026. This is the first of up to three public workshops to satisfy the FDORA requirement.

The public workshop is also intended to meet a performance goal under the FDA User Fee Reauthorization Act of 2022, in accordance with the PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027 letter (PDUFA VII Commitment Letter), which is available at *https://www.fda.gov/media/151712/download*. Specifically, section I.K.4 of the PDUFA VII Commitment Letter, ''Advancing Development of Drugs for Rare Diseases'' (*https://www.fda.gov/media/151712/download*), outlines commitments, including up to three public workshops to discuss various topics relevant to endpoint development for rare diseases.

II. Topics for Discussion at the Public Workshop

The purpose of this public workshop is to: (1) provide an overview of the RDEA Pilot Program (a joint program of the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research), (2) discuss the scientific and technical issues associated with developing study endpoints for rare diseases and highlight resources to assist with addressing these issues, (3) discuss lessons learned from previous PDUFA meeting programs that can be applied to the RDEA Pilot Program, and (4) provide opportunity for public comment on the RDEA Pilot Program and issues associated with rare disease endpoint development.

Meeting sessions will focus on: (1) the RDEA Pilot Program and process, (2) elements of RDEA proposal and meeting packages, (3) addressing issues in developing rare disease endpoints, and (4) experience with other FDA pilot programs. At the end of the public workshop, there will be an opportunity for public comment.

Meeting updates, the agenda, and background materials (if any) will be made available at *https://duke.is/5ca3k* prior to the workshop.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website: *https://duke.is/5ca3k*. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Registration will end at 11:59 p.m. Eastern Time on June 6, 2023.

Registration is free, and persons interested in attending this public workshop must register to receive a link to the meeting. Registrants will receive a confirmation email after they register.

If you need special accommodations due to a disability, please contact *Margolisevents@duke.edu* no later than May 5, 2023. Please note, closed captioning will be available automatically.

Requests for Oral Comments: During online registration you may indicate if you wish to speak during a public comment session. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their comment and request time for joint commentary. All requests to make oral comments must be received by 11:59 p.m. Eastern Time on May 26, 2023. FDA will determine the amount of time

allotted to each commenter and the approximate time each comment is to begin and will select and notify participants by June 2, 2023.

Transcript: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://duke.is/5ca3k*. The transcript will also be available at *https://www.regulations.gov* and may be viewed at the Dockets Management Staff (see **ADDRESSES**).

Dated: April 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08066 Filed 4–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0249]

Authorization of Emergency Use of an In Vitro Diagnostic Device in Response to an Outbreak of Mpox; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) under the Federal Food, Drug, and Cosmetic Act (FD&C Act) in response to an outbreak of mpox. FDA has issued an Authorization for an in vitro diagnostic device as requested by Cue Health, Inc. The Authorization contains, among other things, conditions on the emergency use of the authorized product. The Authorization follows the August 9, 2022, determination by the Secretary of Health and Human Services (HHS) that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves monkeypox virus. On the basis of such determination, the Secretary of HHS declared, on September 7, 2022, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus,* pursuant to the FD&C Act, subject to terms of any authorization issued under that section. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of March 17, 2023.

ADDRESSES: Submit written requests for single copies of an EUA to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, radiological, or nuclear agent or agents when there are no adequate, approved, and available alternatives (among other criteria).

II. Criteria for EUA Authorization

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, or 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc).

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) that an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii) of the FD&C Act, that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

III. The Authorization

The Authorization follows the August 9, 2022, determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves monkeypox virus. Notice of the Secretary's determination was provided in the **Federal Register** on August 15, 2022 (87 FR 50090). On the basis of such determination, the Secretary of HHS declared, on September 7, 2022, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus,* pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section. Notice of the Secretary's declaration was provided in the **Federal Register** on September 13, 2022 (87 FR 56074). On March 17, 2023, having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA issued an EUA to Cue Health, Inc., for the Cue Mpox (Monkeypox) Molecular Test, subject to the terms of the Authorization. The Authorization, which is included below in its entirety after section IV of this document (not including the authorized versions of the fact sheets and other written materials), provides an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act. Any subsequent revision to the Authorization can be found from FDA's web page at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

IV. Electronic Access

An electronic version of this document and the full text of the Authorization is available on the internet at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

BILLING CODE 4164–01–P

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

U.S. FOOD & DRUG ADMINISTRATION

March 17, 2023

Sharon Young
Senior Manager, Regulatory Affairs
Cue Health, Inc.
4980 Carroll Canyon Road, Suite 100
San Diego, CA 92121

Device:	Cue Mpox (Monkeypox) Molecular Test
EUA Number:	EUA230004
Company:	Cue Health, Inc.
Indication:	This test is authorized for the qualitative detection of DNA from monkeypox virus (clade I/II)[1] in human lesion swab specimens (i.e., swabs of acute pustular or vesicular rash) from individuals suspected of mpox[2] by their healthcare provider. Emergency use of this test is limited to authorized laboratories.
Authorized Laboratories:	Laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, that meet requirements to perform high, moderate, or waived complexity tests. Testing is authorized for use at the Point of Care (POC), i.e., in patient care settings operating under a CLIA Certificate of Waiver, Certificate of Compliance, or Certificate of Accreditation.

Dear Sharon Young:

This letter is in response to your[3] request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of your product,[4] pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

[1] On August 12, 2022, following a meeting convened by the World Health Organization (WHO) monkeypox virus variants were renamed to align with current best practices under the International Classification of Diseases and the WHO Family of International Health Related Classifications (WHO-FIC). This letter will refer to the former Congo Basin (Central African) clade as clade one (I) and the former West African clade as clade two (II). Refer to: https://www.who.int/news/item/12-08-2022-monkeypox--experts-give-virus-variants-new-names.

[2] On November 28, 2022, following a series of consultations with global experts, the World Health Organization (WHO) began using a new preferred term "mpox" as a synonym for monkeypox, the disease cause by the monkeypox virus. Refer to: https://www.who.int/news/item/28-11-2022-who-recommends-new-name-for-monkeypox-disease.

[3] For ease of reference, this letter will use the term "you" and related terms to refer to Cue Health, Inc.

[4] For ease of reference, this letter will use the term "your product" to refer to the Cue Mpox (Monkeypox) Molecular Test used for the indication identified above.

On August 9, 2022, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency, or a significant potential for a public health emergency, that affects or has a significant potential to affect national security or the health and security of United States citizens living abroad that involves monkeypox virus.[5] Pursuant to Section 564 of the Act, and on the basis of such determination, the Secretary of HHS then declared on September 7, 2022 that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus*, subject to the terms of any authorization issued under Section 564(a) of the Act.[6]

FDA considered the totality of scientific information available in authorizing the emergency use of your product for the indication above. A summary of the performance information FDA relied upon is contained in the "Cue Mpox (Monkeypox) Molecular Test Instructions for Use." There is an FDA-cleared test for the qualitative detection of non-variola *Orthopoxvirus*, that includes monkeypox virus, but this is not an adequate and available alternative to your product.[7]

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of your product, described in the Scope of Authorization of this letter (Section II), subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of your product meets the criteria for issuance of an authorization under Section 564(c) of the Act, because I have concluded that:

1. The monkeypox virus can cause a serious or life-threatening disease or condition, to humans infected by this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that your product may be effective in diagnosing infection with the monkeypox virus, and that the known and potential benefits of your product when used for diagnosing infection with the monkeypox virus, outweigh the known and potential risks of your product; and

3. There is no adequate, approved, and available alternative to the emergency use of your product.[8]

[5] 87 FR 50090 (August 15, 2022)
[6] 87 FR 56074 (September 13, 2022)
[7] To date, the FDA-cleared CDC Non-variola *Orthopoxvirus* Real-time PCR Primer and Probe Set (Product Code: PBK; DEN070001, K181205, K221658, K221834, K222558) is the only test available in the United States with FDA clearance for the detection of non-variola *Orthopoxvirus* DNA, including vaccinia, cowpox, monkeypox and ectromelia viruses at varying concentrations. Available information indicates that timely detection of mpox cases in the United States requires wide availability of diagnostic testing to control the spread of this contagious infection and there is currently a need for additional diagnostic testing for monkeypox virus in the United States.
[8] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited to the indication above.

Authorized Product Details

Your product is a isothermal nucleic acid amplification assay intended for the qualitative detection of DNA from monkeypox virus (clade I/II), in human lesion swab specimens (i.e., swabs of acute pustular or vesicular rash) from individuals suspected of mpox by a healthcare provider. The test is run using the Cue Health Monitoring System (Cue Reader), the Cue Mpox (Monkeypox) Molecular Test Cartridge, the Cue Sample Wand, and the Cue Health Application (App) on a compatible mobile smart device named on the Cue Health website at www.cuehealth.com.

Testing is limited to laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, that meet requirements to perform high, moderate, or waived complexity tests. Testing is authorized for use at the Point of Care (POC), i.e., in patient care settings operating under a CLIA Certificate of Waiver, Certificate of Compliance, or Certificate of Accreditation.

Results are for the identification of monkeypox virus (clade I/II) DNA which is generally detectable in human pustular or vesicular lesion specimens during the acute phase of infection. Positive results are indicative of the presence of monkeypox virus (clade I/II) DNA; clinical correlation with patient history and other diagnostic information is necessary to determine patient infection status. Positive results do not rule out bacterial infection or co-infection with other viruses. The agent detected may not be the definite cause of disease. Negative results obtained with this device do not preclude monkeypox virus infection and should not be used as the sole basis for treatment or other patient management decisions. Negative results must be combined with clinical observations, patient history, and epidemiological information.

Your product, when used with the Cue Health Monitoring System (Cue Reader), the Cue Mpox (Monkeypox) Molecular Test Cartridge, the Cue Sample Wand, and the Cue Health App downloaded on a compatible mobile smart device,[9] automates all aspects of nucleic acid testing including sample preparation, nucleic acid extraction and amplification, and detection of the monkeypox virus (clade I/II) nucleic acid targeted sequences using isothermal nucleic acid amplification technology in a single-use cartridge as described in the authorized labeling (described below). The Cue Mpox (Monkeypox) Molecular Test includes the materials (or other authorized materials as may be requested under Condition O. below) described in the "Cue Mpox (Monkeypox) Molecular Test Instructions for Use."

[9] Compatible smartphone includes Apple iPhone running Operation System (iOS) 13 or later versions of the iOS, Apple iPad models with iPadOS version 13.0 or later versions with Bluetooth Standard 4.2 or later (Bluetooth 5.0 preferred), and Android Phones running OS 9.0 (API level 28) or later versions with display size 5.5'' or higher; Bluetooth Standard 4.2 or later (Bluetooth 5.0 preferred); Wi-Fi dual-band 2.4GHz and 5 GHz (5 GHz preferred). Additional smartphone models as may be requested, and for which you receive appropriate authorization, in accordance with Condition O. below.

Your product requires control materials (or other authorized control materials as may be requested under Condition O. below) that are described in the "Cue Mpox (Monkeypox) Molecular Test Instructions for Use," and "Cue Mpox (Monkeypox) Molecular Test Quick Reference Instructions (QRI)." Your product also requires the use of additional authorized materials and authorized ancillary reagents that are not included with your product and are described in the authorized labeling described below.

The labeling entitled "Cue Mpox (Monkeypox) Molecular Test Instructions for Use," "Cue Mpox (Monkeypox) Molecular Test Quick Reference Instructions (QRI)," "Cue Health Monitoring System User Manual," and the "Cue Get Started Here" quick start guide, (available at https://www.fda.gov/medical-devices/emergency-use-authorizations-medical-devices/monkeypox-emergency-use-authorizations-medical-devices), the "Cue Health App" and the following fact sheets pertaining to the emergency use, are required to be made available as set forth in the Conditions of Authorization (Section IV), and are collectively referred to as "authorized labeling":

- Fact Sheet for Healthcare Providers: Cue Health, Inc. – Cue Mpox (Monkeypox) Molecular Test
- Fact Sheet for Patients: Cue Health, Inc. – Cue Mpox (Monkeypox) Molecular Test

The above described product, when accompanied by the authorized labeling provided as set forth in the Conditions of Authorization (Section IV), is authorized to be distributed to and used by authorized laboratories under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of your product, when used consistent with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of your product.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that your product may be effective in diagnosing infection with the monkeypox virus, when used consistent with the Scope of Authorization of this letter (Section II), pursuant to Section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that your product (as described in the Scope of Authorization of this letter (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of your product under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) of the Act described above and the Secretary of HHS's corresponding declaration under Section

564(b)(1) of the Act, your product is authorized for the indication above.

III. Waiver of Certain Requirements

I am waiving the following requirements for your product during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of your product, but excluding Subpart H (Acceptance Activities, 21 CFR 820.80 and 21 CFR 820.86), Subpart I (Nonconforming Product, 21 CFR 820.90), Subpart O (Statistical Techniques, 21 CFR 820.250) and Subpart M (Complaint Files, 21 CFR 820.198).

IV. Conditions of Authorization

Pursuant to Section 564(e) of the Act, I am establishing the following conditions on this authorization:

Cue Health, Inc. (You) and Authorized Distributor(s)[10]

A. Your product must comply with the following labeling requirements pursuant to FDA regulations: the intended use statement (21 CFR 809.10(a)(2), (b)(2)); adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)); appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4); and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

B. Your product must comply with the following quality system requirements pursuant to FDA regulations: 21 CFR 820 Subpart H (Acceptance Activities, 21 CFR 820.80 and 21 CFR 820.86), Subpart I (Nonconforming Product, 21 CFR 820.90), Subpart O (Statistical Techniques, 21 CFR 820.250), and Subpart M (Complaint Files, 21 CFR 820.198).

C. You and authorized distributor(s) must make your product available with the authorized labeling to authorized laboratories.

D. You and authorized distributor(s) must make available on your website(s) the authorized labeling.

E. You and authorized distributor(s) must make available "Cue Mpox (Monkeypox) Molecular Test Instructions for Use," "Cue Mpox (Monkeypox) Molecular Test Quick Reference Instructions (QRI)," "Cue Health Monitoring System User Manual," "Cue Get Started Here" quick start guide related to the use of your product on your website(s) and via the Cue Health Application (Cue Health App). Additionally, you must provide the opportunity to request a copy of the above named authorized labeling

[10] "Authorized Distributor(s)" are identified by you, Cue Health, Inc., in your EUA submission as an entity allowed to distribute your product.

documents in paper form, and after such request, you must promptly provide the requested labeling at no additional cost.

F. You and authorized distributor(s) must inform authorized laboratories and relevant public health authorities of this EUA, including the terms and conditions herein, and any updates made to your product and authorized labeling.

G. Through a process of inventory control, you and authorized distributor(s) must maintain records of the authorized laboratories to which your product is distributed and the number of your product distributed.

H. You and authorized distributor(s) must collect information on the performance of your product. You must report any significant deviations from the established performance characteristics of your product of which you become aware to the Division of Microbiology (DMD)/Office of Health Technology 7 (OHT7): Office of In Vitro Diagnostics /Office of Product Evaluation and Quality (OPEQ)/Center for Devices and Radiological Health (CDRH) (via email: CDRH-EUA-Reporting@fda.hhs.gov).

I. You and authorized distributor(s) are authorized to make available additional information relating to the emergency use of your product that is consistent with, and does not exceed, the terms of this letter of authorization.

Cue Health, Inc. (You)

J. You must register and list consistent with 21 CFR Part 807 within one month of this letter.

K. You must notify FDA of any authorized distributor(s) of your product, including the name, address, and phone number of any authorized distributor(s).

L. You must have a signed agreement with each authorized distributor that distribution of the authorized product must be consistent with this Letter of Authorization.

M. If requested by FDA, you must submit associated documents and records related to your quality system for FDA review within 48 hours of the request.

N. You must provide authorized distributor(s) with a copy of this EUA and communicate to authorized distributor(s) any subsequent amendments that might be made to this EUA and its authorized accompanying materials (e.g., Fact Sheets).

O. You may request modifications to this EUA for your product, including to the Scope of Authorization (Section II in this letter) or to the authorized labeling, including requests to make available additional authorized labeling specific to an authorized distributor. Such additional labeling may use another name for the product but otherwise must be consistent with the authorized labeling, and not exceed the terms of authorization of this

letter. Any request for modification to this EUA should be submitted to DMD/OHT7/OPEQ/CDRH and require appropriate authorization from FDA.

P. You must have lot release procedures and the lot release procedures, including the study design and statistical power, must ensure that the tests released for distribution have the clinical and analytical performance claimed in the authorized labeling.

Q. If requested by FDA, you must submit lot release procedures to FDA, including sampling protocols, testing protocols, and acceptance criteria, that you use to release lots of your product for distribution in the U.S. If such lot release procedures are requested by FDA, you must provide it within 48 hours of the request.

R. You must evaluate the analytical limit of detection and assess traceability of your product with any FDA-recommended reference material(s) if requested by FDA.[11] After submission to and concurrence with the data by FDA, you must update your labeling to reflect the additional testing. Such labeling updates will be made in consultation with, and require concurrence of, DMD/OHT7/OPEQ/CDRH.

S. You must have a process in place to track adverse and report to FDA pursuant to 21 CFR Part 803.

T. You must evaluate the impact of monkeypox viral mutations on your product's performance. Such evaluations must occur on an ongoing basis and must include any additional data analysis that is requested by FDA in response to any performance concerns you or FDA identify during routine evaluation. Additionally, if requested by FDA, you must submit records of these evaluations for FDA review within 48 hours of the request. If your evaluation identifies viral mutations that affect the stated expected performance of your device, you must notify FDA immediately (via email: CDRH-EUA-Reporting@fda.hhs.gov).

U. If requested by FDA, you must update your labeling within 7 calendar days to include any additional labeling risk mitigations identified by FDA regarding the impact of viral mutations on test performance. Such updates will be made in consultation with, and require concurrence of, DMD/OHT7/OPEQ/CDRH.

V. If requested by FDA, you must further evaluate the clinical performance of your product using fresh natural clinical specimens in an FDA agreed upon post authorization clinical evaluation study. After submission to and concurrence with the data by FDA, you must update the authorized labeling to reflect the additional testing. Such labeling updates will be made in consultation with, and require concurrence of, DMD/OHT7/OPEQ/CDRH.

W. You must make available an FDA agreed upon positive control material for use with your product within 3 months of the date of this letter (unless otherwise agreed to with

[11] Traceability refers to tracing analytical sensitivity/reactivity back to an FDA-recommended reference material. FDA may request, for example, that you perform this study in the event that we receive reports of adverse events concerning your product.

DMD/OHT7/OPEQ/CDRH). After submission of details about the positive control material to, and review of and concurrence with the positive control material by FDA, you must update your product labeling if requested by FDA. Such additional labeling updates must be made in consultation with, and require concurrence of, DMD/OHT7/OPEQ/CDRH prior to implementation.

X. You must further evaluate the near LoD performance of your product in an FDA agreed upon post authorization study within 4 months of the date of this letter (unless otherwise agreed to with DMD/OHT7/OPEQ/CDRH) . After submission to and concurrence with the data by FDA, you must update authorized labeling to reflect the additional testing, if requested by FDA. Such labeling updates will be made in consultation with, and require concurrence of, DMD/OHT7/OPEQ/CDRH.

Y. You must submit to DMD/OHT7/OPEQ/CDRH within 3 months of the date of this letter your plan and anticipated timeline to establish and maintain a quality system that is appropriate for your product's design and manufacture, and that meets the requirements of either the 2016 edition of ISO 13485 or 21 CFR Part 820.

Authorized Laboratories

Z. Authorized laboratories that receive your product must notify the relevant public health authorities of their intent to run your product prior to initiating testing.

AA. Authorized laboratories using your product must have a process in place for reporting test results to healthcare providers and relevant public health authorities, as appropriate.

BB. Authorized laboratories using your product must include with test result reports, all authorized Fact Sheets. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

CC. Authorized laboratories using your product must use your product as outlined in the authorized labeling. Deviations from the authorized procedures, including the authorized instruments, authorized extraction methods, authorized clinical specimen types, authorized control materials, authorized other ancillary reagents and authorized materials required to use your product are not permitted.

DD. Authorized laboratories must have a process in place to track adverse events and report to you (Cue Customer Technical Support 833-283-8378) and to FDA pursuant to 21 CFR Part 803.

EE. All operators using your product must be appropriately trained in performing and interpreting the results of your product, use appropriate personal protective equipment when handling your product, and use your product in accordance with the authorized labeling.

Cue Health, Inc. (You), Authorized Distributor(s) and Authorized Laboratories

FF. You, authorized distributor(s), and authorized laboratories must collect information on the performance of your product and must report any significant deviations from the established performance characteristics of your product of which they become aware to DMD/OHT7/OPEQ/CDRH (via email: CDRH-EUA-Reporting@fda.hhs.gov) In addition, authorized distributor(s) and authorized laboratories report to you (833.283.8378 or support@cuehealth.com).

GG. You, authorized distributor(s), and authorized laboratories using your product must ensure that any records associated with this EUA, are maintained until otherwise notified by FDA. Such records must be made available to FDA for inspection upon request.

Conditions Related to Printed Materials, Advertising and Promotion

HH. All descriptive printed matter, advertising and promotional materials relating to the use of your product shall be consistent with the authorized labeling, as well as the terms set forth in this EUA and meet the requirements set forth in section 502(a), (q)(1), and (r) of the Act, as applicable, and FDA implementing regulations.

II. No descriptive printed matter, advertising or promotional materials relating to the use of your product may represent or suggest that this test is safe or effective for the detection of monkeypox virus or other non-variola orthopoxviruses.

JJ. All descriptive printed matter, advertising and promotional materials relating to the use of your product shall clearly and conspicuously state that:

- This product has not been FDA cleared or approved, but has been authorized for emergency use by FDA under an EUA;
- This product has been authorized only for the detection of nucleic acid from monkeypox virus, not for any other viruses or pathogens; and
- The emergency use of this product is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus*, under Section 564(b)(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization is revoked sooner.

The emergency use of your product as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

Page 10 – Sharon Young, Cue Health, Inc.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus*, is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

Enclosure

Dated: April 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08023 Filed 4–14–23; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Second Meeting of the 2025 Dietary Guidelines Advisory Committee

AGENCY: U.S. Department of Health and Human Services (HHS); Office of the Assistant Secretary for Health (OASH); and U.S. Department of Agriculture (USDA), Food, Nutrition, and Consumer Services (FNCS).

ACTION: Notice.

SUMMARY: The Departments of Health and Human Services and Agriculture announce the second meeting of the 2025 Dietary Guidelines Advisory Committee (Committee). This meeting will be open to the public virtually.

DATES: The second meeting of the 2025 Dietary Guidelines Advisory Committee will be held on May 10, 2023, 9 a.m. to 3:30 p.m. ET.

ADDRESSES: The meeting will be accessible online via livestream and recorded for later viewing. Registrants will receive the livestream information prior to the meeting.

SUPPLEMENTARY INFORMATION:

Authority and Purpose: Under Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III), the Secretaries of HHS and USDA are directed to publish the *Dietary Guidelines for Americans* jointly at least every five years. See 88 FR 3423, January 19, 2023, for notice of the first meeting of the 2025 Dietary Guidelines Advisory Committee, the complete Authority and Purpose, and the Committee's Task. The 2025 Dietary Guidelines Advisory Committee is formed and governed under the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App).

Purpose of the Meeting: The Committee will meet to discuss their prioritization of the scientific questions proposed by the Departments (see *www.DietaryGuidelines.gov*) and share draft plans for their review of the scientific evidence. In accordance with FACA, deliberations of the Committee will occur in a public forum.

Meeting Agendas: A detailed agenda will be announced in advance of the meeting at *www.DietaryGuidelines.gov.* The agenda will include presentations by each subcommittee and deliberation by the full Committee regarding the prioritization of scientific questions and initial draft protocol development and discussion of plans for future Committee work.

Public Comment: Public comments to the Committee opened on January 19, 2023 and will remain open throughout the Committee's deliberations. Comments may be submitted at *https://www.regulations.gov/document/HHS-OASH-2022-0021-0001.*

Meeting Registration: This Committee meeting is open to the public. The meeting will be accessible online via livestream and recorded for later viewing. Registration is required for the livestream. To register, go to *www.DietaryGuidelines.gov* and click on the link for ''Meeting Registration.''

Closed captioning will be available to all participants. Individuals who need accommodations should contact Kara Beckman (*Kara.Beckman@hhs.gov*). Requests should be made at least five business days in advance of the meeting.

Meeting materials for each meeting will be accessible at *www.DietaryGuidelines.gov.* Materials may be requested by email at *dietaryguidelines@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, 2025 Dietary Guidelines Advisory Committee, Janet M. de Jesus, MS, RD; HHS/OASH/ODPHP, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852; Phone: 240–453–8266; Email *DietaryGuidelines@hhs.gov.* Additional information is

available on the internet at *www.DietaryGuidelines.gov.*

Paul Reed,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2023–08081 Filed 4–14–23; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0323]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 17, 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: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041, or *PRA@HHS.GOV.* When submitting comments or requesting information, please include the document identifier 0990–0323–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: MedicalCountermeasures.gov.

Type of Collection: Reinstatement without chg.

OMB No.: 0990–0323.

Abstract: Department of Health and Human Services, Administration for Strategic Preparedness and Response (ASPR).

The USG seeks information from stakeholders on available medical countermeasures in development, with a particular interest in products, technologies, and capabilities that have progressed into or beyond clinical trials, have established large-scale cGMP manufacturing capability, or utilize an approved platform. Information regarding diagnostics, therapeutics, vaccines, and other products, technologies, or capabilities relevant to respond to public health emergencies are sought. The TechWatch program, run by ASPR/BARDA, provides the *Medicalcountermeasures.gov bdr.hhs.gov* portal as a single point of entry for the submission of meeting requests from interested stakeholders with promising MCM products, technologies, and capabilities.

The information collection request is seeking OMB approval for a three (3) year duration. It is expected that any given responded would submit TechWatch meeting requests no more than annually, based on program history. Developers of medical countermeasures respondents will submit a response once and never submit subsequent requests.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Developers of medical countermeasures addressing naturally occurring and intentional public health threats	350	1	8/60	47
Total	350			47

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–08075 Filed 4–14–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0459]

Agency Father Generic Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 16, 2023.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or *PRA@hhs.gov* by calling (202) 264–0041.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–264–0041.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Fast-Track Generic Clearance for the Collection of Routine Customer Feedback on HHS Communications.

Type of Collection: Father Generic ICR.

OMB No.: 0990–0459—ASPA.

Abstract: This collection of information is necessary to enable HHS to garner customer and stakeholder feedback. Information will be collected from our customers and stakeholders from the concept phase to the end of the product life cycle. This will help ensure that users have an effective, efficient, and satisfying experience with HHS communications products. If this information is not collected, vital feedback on HHS communications will be unavailable, preventing programs from developing communications products that meets the needs of the audience and demonstrating impact of the communications products developed.

Type of respondent; frequency (annual, quarterly, monthly, etc.); and the affected public (individuals, public or private businesses, state or local governments, etc.)

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
HHS communications products	1,000,000	1	30/60	500,000

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–08063 Filed 4–14–23; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0379]

Agency Father Generic Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 16, 2023.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or *PRA@hhs.gov* by calling (202) 264–0041.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0379–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–202–264–0041.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Online Customer Surveys).

Type of Collection: Father Generic ICR.

OMB No.: 0990–0379—OS/ASPA.

Abstract: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders.

Type of respondent; frequency (annual, quarterly, monthly, etc.); and the affected public (individuals, public or private businesses, state or local governments, etc.).

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Website Customer Satisfaction Survey	3,000,000	1	10/60	500,000

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2023–08032 Filed 4–14–23; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify one of the Contact Persons listed below in advance of the meeting.

The meeting can be accessed from the NIH Videocast *https://videocast.nih.gov/* and CCRHB *https://ccrhb.od.nih.gov/meetings.html* websites.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: June 16, 2023.

Time: 9:30 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC CEO Update of Recent Activities and Organizational Priorities, Status Report on Key CC Strategic Plan Initiatives, and Other Business of the Clinical Center Research Hospital Board (CCRHB).

Place: National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Persons: Patricia Piringer, RN, MSN (C), National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, *ppiringer@cc.nih.gov*, (301) 402–2435, (202) 460–7542 (direct).

Natascha Pointer, Management Analyst, Executive Assistant to Dr. Gilman, Office of the Chief Executive Officer, National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, *npointer@cc.nih.gov*, (301) 496–4114, (301) 402–2434 (direct).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person(s) listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Meeting information is also available on the CCRHB website: *https://www.ccrhb.od.nih.gov/* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 12, 2023.

Patricia B. Hansberger,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08071 Filed 4–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: May 25, 2023.

Closed: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, Building B, Room 377, 9800 Medical Center Drive, Rockville, MD 20850.

Open: 1:00 p.m. to 6:00 p.m.

Agenda: Report from the Center Director, 2024 NCATS Strategic Plan, Program Updates (2).

Place: National Center for Advancing Translational Sciences, National Institutes of Health, Building B, Room 377, 9800 Medical Center Drive, Rockville, MD 20850.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice no later than 15 days after the meeting at *NCATSCouncilInput@mail.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 12, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08074 Filed 4–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI): Inviting Feedback on the NIH Office of Disease Prevention Strategic Plan for Fiscal Years 2024–2028

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Office of the Director, Office of Disease Prevention (ODP) is requesting public comment on its draft strategic plan for Fiscal Years 2024–2028 (FY24–28), Prevention Research: Creating a Healthier Future for All. ODP invites feedback on its proposed priorities from prevention researchers in academia and industry, health care providers, patient advocacy organizations, community-based organizations, health service organizations, scientific or professional organizations, trainees and early-stage investigators, federal agencies, those employed by NIH or at institutions receiving NIH support, and the general public. Organizations are strongly encouraged to submit a single response that reflects the views of the organization and membership as a whole.

DATES: ODP's RFI is open for public comment through May 22, 2023. Responses must be received by 11:59

p.m. ET on May 22, 2023, to ensure consideration.

ADDRESSES: All comments must be submitted electronically on the submission website available at *https://rfi.grants.nih.gov/?s=63d9edb46e8d6ea804099132.*

FOR FURTHER INFORMATION CONTACT: Please direct all inquiries to Wilma Peterman Cross; ODP, NIH; Phone: 301–827–5561; email: *prevention@nih.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the 21st Century Cures Act, wherein NIH institutes are required to regularly update their strategic plans. ODP was established in the NIH Office of the Director in 1986. In accordance with 42 U.S.C. 282(f) of the Public Health Service Act, as amended, the mission of ODP is to improve public health by increasing the scope, quality, dissemination, and impact of prevention research supported by NIH. ODP fulfills this mission by providing leadership for the development, coordination, and implementation of prevention research in collaboration with NIH Institutes, Centers, and Offices, and other partners. The office has made considerable progress (*https://prevention.nih.gov/about-odp/strategic-plan/spotlight-progress*) on the priorities identified in our strategic plan for FY19–23 (*https://prevention.nih.gov/about-odp/strategic-plan-2019-2023*), and ODP remains committed to playing an integral role in enhancing prevention-related activities across NIH as well as serving as a partner with its federal colleagues.

Input received from this RFI will inform the development of the final ODP FY24–28 Strategic Plan, Prevention Research: Creating a Healthier Future for All, which will outline activities coordinated by the office to assess, facilitate, and stimulate research in disease prevention, and disseminate the results of this research to improve public health.

The definition of prevention research that ODP uses to guide its work and decision-making covers research designed to identify and assess risk, and to develop and test interventions to prevent or reduce harmful behaviors and exposures, disease onset, or disease progression. Prevention research spans all diseases and conditions, populations, and phases of life.

Specifically, ODP focuses on primary and secondary prevention research in humans.

- Primary prevention research includes research designed to promote health; identify risk factors for developing a new health condition (*e.g.,* disease, disorder, injury); and prevent the onset of a new health condition.
- Secondary prevention research includes research designed to identify risk factors for the progression or recurrence of a health condition, and to detect and prevent progression of an asymptomatic or early-stage condition.

Prevention research targets biology, behaviors, factors in the social and physical environments, and health services. It also informs and evaluates health-related policies and regulations. Examples of prevention research include studies that:

- Identify and assess risk and protective factors
- Screen and identify individuals and groups at risk
- Develop and evaluate interventions to reduce risk
- Translate, implement, and disseminate effective preventive interventions into practice
- Develop methods to support prevention research

ODP's strategic priorities are intentionally not specific to any given disease because prevention research is relevant to all health conditions and to promoting health in everyone; NIH's Institutes and Centers serve as the best place for disease-specific or condition-specific research. As a coordinating office in the Division of Program Coordination, Planning, and Strategic Initiatives within the NIH Office of the Director, ODP is best positioned to identify important research gaps, fostering collaborations across NIH and with federal partners, and promoting rigorous research practices.

Request for Information

ODP is seeking feedback on these draft strategic priorities:

1. Systematically monitor NIH investments in prevention research and the progress and results of that research.
2. Identify prevention research areas for investment or expanded effort by NIH.
3. Promote the use of the best available methods in prevention research and support the development of better methods.
4. Promote collaborative prevention research projects and facilitate coordination of such projects across NIH and with other public and private entities.
5. Advance tobacco regulatory and prevention science.
6. Promote and coordinate prevention research that addresses health disparities.
7. Improve the availability and visibility of information about prevention research, inform diverse audiences about the scope and impact of disease prevention research, and engage with ODP's partners to enhance and support ODP's mission.

ODP is also seeking feedback on areas where targeted efforts by ODP could help accelerate prevention research.

How To Submit a Response

All responses to this RFI must be submitted electronically on the RFI submission website at *https://rfi.grants.nih.gov/?s=63d9edb46e8d6ea804099132.*

Responses must be received by May 22, 2023, at 11:59 p.m. ET. You will see an electronic confirmation acknowledging receipt of your response.

Responses to this RFI are voluntary and may be submitted anonymously. You may voluntarily include your name and contact information with your response. If you choose to provide NIH with this information, NIH will not share your name and contact information outside of NIH unless required by law.

Other than your name and contact information, please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The government will use the information submitted in response to this RFI at its discretion. Other than your name and contact information, the government reserves the right to use any submitted information on public websites; in reports; in summaries of the state of the science; in any possible resultant solicitation(s), grant(s), or cooperative agreement(s); or in the development of future funding opportunities.

This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the government to provide support for any ideas identified in response to it. Please note that the government will not pay for the preparation of any information submitted or for use of that information.

Dated: April 10, 2023.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2023–08044 Filed 4–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0027; OMB No. 1660–NW153]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; State, Tribe, and Territory Disaster Case Management Federal Award

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This notice seeks comments concerning information collected during the request by a State, Tribal, or territorial (STT) government for a Disaster Case Management (DCM) Federal award following a major disaster declaration.

DATES: Comments must be submitted on or before May 17, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Rebekah Kennedy, Team Lead, Community Services Section, Individual Assistance Division, at (202) 701–8228 or *rebekah.kennedy@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 12148, as amended by Executive Order 12673 and Executive Order 13286, the President of the United States has delegated to the Department of Homeland Security (DHS), including FEMA, the authority to provide case management services as stated in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189d. Under the Stafford Act, FEMA may provide DCM services directly to survivors through financial assistance to STT government agencies. DCM services include identifying and addressing disaster-caused unmet needs of survivors through identification of, and referrals to, available resources. A disaster-caused unmet need is an un-resourced item, support, or assistance that has been assessed and verified as necessary for a survivor to recover from a disaster. This may include food, clothing, shelter, first aid, emotional and spiritual care, household items, home repair, or rebuilding.

When an STT applies for, requests a modification of, or appeals a FEMA determination for DCM Federal funding, the STT will utilize the respective forms to illustrate the need, why it is beyond the STT capacity to provide case management services itself, and how the STT will provide services to all populations in need. Additionally, the STT will be required to use the OMB-approved Standard Form 424 when applying for Federal funding.

To supplement their request, the STT will also submit a funding request using the budget form. The information gathered within these forms in the collection tool is used to determine the STT's need for DCM Federal funding and how they anticipate providing services to survivors.

Once awarded, the STT will use the monthly reporting collection tool to provide aggregate data on the services provided to survivors. The information gathered within this form helps FEMA assess the success of the program and ensure that all survivors in need of services are able to receive them and that the case managers are assisting survivors in finding resources that meet their disaster-caused unmet needs.

This proposed information collection previously published in the **Federal Register** on September 19, 2022, at 87 FR 57214 with a 60 day public comment period. Two comments were received. FEMA received two comments related to the STT DCM Federal Award and neither of the comments were relevant to this collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: State, Tribe, and Territory Disaster Case Management Federal Award.

Type of Information Collection: New information collection.

OMB Number: 1660–NW153.

FEMA Forms: DCM Federal Award Application, FF–104–FY–22–204; DCM Federal Award Modification Request, FF–104–FY–22–206; DCM Federal Award Request for Appeal, FF–104–FY–22–207; DCM Federal Award Monthly Reporting, FF–104–FY–22–208; and DCM Federal Award Budget Workbook, FF–104–FY–22–209.

Abstract: This collection tool will primarily be used as a guide to support state, tribal, and territorial governments (STTs) when applying, requesting a modification, or appealing a FEMA determination for Disaster Case Management Federal funding to supplement and expand their existing capacity. In extraordinary circumstances, the STT may request that FEMA provide an opportunity for a local government agency or qualified private organization to apply for the DCM Federal Award directly. Once awarded, the STT will utilize the monthly reporting form to report aggregate data about the performance of their program. All information collected within these forms will be submitted to FEMA by the STT.

When applying for the STT DCM Federal award, the STT will respond to the questions within the application form, developing an overall assessment that details activities that have occurred since the start of the disaster; what resources and capabilities are currently available or anticipated to be available; and the estimated population to be served. The STT will also outline the implementation of their program by detailing their service delivery and work plans.

If the STT is awarded a STT DCM Federal award, the STT may need to modify their initial award. In doing so, the STT will utilize the Request for Modification collection instrument to answer questions that will assist them in justifying the need to request additional time or funding to further support their program implementation.

If the STT chooses to appeal a FEMA determination, the STT will outline the purpose for their submission and provide new, justifying information that was not included in their initial or modification request by using the Request to Appeal collection instrument.

For each of the three forms mentioned above, the STT may also need to request initial or supplemental funding by using the Budget Workbook. This collection instrument enables the STT to outline line items that are necessary to implement the program, including personnel, travel, supplies, and contractual items among others. The

STT can use this workbook to detail the request at all levels in program implementation so that it can calculate the total amount of funding needed.

Once awarded, the STT will report aggregate data on all aspects of program implementation, including staffing, caseloads, survivor/client needs, and the types of referrals being made, as well as challenges faced during the month and best practices/lessons learned. This information assists FEMA in confirming the effectiveness of the program, providing technical assistance to ensure all survivors are able to receive DCM services, and to continuously evolve programmatic implementation through the collection of best practices/lessons learned.

Affected Public: State, local and Tribal governments.

Estimated Number of Respondents: 55.

Estimated Number of Responses: 209.

Estimated Total Annual Burden Hours: 577.

Estimated Total Annual Respondent Cost: $43,962.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $132,946.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–08033 Filed 4–14–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0029; OMB No. 1660–NW152]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Logistics Supply Chain Management System Cloud (LSCMS–C) Access Control Form

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the Logistics Supply Chain Management System Cloud (LSCMS–C) Access Control Form, which is required for internal and external personnel who need access to the LSCMS–C operational system to process supply chain management transactions.

DATES: Comments must be submitted on or before May 17, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Natasha Hinkson, Logistics Management Directorate, Logistics System Division IT Support Branch Chief, 202–658–9394, *Natasha.Hinkson@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The LSCMS–C system requires role-based access, which is based on an individual's position, to complete day to day supply chain management transactions for the Office of Response and Recovery's Logistics Management Directorate (LMD). Transactions include the ordering, tracking, monitoring, reporting, and shipping of FEMA assets and critical commodities both domestically and Outside the Continental United States (OCONUS) in support of disaster operations.

Authorized users of the LSCMS–C operational system will have access to minimal personally identifiable information, primarily point of contact information associated with the disaster commodities and assets order entry request for other end users to complete the fulfillment of FEMA orders for ordering, receiving, and delivery of the commodities and assets for FEMA Disaster Response and Recovery activities, as well as non-disaster activities for Mission Support.

The Transportation Service Providers (TSP) Registration Form is additionally required for Transportation Service Providers who would like to apply to be a part of the FEMA Standard Tender of Service (FEMA STOS) program for FEMA STOS specific information that will be included in their LSCMS–C profiles.

The authorities to collect and use this information are applicable to all Federal agencies under the Interstate Commerce Act, Federal Acquisition Regulation (FAR), and General Services Administration's Federal Management Regulation. The authorities include:

- Interstate Commerce Act, 49 U.S.C. 10721, 13712;
- Federal Acquisition Regulation, subpart A—General; part 47, ''Transportation'';
- Federal Management Regulation, 41 CFR parts 102–117, 102–118;
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207;
- Homeland Security Act of 2002, 6 U.S.C. 311 *et seq.*

This proposed information collection previously published in the **Federal Register** on November 10, 2022, at 87 FR 67923 with a 60 day public comment period. One complimentary comment was received and FEMA thanks the anonymous commentor. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Logistics Supply Chain Management System Cloud (LSCMS–C) Access Control Form.

Type of Information Collection: Existing collection in use without an OMB control number.

OMB Number: 1660–NW152.

FEMA Forms: FEMA Form FF–145–FY–22–102 (formerly 119–0–0–20), Logistics Supply Chain Management System Cloud (LSCMS–C) Access Control Form; FEMA Form FF–145–FY–22–103, Transportation Service Providers (TSP) Registration Form.

Abstract: The Logistics Supply Chain Management System Cloud (LSCMS–C) Access Control Form is required for FEMA or Non-FEMA personnel who require access to the LSCMS–C operational system, enabling end users to process supply chain management transactions. The LSCMS–C Access Control Form is completed by internal and external users who require access. The Transportation Service Providers (TSP) Registration Form is additionally required for Transportation Service Providers who would like to apply to be a part of the FEMA Standard Tender of Service (FEMA STOS) program for FEMA STOS specific information that will be included in their LSCMS–C profiles.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 984.

Estimated Number of Responses: 2,952.

Estimated Total Annual Burden Hours: 885.6.

Estimated Total Annual Respondent Cost: $25,531.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $3,958,942.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–08034 Filed 4–14–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0157]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Online Request To Be a Supporter and Declaration of Financial Support

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision 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 June 16, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0157 in the body of the letter, the agency name and Docket ID USCIS–2023–0004. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2023–0004.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2023–0004 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Online Request to be a Supporter and Declaration of Financial Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–134A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. DHS uses Form I–134A to determine whether a United States-based supporter has sufficient financial resources and access to those funds to support the beneficiary named on Form I–134A for the duration of their temporary stay in the United States. Form I–134A is used by a United States-based supporter to request to be a supporter and to agree to provide financial support to the named beneficiary named on the form during the beneficiary's period of stay in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–134A is 100,000 and the estimated hour burden per response is 1.68 hours; the estimated total number of respondents for the information collection I–134A Copy of I–130 Receipt is 50,000 and the estimated hour burden per response is .08 hours; and the estimated total number of respondents for the information collection I–134A relationship documentation is 50,000 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 184,250 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 $0.00.

Dated: April 11, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–08030 Filed 4–14–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7076–N–10]

60-Day Notice of Proposed Information Collection: Public Housing Inventory Removals Application, General Depository Agreement, and Notification of Public Housing Closeout or Future Development, OMB No. 2577–0075

AGENCY: Office of Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment. Information collections from PHAs assure compliance with all Federal program requirements.

DATES: *Comments Due Date:* June 16, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *PaperworkReductionActOffice@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Leea J. Thornton, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–6455. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Inventory Removal Application, General Depository Agreement, and Notification of Future Public Housing Development

OMB Approval Number: 2577–0075.

Type of Request: Revision of a currently approved collection

Form Number: HUD–51999; HUD 52860, HUD 52860–A, HUD 52860–B, HUD 52860–C; HUD 52860–D; HUD 52860–E, and HUD 52860–F, HUD–52860–G, and HUD–5837.

Description of the need for the information and proposed use: This collection covers the paperwork and HUD 52860 form requirements that PHAs must use when they request HUD approval to remove public housing real property (including units) from their public housing program through section 18 (demolition/disposition), section 22 (voluntary conversion), section 33 (required conversion) and section 32 (homeownership conveyance) of 1937 Act, as well as through settlement agreements in lieu of court proceedings for proposed eminent domain takings of public housing property and retention requirements under 2 CFR 200.311. Note that HUD approval of a removal action does not automatically or necessarily result in actual removal; rather, the PHA must complete the actual removal and comply with the applicable HUD reporting requirements to document the actual removal.

This collection covers the paperwork and HUD–51999 (General Depository Agreement) (GDA) form that PHAs must use when they receive restricted funds and program income, by requiring such funds to be deposited into interest-bearing accounts at financial institutions whose deposits or accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF).

This collection covers the paperwork and HUD–5837 (Notification of Public Housing Closeout or Future Development) form that PHAs must provide when they are submitting applications that remove all their public housing units about their plans for

potential new public housing development or closeout of their public housing program. The HUD–5837 is used by HUD to monitor the federal public housing inventory and PHA's ongoing Annual Contributions Contract (ACC) with HUD after the PHA has zero public housing units in its inventory.

The revision of this collection does two things.

First, it removes the following three forms that from this collection:

- Annual Contributions Contract (ACC) (HUD–53012).
- Declaration of Trust/Declaration of Restrictive Covenants (DOT/DORC) (HUD–52190). This form is included in OMB Collection 2577–0275.
- Capital Fund Program (CFP) Amendment to the Annual Contributions Contract (ACC) Office of Public and Indian Housing (HUD–52840–A). This form is being included in its own collection.

Second, it makes formatting, instructional and other changes to the remaining forms to provide clearer direction and to ensure PHAs are fully complying with all applicable statutory and regulatory requirements.

The name of this collection is being changed to reflect the removal of the ACC form and to reference the GDA and Notification of Public Housing Closeout or Future Development form. The previous name of the collection was Public Housing Annual Contributions Contract and Inventory Removal Application.

Respondents: Public housing agencies.

	HUD-form	Total responses	Burden hours per response	Total hours	Cost per hour	($) Total cost
1	Submit Notification of Future Development via HUD–5837.	19	2	38	$44.56	$1,693.28
2	Submit General Depository Agreement (GDA) via form HUD 51999.	2,770	1	2,770	44.56	123,431.20
3	Removal of public housing property from ACC through demolition and/or disposition, including de minimis, via (section 18) via HUD form 52860.	200	10	2,000	47.26	94,520
4	Removal of public housing property from ACC through voluntary conversion (section 22) via HUD form 52860.	12	10	120	47.26	5,671.20
5	Removal of public housing property from ACC through required conversion (section 33) via HUD form 52860.	0	10	0	47.26	0
6	Removal of public housing property through homeownership (section 32) via HUD Form 52860.	3	10	30	47.26	1,417.80
7	Removal of public housing property from ACC through eminent domain HUD form 52860.	1	10	10	47.26	470.26
8	Removal of public housing property from ACC through retention actions under 2 CFR 200.311 via HUD form 52860.	2	10	20	47.26	945.20
	Totals	3,007	63	4,988	47.26	235,732.88

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Steven Durham,

Acting Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2023–07975 Filed 4–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Rosebud Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Rosebud Sioux Tribe of the Rosebud Indian Reservation and the State of South Dakota.

DATES: The extension takes effect on April 17, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Rosebud Sioux Tribe of the Rosebud Indian Reservation and the State of South Dakota have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to October 12, 2023.

This publication provides notice of the new expiration date of the compact.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–07990 Filed 4–14–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/ A0A501010.999900]

Land Acquisitions; the Samish Indian Nation, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs has made a final determination to acquire 39.34 acres, more or less, into trust for the Samish Indian Nation, Washington.

DATES: This final determination was made on April 11, 2023.

FOR FURTHER INFORMATION CONTACT: Carla H. Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *comments@bia.gov,* (720) 484–3233.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs issued a decision to accept land in trust for the Samish Indian Nation, Washington under the authority of Section 5 of the Indian Reorganization Act of 1934 (48 Stat. 984). The land referred to herein, consisting of 39.34 acres, more or less, is in Skagit County, State of Washington, described as follows:

Legal Description of Property

Parcel Nos.: 20096, 20102, 20103— Campbell Lake North Property

The East ½ of the Southeast ¼ of Section 7, Township 34 North, Range 2 East, W.M.

Except that portion of the Northeast ¼ of the Southeast ¼ lying Northwesterly of the Southeasterly line of State Highway 20 as conveyed by deeds recorded August 23, 1937 in Volume 172 of Deeds, page 489, and September 6, 1938 in Volume 175 of Deeds, page 303, respectively.

Also except that portion conveyed to the State of Washington by Deed recorded June 21, 2007, under Auditor's File No. 200706210066.

Also except Lots A, B and C, Revised Short Plat No. 5–78, approved November 19, 1979 and recorded November 19, 1979 in Volume 3 of Short Plats, page 211, under Auditor's File No. 7911190060.

Also except Lot 1, Short Plat No. 90–50, approved January 10, 1991 and recorded January 11, 1991 in Volume 9 of Short Plats, page 299, under Auditor's File No. 9101110004.

(Said property also known as Lot D, Revised Short Plat No. 5–78, as above described.)

Together with a non-exclusive easement for ingress and egress over the existing gravel drive over that portion of the Southeast ¼ of the Northeast ¼ of said Section 7 more specifically described in that certain Easement Exchange Agreement recorded September 20, 1988, under Auditor's File No. 8809200062.

Except from said Lot ''D'' of Revised Short Plat No. 5–78, that portion described as follows:

Beginning at a point on the East line of said Section 7, that lies North 0°36′36″ West 492.59 feet from the Southeast corner of said subdivision;

Thence North 88°51′30″ West 268.71 feet;

Thence North 0°36′36″ West 4.62 feet;

Thence North 88°51′30″ West 476.51 feet;

Thence North 0°36′36″ West 1,337.19 feet;

Thence South 88°51′30″ East 745.22 feet to the East line of said Section 7;

Thence South 0°36′36″ East 75 feet, along the East line of said Section 7, to the Northeast corner of Lot ''C'' of said Short Plat No. 5–78;

Thence North 88°51′30″ West 476.22 feet along the North line to the Northwest corner of said Lot ''C'';

Thence South 0°36′36″ East 208.10 feet to the Southwest corner of said Lot ''C'';

Thence South 88°51′30″ East 207.51 feet along the South line to the Northwest corner of Lot 1, Short Plat No. 50–90, as recorded in Book 9 of Short Plats, page 299;

Thence South 0°36′36″ East 417.42 feet to the Southwest corner of said Lot 1;

Thence South 88°51′30″ East 268.71 feet along the South line of said Lot 1 to the East line of said Section 7;

Thence South 0°36′36″ East 641.30 feet along said East line to the point of beginning.

(Said last described exception now known as The Craig Short Plat PL00–0677, as recorded December 27, 2002, under Auditor's File No. 200212270096.)

Also except that portion of the East ½ of the Southeast ¼ of Section 7, Township 34 North, Range 2 East, W.M., described as follows:

Beginning at a Point on the East line of said Section 7, that lies North 0°36′36″ West 1834.40 feet from the Southeast corner of said subdivision;

Thence North 88°51′30″ West 745.22 feet;

Thence North 13°14′34″ West 586.94 feet;

Thence North 58°51′29″ East 35.27 feet;

Thence North 49°38′36″ East 246.98 feet;

Thence North 47°39′03″ East 95.93 feet;

Thence South 88°51′30″ East 105.42 feet along the North line of said Southeast ¼ of Section 7;

Thence South 0°36′36″ East 268.13 feet;

Thence South 88°51′30″ East 476.22 feet;

Thence South 0°36′36″ East 549.31 feet to the Point of Beginning.

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. 2023–07999 Filed 4–14–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/ A0A501010.999900]

Land Acquisitions; the Samish Indian Nation, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs has made a final determination to acquire 1.02 acres, more or less, into trust for the Samish Indian Nation, Washington.

DATES: This final determination was made on April 11, 2023.

FOR FURTHER INFORMATION CONTACT: Carla H. Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *comments@bia.gov,* (720) 484–3233.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs issued a decision to accept land in trust for the Samish Indian Nation, Washington under the authority of Section 5 of the Indian Reorganization Act of 1934 (48 Stat. 984). The land referred to herein, consisting of 1.02 acres, more or less, is in Skagit County, State of Washington, described as follows:

Legal Description of Property

Parcel Nos.: 33131, 33132, 33134, 33135— Administration Building Property

Parcel A

That portion of government Lot 1, Section 30, Township 35 North, Range 2 East, W.M., described as follows: Beginning at a point on the West line of said Government Lot 1, 152.50 feet South of the Northwest corner thereof; thence South 0°39′ East along said West line of Government Lot 1, 107.87 feet to the said North line of Thirtieth Street produced Westerly from ''WHITNEY'S FIRST ADDITION TO THE CITY OF ANACORTES''; thence South 89°39′ East along the said North line of Thirtieth Street produced, 135.97 feet to the West line of the North and South alley

in Block 10, ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly; thence North 0°17′30″ East along said West line of alley produced, 107.86 feet; thence North 89°42′30″ West, 137.75 feet to the point of beginning.

Parcel B

The South 107.86 feet of the following described tract: That portion of Government Lot 1, Section 30, Township 35 North, Range 2 East, W.M., described as follows: Beginning at the intersection of the West line of Commercial Avenue in Anacortes, Washington, with the North line of Thirtieth Street, in ''WHITNEY'S FIRST ADDITION TO THE CITY OF ANACORTES'', produced Westerly; thence North 89°42′30″ West along the North line of Thirtieth Street produced 120.0 feet to the East line of the North and South alley in Block 10 of ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly and the true point of beginning of this description; thence North 0°17′30″ East along said East line of alley produced 215.73 feet, more or less, to the South line of Twenty-ninth Street produced, in the City of Anacortes; thence North 89°42′30″ West along the South line of said Twenty-ninth Street produced to the West line of the alley in Block 10 of ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly; thence South 0°17′30″ West along the West line of said alley produced South, 215.73 feet, more or less, to the North line of Thirtieth Street produced; thence South 89°42′30″ East along the North line of Thirtieth Street produced to the point of beginning.

Parcel C

That portion of Government Lot 1 in Section 30, Township 35 North, Range 2 East, W.M., described as follows: Beginning at a point on the West line of Commercial Avenue, in Anacortes, Washington where it is intersected by the North line of Thirtieth Street in ''WHITNEY'S FIRST ADDITION TO THE CITY OF ANACORTES'', produced Westerly; thence North 89°42′30″ West along the said North line of Thirtieth Street produced, 120 feet to the east line of the North and South alley in Block 10 of ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly; thence North 0°17′30″ East along said East line of alley produced 107.86 feet; thence South 89°42′30″ East 120 feet to the West line of Commercial Avenue; thence South 0°17′30″ West along the West line of Commercial Avenue 107.86 feet to the point of beginning.

Parcel D

A tract of land in Government Lot 1, Section 30, Township 35 North, Range 2 East, W.M., described as follows: Beginning at a point on the West line of said Government Lot 1, 44.62 feet South of the Northwest corner thereof, said point being on the South line of Twenty-Ninth Street, as produced in the City of Anacortes; thence South 0°39′ East along the West line of said Government Lot 1, 107.88 feet; thence South 89°42′30″ East 137.75 feet to the West line of the North and South alley in Block 10 of ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly; thence North 0°17′30″ East along said West line of alley produced, 107.87 feet to the South line of said Twenty-Ninth Street produced; thence North 89°42′30″ West along the South line of said Twenty-Ninth Street, produced, 139.53 feet to the point of beginning; EXCEPT therefrom that portion thereof described as follows: Beginning at a point on the West line of said Government Lot 1, 44.62 feet South of the Northwest corner thereof, said point being on the South line of Twenty-Ninth Street, as produced in the City of Anacortes; Thence South 0°39' East along the West line of said Government Lot 1, 107.88 feet; thence South 89°42′30″ East 69 feet to the true point of beginning; thence continue South 89°42′30″ East 68.75 feet to the West line of the North and South alley in Block 10, ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly; thence North 0°17′30″ East along said West line of alley produced, 107.87 feet to the South line of said Twenty-Ninth Street, produced; thence North 89°42′30″ West along the South line of said Twenty-Ninth Street, 68.75 feet; thence South parallel to the West line of said Government Lot 1, to the true point of beginning.

Parcel E

A tract of land in Government Lot 1, Section 30, Township 35 North, Range 2 East, W.M., described as follows: Beginning at a point on the West line of said Government Lot 1, 44.62 feet South of the Northwest corner thereof, said point being on the South line of 29th Street, as produced in the City of Anacortes; thence South 0°39′ East along the West line of said Government Lot 1, 107.88 feet; thence South 89°42′30″ East 69 feet to the true point of beginning; thence continuing South 89°42′30″ East 68.75 feet to the West line of the North and South alley in Block 10 of ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly; thence North 0°17′30″ East along said West line of alley produced 107.87 feet to the South line of said 29th Street, produced; thence North 89°42′30″ West along the South line of said 29th Street, 68.75 feet; thence South parallel to the West line of said Government Lot 1 to the true point of beginning.

Parcel F

A tract of land in Government Lot 1, Section 30, Township 35 North, Range 2 East, W.M., described as follows: Beginning at the intersection of the West line of Commercial Avenue in Anacortes, Washington, with the North line of 30th Street, in ''WHITNEY'S FIRST ADDITION TO THE CITY OF ANACORTES'', produced Westerly; thence North 89°42′30″ West along the North line of 30th Street produced 120.0 feet to the East line of the North and South alley in Block 10 of ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly, and the true point of beginning of this description; thence North 0°17′30″ East along said East line of alley produced 215.73 feet, more or less, to the South line of 29th Street produced, in the city of Anacortes; thence North 89°42′30″ West along the South line of said 29th Street produced to the West line of the alley in Block 10 of ''PLAT OF HENSLER'S FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASH.'', produced Southerly; thence South 0°17′30″ West along the West line of said alley produced South 215.73 feet, more or less, to the North line of 30th Street produced; thence South 89°42′30″ East along the North line of 30th Street produced to the true point of beginning, EXCEPT the South 107.86 feet Situate in the County of Skagit, State of Washington.

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. 2023–08002 Filed 4–14–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035615; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: U.S. Department of the Interior, Fish and Wildlife Service, Alaska Region, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Fish and Wildlife Service, Alaska Region, Anchorage, AK (FWS Alaska) has amended a Notice of Inventory Completion published in the **Federal Register** on October 29, 2008. This notice amends the minimum number of individuals and the number of associated funerary objects in a collection removed from Carlisle Island, Aleutians West Borough, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 17, 2023.

ADDRESSES: Jeremy M. Karchut, Regional Archaeologist/Regional

Historic Preservation Officer, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd, MS–235, Anchorage, AK 99503, telephone (907) 786–3399, email *jeremy_karchut@fws.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 FWS Alaska. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by FWS Alaska.

Amendment

This notice amends the determinations of a Notice of Inventory Completion published in the **Federal Register** (73 FR 64367–64368, October 29, 2008). Repatriation of the items in the original Notice of Inventory Completion has not occurred. This notice amends the minimum number of individuals and number of associated funerary objects. The number of individuals originally reported from Carlisle Island increased from one to two and the number of associated funerary objects increased from zero to six.

Table of Changes

HUMAN REMAINS

Site	Original number of individuals	Amended number of individuals
Carlisle Island	1	2

ASSOCIATED FUNERARY OBJECTS

Site	Original number	Amended number	Amended description
Carlisle Island	0	6	one pumice ground stone; two clam shells; one stone pallet; one matting fragment; and one worked bone

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, FWS Alaska has determined that:

- The human remains represent the physical remains of two individuals of Native American ancestry.
- The six objects 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 and the Native Village of Nikolski.

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 May 17, 2023. If competing requests for repatriation are received, FWS Alaska 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. FWS Alaska is responsible for sending a copy of this notice to the Indian Tribe.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: March 29, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08055 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035616; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Fullerton, Fullerton, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Fullerton 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 Kings County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after May 17, 2023.

ADDRESSES: Maria Estela Zarate, California State University, Fullerton, 2600 Nutwood Avenue, Suite 1060, Fullerton, CA 92831, telephone (657) 278–4514, email *mazarate@Fullerton.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 California State University, Fullerton. 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 California State University, Fullerton.

Description

Human remains representing, at minimum, one individual were removed from Kings County, CA. The human remains were uncovered during operations at a gypsum quarry that operated from 1954–1957 and from 1960–1962. The precise date of removal of the human remains is not known. The owner of the quarry, Mr. Alva McPhaill, gave the human remains to Mr. Richard Flewelling of The Flintkote Company. The precise date of that transfer is not known. McPhaill reportedly collected artifacts in the area of the gypsum quarry. At an unknown date, but likely prior to 1980, Mr. Flewelling donated the human remains to California State University, Fullerton. 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 expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California State University, Fullerton 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 Santa Rosa Indian Community of the Santa Rosa 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 May 17, 2023. If competing requests for repatriation are received, California State University, Fullerton 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. California State University, Fullerton 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: March 29, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08056 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035614; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: U.S. Department of the Interior, Fish and Wildlife Service, Alaska Region, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Fish and Wildlife Service, Alaska Region, Anchorage, AK (FWS Alaska) has amended a Notice of Inventory Completion published in the **Federal Register** on July 14, 2008. This notice amends the minimum number of individuals and the number of associated funerary objects in collections removed from the Aleutians West Borough, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 17, 2023.

ADDRESSES: Jeremy M. Karchut, Regional Archeologist/Regional Historic Preservation Officer, U.S. Fish and Wildlife Service, 1011 E Tudor Rd., MS–235, Anchorage, AK 99503, telephone (907) 786–3399, email *jeremy_karchut@fws.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 FWS Alaska. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by FWS Alaska.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (73 FR 40371–40372, July 14, 2008). Repatriation of the items in the original Notice of Inventory Completion has not occurred. This notice amends the number of individuals and number of associated funerary objects.

The number of individuals originally reported from Cold Cave, Kagamil Island decreased from 30 to 17 and the number of associated funerary objects increased from 127 to 155. The number of individuals originally reported from Warm Cave, Kagamil Island increased from one to eight, and the number of associated funerary objects increased from 23 to 151. The number of individuals originally reported from Mask Cave, Kagamil Island decreased from four to one, and the number of associated funerary objects increased from 60 to 72.

Table of Changes

Human Remains

Site	Original number of individuals	Amended number of individuals
Kagamil Island, Cold Cave	30	17
Kagamil Island, Warm Cave	1	8
Kagamil Island, Mask Cave	4	1

Associated Funerary Objects

Site	Original number	Amended number	Amended description
Kagamil Island, Cold Cave	127	155	one abrader; two awls; one basalt biface; one bentwood bowl; one bentwood bowl fragment; five bidarka skins; five bird feather lots; four bone points; three bone wedges; one bowl bottom; one braid of grass; one braid of hair; one coat fragment; one ethnobotany sample; 60 matting fragments; one fur and hair lot; two grass lots; four containers of grave soil; one hair and feather lot; two hair lots; one harpoon head; 16 kayak frame fragments; eight lengths of cordage; one matting bundle; two moss and grass lots; one obsidian point; one skin and fur bundle; two wood fragments; one wooden mask attachment; nine wooden shaft fragments; one piece of worked antler; nine pieces of worked bone; and five pieces of worked wood.
Kagamil Island, Warm Cave	23	151	one base of a wood vessel; two bird wing bundles; one blade fragment; one bone and grass lot; five bone lots; one bone, wood, and soil lot; two charcoal samples; two pieces of cordage; two crab legs; three crystal lots; two dust lots; eight feather lots; five pieces of fur; three grass and dust lots; three grass, dust, bone, and feather lots; one hide/leather lot; two pieces of human hair; 13 kayak fragments; one lithic lot; 35 matting fragments; three rock lots; one sea urchin lot; one seed lot; one shell lot; 10 undetermined objects; one wood and charcoal lot; one wood bowl rim; 29 wood fragments; one piece of wood scaffolding; and 10 wood shaft fragments.
Kagamil Island, Mask Cave	60	72	one adze; two basalt bifaces; two basalt flakes; one bone root digger; one bone wedge; two doll head fragments; five figurines; eight kayak parts; one obsidian flake; one shell object; one lot of undetermined material; one wood disc; 25 wood fragments; 15 wood mask fragments; one wood net float; two wood objects; one wood peg fragment; one wood sample; and one wood shaft fragment.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Fish & Wildlife Service has determined that:

- The human remains represent the physical remains of 26 individuals of Native American ancestry.
- The 378 objects 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 and Native Village of Nikolski.

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 May 17, 2023. If competing requests for repatriation are received, FWS Alaska 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. FWS Alaska 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, 10.13, and 10.14.

Dated: March 29, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08054 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035670; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items Amendment: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New York State Museum has amended a Notice of Intent to Repatriate published in the **Federal Register** on December 9, 2022. This notice amends the number of unassociated funerary objects and the cultural affiliation in a collection removed from Orange and Ulster Counties, NY.

DATES: Repatriation of the cultural items in this notice may occur on or after May 17, 2023.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.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 New York State Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the summary or related records held by the New York State Museum.

Amendment

This notice amends the determinations published in a Notice of Intent to Repatriate in the **Federal Register** (87 FR 75651–75652, December 9, 2022). Repatriation of the items in the original Notice of Intent to Repatriate has not occurred. This notice amends the determination of cultural affiliation.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the New York State Museum has determined that:

- The four cultural items 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

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 May 17, 2023. If competing requests for repatriation are received, the New York State 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 New York State 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 10.8, 10.10, 10.13, and 10.14.

Dated: April 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08059 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035671; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New York State Museum has amended a Notice of Inventory Completion published in the **Federal Register** on December 9, 2022. This notice amends the cultural affiliation in collections removed from Bronx, Dutchess, Orange, Sullivan, and Orange Counties, NY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 17, 2023.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.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 New York State Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the New York State Museum.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (87 FR 75649–75651, December 9, 2022). Repatriation of the items in the original Notice of Inventory Completion has not occurred. This notice amends the determination of cultural affiliation.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the New York State Museum has determined that:

- The human remains represent the physical remains of 80 individuals of Native American ancestry.
- The 2,668 objects 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 and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

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 May 17, 2023. If competing requests for repatriation are received, the New York State Museum 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 New York State 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, 10.10, 10.13, and 10.14.

Dated: April 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08060 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035612; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University of Pennsylvania, Indiana, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University of Pennsylvania (IUP) 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 western Pennsylvania.

DATES: Repatriation of the human remains in this notice may occur on or after May 17, 2023.

ADDRESSES: Andrea Palmiotto, Indiana University of Pennsylvania, 1011 South Street, Indiana, PA 15705, telephone (724) 357–2841, email *apalmiot@iup.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 IUP. 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 IUP.

Description

Human remains representing, at minimum, one individual were removed from Allegheny County, PA. The human remains were examined by the Allegheny County Coroner in 1976, and they were donated to Indiana University of Pennsylvania at an unknown date. The human remains consist of a partial cranium, mandible, vertebra, and right femur. No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from a location in western Pennsylvania. At an unknown date, an avocational collection known as the Cochran Collection was donated to IUP and, subsequently, the collection was found to contain these human remains. The human remains consist of a manual phalanx (finger bone). 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: anthropological, biological, geographical, historical, 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 IUP has determined that:

- The human remains described in this notice represent the physical remains of two 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 Seneca Nation of Indians.

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 May 17, 2023. If competing requests for repatriation are received, IUP 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. IUP 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: March 29, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08052 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035669; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Lindsay Wildlife Museum, Walnut Creek, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Lindsay Wildlife Museum 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 an unknown location but were likely removed from in or around Walnut Creek, Contra Costa County, CA.

DATES: Disposition of the human remains in this notice may occur on or after May 17, 2023.

ADDRESSES: Christina Schwandt, Curator of Education, Lindsay Wildlife Museum, 1931 First Avenue, Walnut Creek, CA 94530, telephone (925) 627–2913, email *cschwandt@lindsaywildlife.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 Lindsay Wildlife 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 Lindsay Wildlife Museum.

Description

Human remains representing, at minimum, four individuals were removed from unknown location(s). These partial human remains were at

the Lindsay Wildlife Collection before 1965 when the museum started keeping records for its collection. The Lindsay Wildlife Collection started as a private collection by Alexander ''Sandy'' Lindsay to share his curiosity and passion for the natural world with the people of Walnut Creek, CA. Mr. Lindsay focused his collection on specimens and objects acquired in or around Walnut Creek, Contra Costa County, CA. No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from unknown geographic locations, most likely near Walnut Creek, Contra Costa County, CA. This location is the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Lindsay Wildlife 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 and associated funerary objects described in this notice were removed from the aboriginal land of the California Valley Miwok Tribe, California; Scotts Valley Band of Pomo Indians of California; and the Tule River Indian Tribe of the Tule River Reservation, California.

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 May 17, 2023. If competing requests for disposition are received, Lindsay Wildlife 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. Lindsay Wildlife 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: April 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08058 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035668; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pioneer Museum, Blue Licks Battlefield State Resort, Kentucky Department of Parks, Carlisle, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Pioneer Museum, Blue Licks Battlefield State Resort Park, Kentucky Department of Parks 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 Franklin County, KY.

DATES: Disposition of the human remains in this notice may occur on or after May 17, 2023.

ADDRESSES: Jennifer Spence, Parks Museum Curator, Kentucky Department of Parks, 500 Mero Street, 5th Floor, Frankfort, KY 40601, telephone (502) 892–3339, email *Jennifer.spence@ky.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 Kentucky Department of Parks. 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 Kentucky Department of Parks.

Description

Human remains representing, at minimum, three individuals were removed from Franklin County, KY. The human remains were collected from an unknown site in Franklin County, KY, sometime between May 29 and May 31, 1966, based on a handwritten note found with the human remains during an inventory project at the Pioneer Museum in January of 2021. No known individuals were identified. No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from known geographic locations. These locations are the aboriginal lands 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 Kentucky Department of Parks has determined that:

- The human remains described in this notice represent the physical remains of three 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 were removed from the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe; The Osage Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

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 and described in this notice to a requestor may occur on or after May 17, 2023. If competing requests for disposition are

received, the Kentucky Department of Parks 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 Kentucky Department of Parks 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: April 5, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08057 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035613; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Fish and Wildlife Service, Alaska Region, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Fish and Wildlife Service, Alaska Region (FWS Alaska) has completed an inventory of human remains and associated funerary objects with assistance from the University of Alaska Museum of the North and the Museum of the Aleutians, 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 archeological sites on Kagamil, Carlisle, and Ship Rock Islands in the Aleutians West Census Area, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 17, 2023.

ADDRESSES: Jeremy M. Karchut, Regional Archeologist/Regional Historic Preservation Officer, U.S. Fish and Wildlife Service, 1011 E Tudor Road, MS–235, Anchorage, AK 99503, telephone (907) 786–3399, email *jeremy_karchut@fws.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 FWS Alaska. 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 FWS Alaska.

Description

Kagamil Island, Warm Cave

In 1948 or 1949, during an expedition led by physical anthropologist William S. Laughlin, 18 associated funerary objects were removed from Warm Cave on Kagamil Island. In 2017, the Peabody Museum of Archaeology and Ethnology at Harvard University in Cambridge, MA, transferred these associated funerary objects to the University of Alaska Museum in Fairbanks, AK. The 18 associated funerary objects include four woven fiber mats, two wood tools, five pieces of work wood, one unworked piece of wood, two ground stone knife fragments, two wood panels, one abrader, and one soil sample.

Kagamil Island

Between 1947 and 1950, ethnobotanist Theodore P. Bank II and physical anthropologist William S. Laughlin removed human remains representing, at minimum, nine individuals from an unknown site—likely Cold Cave, Warm Cave, or Mask Cave—on Kagamil Island. Initially, these human remains and associated funerary objects were stored at the University of Michigan Museum of Anthropology in Ann Arbor, MI. In 1982, they were transferred to the University of Alaska Museum in Fairbanks, AK, and in 2002, they were transferred to the Museum of the Aleutians in Unalaska, AK. Following additional transfers, physical custody is of the human remains is currently split between the University of Alaska Museum in Fairbanks and the Museum of the Aleutians in Unalaska. These human remains belong to seven adults and two juveniles. No known individuals were identified. The 44 associated funerary objects are one awl, one bone fish hook shank, one bone foreshaft, one bone labret, one bone object, one bone point, two pieces of cordage, one flora sample, one grass bundle, one ivory labret, one ivory object, one kayak part, one matting and cordage lot, three matting bundles, 19 matting fragments, one pumice sample, one lot of slides, one skin/hide fragment, three soil samples, one wood object, and one wood shaft fragment.

In 1936, Olaus Murie removed human remains representing, at minimum, three individuals from ''Mummy Cave''—likely Cold Cave, Warm Cave, or Mask Cave—on Kagamil Island. In 1973, Adolph Murie (Olaus' brother) and his wife Louise donated a collection amassed by Olaus and his wife Margaret to the Teton Science Schools, in Northwest Wyoming and Idaho, which included these human remains. In November of 2021, the human remains were found in the ''Murie Museum closet,'' and in August of 2022, they were transferred to the University of Alaska Museum in Fairbanks. No known individuals were identified. No associated funerary objects are present.

In 1938, William S. Laughlin removed 51 associated funerary objects from a cave —likely Cold Cave, Warm Cave, or Mask Cave—on Kagamil Island. Over the years, the Laughlin family donated these objects to the Museum of the Aleutians in Unalaska. The 51 associated funerary objects are one awl, four bifaces, three bone points, one bone wedge, one bundle of fiber/plant material, three pieces of cordage, two bundles of cordage, one ear bone, one flake tool, two foreshafts, two beads, one ground stone, one incised stone, one matting fragment, two lots of mixed fiber fragments, one piece of mold, one otter tooth, one pointed bone implement, four PPKs, four scrapers, two sea lion teeth, one seal tooth, one sealskin strap with fur, three ulus, one whale tooth, five worked bones, and one woven bag fragment.

In 1941, Malcolm Greany removed nine associated funerary objects from a cave —likely Cold Cave, Warm Cave, or Mask Cave—on Kagamil Island. In 1942, Greany gave these objects to the Alaska State Museum in Juneau, and in 2022, they were transferred to the Museum of the Aleutians in Unalaska. The nine associated funerary objects are nine grass mat fragments.

Ship Rock Island

At an unknown date, an unknown individual removed 11 associated funerary objects from Ship Rock Cave on Ship Rock Island, located in Umnak Strait between Umnak Island and Unalaska Island. (Possibly, Aleš Hrdlička removed these objects in 1937 and 1938.) Currently, the objects are housed at the Museum of the Aleutians in Unalaska. The 11 associated funerary objects are eight kayak parts, one wood vessel, one wood vessel bottom, and one wood shaft fragment.

Kagamil Island and Ship Rock Island

At an unknown date, an unknown individual removed nine associated funerary objects from a site—likely Cold Cave, Warm Cave, or Mask Cave—on Kagamil Island and from Ship Rock Cave on Ship Rock Island. (Possibly, Aleš Hrdlička removed these objects in 1937 and 1938.) The objects were housed at the Burke Museum in Seattle, WA, until 2016, when they were transferred to the University of Alaska Museum of the North. All nine associated funerary objects—seven from Kagamil Island and two from Ship Rock Island—are matting fragments.

Carlisle Island

In 1948 or 1949, physical anthropologist William S. Laughlin removed human remains representing, at minimum, one individual and six associated funerary objects from Carlisle Island. In 2019, the Peabody Museum of Archaeology and Ethnology at Harvard University transferred these remains and objects to the University of Alaska Museum in Fairbanks. The human remains belong to a juvenile individual. No known individual was identified. The six associated funerary objects are one pumice ground stone, two clam shells, one stone pallet, one matting fragment, and one worked bone.

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, geographical, biological, historical, 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, FWS Alaska have determined that:

- The human remains described in this notice represent the physical remains of 13 individuals of Alaska Native ancestry.
- The 148 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 Native Village of Nikolski.

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 May 17, 2023. If competing requests for repatriation are received, FWS Alaska 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. FWS Alaska 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: March 29, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08053 Filed 4–14–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *regarding Certain Lidar (Light Detection and Ranging) Systems and Components Thereof. DN 3675*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Ouster, Inc., on April 11, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lidar (light detection and ranging) systems and components thereof. The complaint names as respondents: Hesai Group of China; Hesai Technology Co., Ltd. of China; and Hesai Inc. of Palo Alto, CA. The complainant requests that the Commission issue an exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant 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 requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(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 requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3675) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–08080 Filed 4–14–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–575 and 731–TA–1360–1361 (Review)]

Tool Chests and Cabinets From China and Vietnam; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing duty order on tool chests and cabinets from China and the antidumping duty orders on tool chests and cabinets from China and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On March 6, 2023, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 73786, December 1, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on May 31, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before June 8, 2023 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by June 8, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[2] The Commission has found the responses submitted on behalf of Stanley Black & Decker to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 11, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–07952 Filed 4–14–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0015]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application for Tax Exempt Transfer and Registration of Firearm—ATF Form 5 (5320.5)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection (IC) OMB 1140–0015 (Application for Tax Exempt Transfer and Registration of Firearm—ATF Form 5 (5320.5)) is being revised to include additional questions and grammar changes. The proposed IC is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Connor Brandt, National Firearms Act Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *nfaombcomments@atf.gov,* or by telephone at 304–616–3175.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection (*check justification or form 83): Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Tax Exempt Transfer and Registration of Firearm.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5 (5320.5).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government and State, local or Tribal government.

Other (if applicable): Individuals or households, business or other for-profit, not-for-profit institutions, and farms.

Abstract: The Application for Tax Exempt Transfer and Registration of Firearm—ATF Form 5 (5320.5) is used request permission to transfer and register a National Firearms Act (NFA) firearm, and to claim exemption from the transfer tax.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: An estimated 10,591 respondents will respond to this collection once annually, and it will take each respondent approximately .5052 hours (30.309 minutes) to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 5,350 hours, which is equal to 10,591 (total respondents) * 1 (# of response per respondent) * .5052 hours (30.309 minutes or the time taken to prepare each response).

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07981 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Request for Restricted 922(o) Machine Gun (National Firearms Act)—ATF Form 5320.24

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Connor Brandt, National Firearms Act Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *nfaombcomments@atf.gov,* or by telephone at 304–616–4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): New information collection.

2. *The Title of the Form/Collection:* Request for Restricted 922(o) Machine Gun (National Firearms Act).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5320.24.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit, Federal Government, State, local or Tribal Government.

Other (if applicable): Individuals or households, Not-for-profit Institutions, or Farms.

Abstract: The Request for Restricted 922(o) Machine Gun (National Firearms Act) (NFA)—ATF Form 5320.24 must be filed by Federal Firearms Licensees who have paid the special (occupational) tax to import, manufacture, deal in, or transfer an NFA firearm to a similarly qualified licensee. The completed ATF Form 5320.24 will also serve as supporting documentation for the Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer—ATF Form 3 (5320.3) (ATF Form 3), which must be completed by a law enforcement authority requesting demonstration of 922(o) restricted machineguns.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,850 respondents will respond to this collection once annually, and it will take each respondent approximately 20 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 616 hours, which is equal to 1,850 (total respondents) * 1 (# of response per respondent) * .333333 (20 minutes or the time taken to prepare each response).

7. *An Explanation of the Change in Estimates:* This is a new collection that affects the public burden. There are a total 1,850 responses and respondents to this collection. The total burden hours are 616. However, there is no public cost burden associated with this collection which has electronic submission capability.

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07958 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Drug Activity Questionnaire—ATF Form 8620.12

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 17, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Drug Activity Questionnaire.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 8620.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: The Drug Activity Questionnaire—ATF Form 8620.12 will be used to collect personally identifiable information (PII), which will be used to determine if a candidate (respondent) can be granted access to ATF information, IT systems, and/or unescorted access to ATF facilities. This collection includes information relating to ATF drug policy requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will provide information to complete this form once annually, and it will take approximately 10 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 333 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * .16665 (10 minutes or the time taken to prepare each response).

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07986 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Adverse Information Suitability Request—ATF Form 3252.12

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 17, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Adverse Information Suitability Request.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 3252.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: Any individual currently serving a confidential informant (CI) for ATF must provide their personally identifiable information. ATF will utilize the information to verify the identity of the individual and conduct indices checks. Respondents include members of the public who are presently serving as a CI for ATF.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will provide information to complete this form once annually, and it will take approximately 20 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 100 hours, which is equal to 300 (total respondents) * 1 (# of response per respondent) * .3334 (20 minutes or the time taken to prepare each response).

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07983 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; 30-Day Alien Suitability Request—ATF Form 3252.11

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 17, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *The Title of the Form/Collection:* 30-Day Alien Suitability Request.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 3252.11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: The purpose of the collection is to relay the status of an illegal alien currently sponsored by ATF and to request continued use of the individual as an ATF confidential informant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 30 respondents will provide information to complete this form 12 times annually, and it will take approximately 15 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 90 hours, which is equal to 30 (total respondents) * 12 (# of response per respondent) * .25 (15 minutes or the time taken to prepare each response).

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07980 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Acknowledgement of Deactivation Removal—ATF Form 3252.9

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 17, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Acknowledgement of Deactivation Removal.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF 3252.9.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: The purpose of the collection is to document the confidential informant's (CI) acknowledgment that he or she is no longer authorized to serve as an ATF CI. The CI will review the ATF F 3252.9 sign and date to acknowledge his or her understanding of the notification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will provide information to complete this form once annually, and it will take approximately 15 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 75 hours, which is equal to 300 (total respondents) * 1 (# of response per respondent) * .25 (10 minutes or the time taken to prepare each response).

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07985 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0056]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Special Agent Medical Preplacement—ATF Form 2300.10

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection (IC) OMB 1140–0056 (Special Agent Medical Preplacement—ATF Form 2300.10) is being revised due to an increase in number of respondents and total public burden hours. Additionally, there is a decrease in the total cost burden since the last renewal in 2020. The proposed information collection is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Dawn Cheeks, Program Analyst, Workforce Wellness and Services Division, by mail at 99 New York Avenue NE, Washington, DC 20226, email at *dawn.cheeks@atf.gov,* or telephone at 202–412–1770.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection (check justification or form 83):* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Special Agent Medical Preplacement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 2300.10.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): Federal Government.

Abstract: ATF E-Form 2300.10, Special Agent Medical Preplacement form collects specific identifiable data, these elements are name, address, telephone, social security number and certain medical data. The medical data on the form must be collected in order to determine whether or not a candidate is qualified medically for the position. The information will be initially used to make recommendation on either hiring or not hiring a candidate for the criminal investigator (special agent) position.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 380 respondents will utilize the form annually, and it will take each respondent approximately 45 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 285 hours, which is equal to 380 (total respondents) * 1 (# of response per respondent) * .75 (45 minutes).

(7) *An Explanation of the Change in Estimates:* The adjustments associated with this collection include an increase in both the number of respondents by 92 and total burden hours by 69 since the last renewal in 2020. There has also been a decrease in the total cost burden from $3,600.00 to $0.00 due to the form being transmitted electronically since the last renewal in 2020.

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07978 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0040]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application for Amended Federal Firearms License—ATF Form 5300.38

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection (IC) OMB 1140–0040 (Application for Amended Federal Firearms License—ATF F 5300.38) is being revised due to material changes to the form, such as added verbiage, added fill spaces for select questions, check box removal and revised contact information. There is also an increase in the annual cost burden due to the postal rate change since the last renewal in 2019. The proposed information collection is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Leslie Anderson, Program Analyst, Federal Firearms Licensing Center by mail at 244 Needy Rd, Martinsburg, WV 25405, email at *Leslie.anderson@atf.gov* or telephone at 304–616–4634.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection* (check justification or form 83): Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Amended Federal Firearms License.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5300.38.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households.

Abstract: Section 922 of chapter 44 of title 18 requires persons wishing to be licensed under a new business address to complete ATF Form 5300.38 to certify compliance with the provisions of the law for the new address.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,000 respondents will utilize the form annually and it will take each respondent approximately 30 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 5,000 (hours) which is equal to 10,000 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes).

(7) *An Explanation of the Change in Estimates:* The annual cost has increased due to a change in the postal rate from $0.50 during the last renewal in 2019, to $0.63 in 2023. Subsequently, the public cost burden increased by $1,300 from $5,000 in 2019 to $6,300 in 2023.

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07979 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0111]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Reactivation Suitability Request—ATF Form 3252.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0111 (Reactivation Suitability Request—ATF Form 3252.5) is being revised due to minor material changes to the form, such as conversion of data fields from narrative (*i.e.,* sentence) format to a question based format (*i.e.,* yes/no, with narrative for yes responses).

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 17, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Reactivation Suitability Request.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form Number 3252.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: The Confidential Informant (CI) handler will use the Reactivation Suitability Request—ATF Form 3252.5 to reinstate an individual to serve as a CI for ATF.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents will respond to this collection annually, and it will take each respondent approximately 2 hours to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 100 hours, which is equal to 50 (# total respondents for this IC) * 2 hours (120 minutes *i.e.* the total time per response).

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: April 11, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–07976 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on February 9, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards

development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development, and conformity assessment activities are publicly available at *nfpa.org.*

On September 20, 2004, NFPA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 21, 2004 (69 FR 61869).

The last notification was filed with the Department on August 1, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 30, 2022 (86 FR 47151).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–07982 Filed 4–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Rare Earth Technologies

Notice is hereby given that, on February 24, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Rare Earth Technologies (''CREaTe'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AECOM Process Technologies, Austin, TX; GridMatrix, Cupertino, CA; HII, Fairfax, VA; Illinois State Geological Survey, Champaign, IL; and Strategic Marketing Innovations, Washington, DC, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CREaTe intends to file additional written notifications disclosing all changes in membership.

On April 22, 2022, CREaTe filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on November 10, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 24, 2023 (88 FR 4210).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–07957 Filed 4–14–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Supply and Service Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Federal Contract Compliance Programs (OFCCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 17, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OFCCP administers and enforces three equal employment opportunity authorities, which prohibit employment discrimination and set affirmative action requirements for contractors that meet certain jurisdictional thresholds, Executive Order 11246, as amended (E.O. 11246); Section 503 of the Rehabilitation Act of 1973, as amended; and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. This ICR covers the reporting requirements for supply and service contractors under all three authorities as well as the recordkeeping requirements under E.O. 11246. This proposed information collection request outlines the legal authority, procedures, burden, and cost associated with developing and maintaining affirmative action programs and responding to the compliance review Scheduling Letter. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 21, 2022 (87 FR 70867).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OFCCP.

Title of Collection: Supply and Service Program.

OMB Control Number: 1250–0003.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 104,303.

Total Estimated Number of Responses: 209,864.

Total Estimated Annual Time Burden: 10,021,619 hours.

Total Estimated Annual Other Costs Burden: $35,612.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2023–08008 Filed 4–14–23; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Class Exemption for Certain Transactions Involving the Sale of Individual Life Insurance or Annuity Contracts by an Employee Benefit Plan

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 17, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 408(a) of the Employee Retirement Income Security Act (ERISA) authorizes the Secretary of Labor ''to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 and 407(a).'' Class exemption PTE 92–6 exempts from the prohibited transaction restrictions the sale of individual life insurance or annuity contracts held by an employee benefit plan to certain parties. Plans utilizing the exemption are required to inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, a trust, another plan, an owner-employee, or a shareholder-employee and be given an opportunity to purchase such contract. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 22, 2022 (87 FR 43897).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Class Exemption for Certain Transactions Involving the Sale of Individual Life Insurance or Annuity Contracts Held by an Employee Benefit Plan.

OMB Control Number: 1210–0063.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 11,401.

Total Estimated Number of Responses: 11,401.

Total Estimated Annual Time Burden: 2,280 hours.

Total Estimated Annual Other Costs Burden: $7,753.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 10, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–08007 Filed 4–14–23; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for the advisory committee listed below have determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Committee: Advisory Committee for International Science and Engineering, #25104.

Effective date for renewal is April 12, 2023. For more information, please contact Crystal Robinson, NSF, at (703) 292–8687.

Dated: April 12, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–07994 Filed 4–14–23; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2023–132; Order No. 6481]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing concerning product description changes to the Mail Classification Schedule related to International Mail. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 3, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On April 10, 2023, the Postal Service filed a notice of changes to product descriptions pursuant to CFR 3040.190.[1] The Postal Service seeks to make changes to the Mail Classification Schedule (MCS) descriptions of the following Market Dominant international mail Special Services: International Registered Mail (offered within the International Ancillary Services product and appearing in MCS section 1510.2), International Reply Coupon (IRC) Service (appearing in MCS section 1535), and International Business Reply Mail Service (IBRS) (appearing in MCS section 1540). Notice at 1. The changes are intended to take effect on July 9, 2023. *Id.*

II. Summary of Changes

For all three services at issue, the Postal Service asserts that its proposed changes would update existing references to applicable Universal Postal Convention Regulations. *Id.* at 2. Additionally, the Postal Service proposes two additional changes to the Outbound International Registered Mail service to (1) correct the name of the underlying product to which this service is ancillary (Outbound Single-Piece First-Class Mail International); and (2) provide a reference to the maximum weight for that underlying product. *Id.*

The Postal Service maintains that the proposed changes satisfy the requirements of 39 CFR 3040.190 because the changes should result in a more accurate representation of the Postal Service's current offerings and should allow mailers to more precisely locate pertinent information; the Notice is filed no later than 15 days prior to the intended effective date; and the changes revise the MCS to be consistent as a whole or to include more accurate references to the Universal Postal Convention Regulations without otherwise changing the products, prices, or price groups. *Id.* at 1–2. The Postal Service also asserts that the proposed changes do not significantly change the user experience for any product and that there is no evidence that the changes will significantly impact competitors. *Id.* at 3. The Postal Service further contends that the proposed changes do not constitute material changes to the respective product descriptions as governed by 39 CFR 3040.180. *Id.*

III. Notice of Commission Action

Pursuant to 39 CFR 3040.191, the Commission has posted the Notice on its website and invites comments on whether the Postal Service's filings are consistent with the policies and applicable criteria of chapter 36 of title 39 of the United States Code, 39 CFR 3040.190–192, and any applicable Commission directives and orders. Comments are due no later than May 3, 2023. The filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints R. Tim Boone to represent the interests of the general public (Public Representative) in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2023–132 to consider matters raised by the Notice.

2. Comments by interested persons are due by May 3, 2023.

3. Pursuant to 39 U.S.C. 505, R. Tim Boone is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–07970 Filed 4–14–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Minor Classification Changes, April 10, 2023 (Notice).

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10 a.m., April 26, 2023.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Office of Legislative Affairs update
- Bureau of Actuary and Research briefing on Disability analysis
- Recognition of various positions and awards

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

(Authority 5 U.S.C. 552b)

Dated: April 13, 2023.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2023–08177 Filed 4–13–23; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97284; File No. SR–DTC–2023–003]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the Clearing Agency Securities Valuation Framework

April 11, 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 March 28, 2023, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Securities Valuation Framework (''Framework'') of DTC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC, the central counterparties or ''CCPs,'' and the CCPs together with DTC, the ''Clearing Agencies''), as described below. The proposed changes to the Framework would apply to DTC, NSCC, and both of FICC's divisions, the Government Securities Division and the Mortgage-Backed Securities Division.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to the Framework to clarify the Clearing Agencies' practices concerning the valuation of (i) securities eligible for clearance and settlement processing by the applicable Clearing Agency and (ii) with respect to the CCPs, eligible securities in their respective Clearing Funds (each, a ''CUSIP''). Specifically, the proposed rule change would clarify certain aspects of the Framework concerning (i) the selection of third-party pricing vendors (''Pricing Vendors''); (ii) the monitoring and review of Pricing Vendor data; (iii) the processing and use of Pricing Vendor data; and (iv) other non-substantive aspects of the Framework. The proposed changes are discussed in detail below.

(i) Background

The Clearing Agencies maintain a Framework that sets forth the manner in which each of the Clearing Agencies identifies, measures, monitors, and manages the risks related to the pricing of securities processed or otherwise held by such Clearing Agencies, including (i) CUSIPs eligible for clearance and settlement processing by the applicable Clearing Agency and (ii) with respect to the CCPs, eligible CUSIPs in their respective Clearing Funds.[5] The Framework describes, among other things, the Clearing Agencies' use of Pricing Vendors and the monitoring, reviewing and processing of pricing data for end-of-day and intraday pricing.

The Framework is owned and managed by an officer within the DTCC Securities Valuation team, which is part of the Group Chief Risk Office of DTCC, on behalf of the Clearing Agencies.[6] The processes and systems described in the Framework, and any policies, procedures, or other documents created to support those processes, support the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(4)(i)[7] and, with respect to the CCPs, Rule 17Ad–22(e)(6)(iv)[8] under the Act.

(ii) Proposed Rule Change

The Clearing Agencies propose to revise the Framework to improve the accuracy and clarity of the descriptions of the Clearing Agencies' practices concerning securities valuation. Specifically, the Clearing Agencies propose to revise the Framework to: (i) clarify certain aspects of the Pricing Vendor selection process; (ii) clarify the description of the Clearing Agencies' practices for monitoring and reviewing Pricing Vendor data; (iii) clarify the description of the Clearing Agencies' processes concerning the use of end-of day and intraday CUSIP pricing data; and (iv) make other non-substantive clarifying and clean-up changes to the Framework. Each of these categories of changes are discussed in further detail below.

Selection of Pricing Vendors

Pursuant to the Framework, the Clearing Agencies select Pricing Vendors based on a review of their services, which includes a review of their securities coverage, price quality checks, and other due diligence prior to engagement. Once a Pricing Vendor is engaged, the Securities Valuation team assesses the reliability of each Pricing Vendor at least annually.

The Clearing Agencies propose minor modifications to the Framework concerning the Pricing Vendor selection process. The Clearing Agencies propose to revise the Framework to state that Pricing Vendors are selected based on a ''service review'' as opposed to a ''review of their service.'' The proposed rule change is not intended to reflect a material change to the Pricing Vendor selection process, but rather, would more accurately reflect the scope of any potential review performed for Pricing Vendors, which may include factors beyond just the specific service provided (*e.g.,* it may include a review of certain attributes of the Pricing Vendor itself).

The Clearing Agencies also propose to revise the Framework to clarify that when reviewing the reliability of a Pricing Vendor, the Clearing Agencies would consider whether the Pricing Vendor actually provides accurate and timely pricing data as opposed to whether the Pricing Vendor is ''able to provide'' accurate and timely data. The Clearing Agencies believe the proposed rule change would more clearly and accurately reflect the expectation that the Pricing Vendor has actually provided accurate and timely pricing data and thereby further ensure that the Clearing Agencies' policies and procedures are reasonably designed to use reliable sources of timely price data.

Monitoring and Review of Pricing Vendor Data

Pursuant to the Framework, the Securities Valuation team monitors and reviews each Pricing Vendor's pricing at least once each business day. This includes a review of whether any CUSIP's price has remained unchanged for an extended period of time, whether a CUSIP has been dropped from the Pricing Vendor's file and whether other circumstances exist that may call into question the reliability of any CUSIP's price.

The Clearing Agencies propose to make certain non-substantive clarifying and grammatical corrections to the Framework concerning the monitoring of Pricing Vendors. The proposed changes would clarify that the scope of daily monitoring and review includes a determination of whether (i) an ''eligible'' CUSIP's price has remained unchanged for an extended period (as opposed to inferring ''all CUSIPS'' for which a vendor may provide pricing in a given file) and (ii) other ''relevant'' circumstances exist that ''could'' call into question the reliability of a CUSIP's price. These proposed changes are intended to enhance the clarity and drafting of the Framework and are not intended to result in a material change to the monitoring and review processes.

Processing and Use of Pricing Vendor Data

The Framework currently provides that the Securities Valuation team assigns each CUSIP a primary source Pricing Vendor and a secondary source Pricing Vendor and that, in the event that the primary Pricing Vendor becomes unavailable, unreliable, or otherwise unusable with respect to a CUSIP, the secondary Pricing Vendor will be designated as the replacement for the primary Pricing Vendor with

[5] *See* Securities Exchange Act Release No. 82006 (November 2, 2017), 82 FR 51892 (November 8, 2017) (SR–DTC–2017–016; SR–NSCC–2017–016; SR–FICC–2017–020).

[6] The parent company of the Clearing Agencies is The Depository Trust & Clearing Corporation (''DTCC''). DTCC operates on a shared services model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a Clearing Agency.

[7] 17 CFR 240.17Ad–22(e)(4)(i).

[8] 17 CFR 240.17Ad–22(e)(6)(iv).

respect to such CUSIP. The Framework also describes the processing of end-of-day and intraday pricing from Pricing Vendors. Specifically, the Framework provides that each CUSIP's price is date stamped (and in the case of intraday pricing, time-stamped) and identified with its Pricing Vendor source, and in the event that both primary Pricing Vendor and secondary Pricing Vendor become unavailable, unreliable, or otherwise unusable with respect to a CUSIP, the Securities Valuation team assigns such CUSIP its last available price.

Pricing Vendor Assignments

The Clearing Agencies propose to revise the Framework to remove the statement that the Securities Valuation team assigns each CUSIP a primary and secondary source Pricing Vendor and remove corresponding references to ''Primary Pricing Vendor'' and ''Secondary Pricing Vendor'' throughout the Framework. The Clearing Agencies maintain relationships with more than one Pricing Vendor for the majority of their products; however, this may not be the case in all circumstances. For example, the Clearing Agencies may not maintain multiple Pricing Vendors for products that are cleared based on the pricing of another similar product for which they also maintain Pricing Vendor relationships. The Clearing Agencies also may not perform intra-day pricing for certain asset classes that are not subject to clearance and netting services. The Clearing Agencies therefore believe the proposed change would more accurately reflect the Clearing Agencies' practices for maintaining Pricing Vendors. The proposed changes would further clarify that the Clearing Agencies may not maintain ''primary'' and ''secondary'' vendors for all CUSIPs, and that the Clearing Agencies may use whichever Pricing Vendor proves to be available and reliable for a CUSIP at a given time without relying on such ''primary'' and ''secondary'' designations. The proposed changes would also provide additional clarity and flexibility for the Clearing Agencies to maintain more than two Pricing Vendors for a product area/CUSIP or, where appropriate, reduce the number of Pricing Vendor relationships it may maintain for any given product area or CUSIP, as governed by applicable Securities Valuation policies and procedures.

The Clearing Agencies would also revise the Framework to specify that in the event a Pricing Vendor becomes unavailable, unreliable, or otherwise unusable with respect to a CUSIP, back-up pricing would be utilized to provide accurate and timely pricing data with respect to such CUSIP. The proposed change would more accurately reflect that backup pricing may be sourced from an alternative Pricing Vendor, where applicable, or may also be determined, in the absence of an alternative Pricing Vendor, pursuant to the Clearing Agencies' applicable policies and procedures to ensure that timely pricing data is applied.

End-of-Day and Intraday Price Processing

The Clearing Agencies also propose to clarify their processes for recording end-of-day and intraday pricing. The Clearing Agencies would revise the Framework to clarify that, with respect to end-of-day and intraday pricing, if Pricing Vendor data is unavailable, unreliable, or otherwise unusable for a CUSIP, the Securities Valuation team does not ''assign'' the last available price to the CUSIP, but rather, the last available price is recorded in the Clearing Agencies' pricing database, which is consumable for applicable stakeholders. The proposed rule change would also further clarify that this process would apply if pricing data were unavailable, unreliable, or otherwise unusable from ''all'' Pricing Vendors, and not just the primary or secondary Pricing Vendors, for the reasons discussed above. The Clearing Agencies believe the proposed changes concerning end-of-day and intraday price processing would improve the accuracy and clarity of the Framework.

Other Non-Substantive Clean-Up Changes

Finally, the Clearing Agencies propose to make several non-substantive changes to the Framework. For example, the Clearing Agencies would revise a statement that the Securities Valuation team values each ''applicable'' CUSIP to say each ''eligible'' CUSIP to align this statement more clearly with the scope of the policy (*i.e.,* those securities eligible for clearance and settlement or for each CCPs' clearing fund). The Clearing Agencies would also revise the definition of ''Pricing Vendors'' to define them as third-party pricing ''suppliers'' as opposed to ''vendors'' to eliminate redundancy in the definition and align with other language used in the Framework concerning their role in supplying prices. Additionally, the Clearing Agencies would make several non-substantive, grammatical, and punctuation-related clean-up changes throughout the Framework (including revisions to a footnote in the policy regarding the possibility that certain CUSIPs might not be priced as expected). The proposed changes are not intended to change the meaning or purpose of the Framework but rather improve the drafting and clarity of the Framework.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [9] and Rules 17Ad–22(e)(4)(i) [10] and (e)(6)(iv) [11] under the Act, for the reasons set forth below.

Section 17A(b)(3)(F) of the Act [12] requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The proposed rule change would improve descriptions of the Clearing Agencies' processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data for securities valuation purposes. The proposed rule change is designed to improve the accuracy and clarity of the Framework document. The Framework and the policies and procedures that support the Framework help assure that each Clearing Agency is using reliable sources of timely price data for collateral valuation, risk management and settlement purposes. Since margin and collateral play key roles in the applicable Clearing Agency's risk management process, having accurate margin system and collateral valuation facilitates the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. The Clearing Agencies therefore believe that enhancing the quality and accuracy of the Framework is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(4)(i) [13] under the Act requires that each covered clearing

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(4)(i).

[11] 17 CFR 240.17Ad–22(e)(6)(iv).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(4)(i).

agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. The Framework describes how the Clearing Agencies identify, measure, monitor, and manage the risks related to the pricing of securities processed or otherwise held by the Clearing Agencies. The processes, systems, and controls used by the Clearing Agencies to identify, measure, monitor, and manage such risks, as described in the Framework, and the policies and procedures that support these activities, help assure that each Clearing Agency is using (i) reliable sources of timely price data when pricing securities processed or otherwise held by the applicable Clearing Agency and (ii) procedures and sound valuation models when pricing data are not readily available or reliable. The proposed rule change would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation practices, and specifically, its processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data. By appropriately pricing securities, the Clearing Agencies can more accurately calculate the value of the securities that the Clearing Agencies monitor or hold for risk management purposes. The proposed changes are therefore intended to facilitate the maintenance of policies and procedures that are reasonably designed to effectively identify, measure, monitor and manage the Clearing Agencies' credit exposures to participants and those arising from its payment, clearing, and settlement processes and determine the amount of financial resources required to cover its credit exposure to each participant with a high degree of confidence in accordance with the requirements of Rule 17Ad–22(e)(4)(i).

Rule 17Ad–22(e)(6)(iv) [14] under the Act requires each covered clearing agency that is a CCP to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. The Framework describes how the CCPs identify, measure, monitor, and manage the risks related to the pricing of securities processed or otherwise held by the CCPs. As noted above, the proposed rule change would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation practices, and specifically, its processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data. The processes, systems, and controls used by the CCPs to identify, measure, monitor, and manage such risks, as described in the Framework, and the policies and procedures that support these activities, help assure that each CCP is using reliable sources of timely price data as well as procedures and sound valuation models when pricing data are not readily available or reliable. The Clearing Agencies therefore believe the proposed changes to the Framework are consistent with the requirements of Rule 17Ad–22(e)(6)(iv).

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation processes. The Framework itself, and the proposed rule changes described herein, would not advantage or disadvantage any particular participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. The Clearing Agencies therefore do not believe that the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

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.

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:

[14] 17 CFR 240.17Ad–22(e)(6)(iv).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

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–DTC–2023–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2023–003. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2023–003 and should be submitted on or before May 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–07963 Filed 4–14–23; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, April 20, 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: April 13, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–08187 Filed 4–13–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97283; File No. SR–FICC–2023–004]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the Clearing Agency Securities Valuation Framework

April 11, 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 March 28, 2023, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Securities Valuation Framework (''Framework'') of FICC and its affiliates, National Securities Clearing Corporation (''NSCC,'' and together with FICC, the central counterparties or ''CCPs'') and The Depository Trust Company (''DTC,'' and together with the CCPs, the ''Clearing Agencies''), as described below. The proposed changes to the Framework would apply to DTC, NSCC, and both of FICC's divisions, the Government Securities Division and the Mortgage-Backed Securities Division.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).

and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to the Framework to clarify the Clearing Agencies' practices concerning the valuation of (i) securities eligible for clearance and settlement processing by the applicable Clearing Agency and (ii) with respect to the CCPs, eligible securities in their respective Clearing Funds (each, a ''CUSIP''). Specifically, the proposed rule change would clarify certain aspects of the Framework concerning (i) the selection of third-party pricing vendors (''Pricing Vendors''); (ii) the monitoring and review of Pricing Vendor data; (iii) the processing and use of Pricing Vendor data; and (iv) other non-substantive aspects of the Framework. The proposed changes are discussed in detail below.

(i) Background

The Clearing Agencies maintain a Framework that sets forth the manner in which each of the Clearing Agencies identifies, measures, monitors, and manages the risks related to the pricing of securities processed or otherwise held by such Clearing Agencies, including (i) CUSIPs eligible for clearance and settlement processing by the applicable Clearing Agency and (ii) with respect to the CCPs, eligible CUSIPs in their respective Clearing Funds.[5] The Framework describes, among other things, the Clearing Agencies' use of Pricing Vendors and the monitoring, reviewing and processing of pricing data for end-of-day and intraday pricing.

The Framework is owned and managed by an officer within the DTCC Securities Valuation team, which is part of the Group Chief Risk Office of DTCC, on behalf of the Clearing Agencies.[6] The processes and systems described in the Framework, and any policies, procedures, or other documents created to support those processes, support the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(4)(i)[7] and, with respect to the CCPs, Rule 17Ad–22(e)(6)(iv)[8] under the Act.

(ii) Proposed Rule Change

The Clearing Agencies propose to revise the Framework to improve the accuracy and clarity of the descriptions of the Clearing Agencies' practices concerning securities valuation. Specifically, the Clearing Agencies propose to revise the Framework to: (i) clarify certain aspects of the Pricing Vendor selection process; (ii) clarify the description of the Clearing Agencies' practices for monitoring and reviewing Pricing Vendor data; (iii) clarify the description of the Clearing Agencies' processes concerning the use of end-of day and intraday CUSIP pricing data; and (iv) make other non-substantive clarifying and clean-up changes to the Framework. Each of these categories of changes are discussed in further detail below.

Selection of Pricing Vendors

Pursuant to the Framework, the Clearing Agencies select Pricing Vendors based on a review of their services, which includes a review of their securities coverage, price quality checks, and other due diligence prior to engagement. Once a Pricing Vendor is engaged, the Securities Valuation team assesses the reliability of each Pricing Vendor at least annually.

The Clearing Agencies propose minor modifications to the Framework concerning the Pricing Vendor selection process. The Clearing Agencies propose to revise the Framework to state that Pricing Vendors are selected based on a ''service review'' as opposed to a ''review of their service.'' The proposed rule change is not intended to reflect a material change to the Pricing Vendor selection process, but rather, would more accurately reflect the scope of any potential review performed for Pricing Vendors, which may include factors beyond just the specific service provided (*e.g.,* it may include a review of certain attributes of the Pricing Vendor itself).

The Clearing Agencies also propose to revise the Framework to clarify that when reviewing the reliability of a Pricing Vendor, the Clearing Agencies would consider whether the Pricing Vendor actually provides accurate and timely pricing data as opposed to whether the Pricing Vendor is ''able to provide'' accurate and timely data. The Clearing Agencies believe the proposed rule change would more clearly and accurately reflect the expectation that the Pricing Vendor has actually provided accurate and timely pricing data and thereby further ensure that the Clearing Agencies' policies and procedures are reasonably designed to use reliable sources of timely price data.

Monitoring and Review of Pricing Vendor Data

Pursuant to the Framework, the Securities Valuation team monitors and reviews each Pricing Vendor's pricing at least once each business day. This includes a review of whether any CUSIP's price has remained unchanged for an extended period of time, whether a CUSIP has been dropped from the Pricing Vendor's file and whether other circumstances exist that may call into question the reliability of any CUSIP's price.

The Clearing Agencies propose to make certain non-substantive clarifying and grammatical corrections to the Framework concerning the monitoring of Pricing Vendors. The proposed changes would clarify that the scope of daily monitoring and review includes a determination of whether (i) an ''eligible'' CUSIP's price has remained unchanged for an extended period (as opposed to inferring ''all CUSIPS'' for which a vendor may provide pricing in a given file) and (ii) other ''relevant'' circumstances exist that ''could'' call into question the reliability of a CUSIP's price. These proposed changes are intended to enhance the clarity and drafting of the Framework and are not intended to result in a material change to the monitoring and review processes.

Processing and Use of Pricing Vendor Data

The Framework currently provides that the Securities Valuation team assigns each CUSIP a primary source Pricing Vendor and a secondary source Pricing Vendor and that, in the event that the primary Pricing Vendor becomes unavailable, unreliable, or otherwise unusable with respect to a CUSIP, the secondary Pricing Vendor will be designated as the replacement for the primary Pricing Vendor with respect to such CUSIP. The Framework also describes the processing of end-of-day and intraday pricing from Pricing Vendors. Specifically, the Framework provides that each CUSIP's price is date stamped (and in the case of intraday pricing, time-stamped) and identified with its Pricing Vendor source, and in the event that both primary Pricing Vendor and secondary Pricing Vendor become unavailable, unreliable, or otherwise unusable with respect to a CUSIP, the Securities Valuation team

[5] *See* Securities Exchange Act Release No. 82006 (November 2, 2017), 82 FR 51892 (November 8, 2017) (SR–DTC–2017–016; SR–NSCC–2017–016; SR–FICC–2017–020).

[6] The parent company of the Clearing Agencies is The Depository Trust & Clearing Corporation (''DTCC''). DTCC operates on a shared services model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a Clearing Agency.

[7] 17 CFR 240.17Ad–22(e)(4)(i).

[8] 17 CFR 240.17Ad–22(e)(6)(iv).

assigns such CUSIP its last available price.

Pricing Vendor Assignments

The Clearing Agencies propose to revise the Framework to remove the statement that the Securities Valuation team assigns each CUSIP a primary and secondary source Pricing Vendor and remove corresponding references to ''Primary Pricing Vendor'' and ''Secondary Pricing Vendor'' throughout the Framework. The Clearing Agencies maintain relationships with more than one Pricing Vendor for the majority of their products; however, this may not be the case in all circumstances. For example, the Clearing Agencies may not maintain multiple Pricing Vendors for products that are cleared based on the pricing of another similar product for which they also maintain Pricing Vendor relationships. The Clearing Agencies also may not perform intra-day pricing for certain asset classes that are not subject to clearance and netting services. The Clearing Agencies therefore believe the proposed change would more accurately reflect the Clearing Agencies' practices for maintaining Pricing Vendors. The proposed changes would further clarify that the Clearing Agencies may not maintain ''primary'' and ''secondary'' vendors for all CUSIPs, and that the Clearing Agencies may use whichever Pricing Vendor proves to be available and reliable for a CUSIP at a given time without relying on such ''primary'' and ''secondary'' designations. The proposed changes would also provide additional clarity and flexibility for the Clearing Agencies to maintain more than two Pricing Vendors for a product area/CUSIP or, where appropriate, reduce the number of Pricing Vendor relationships it may maintain for any given product area or CUSIP, as governed by applicable Securities Valuation policies and procedures.

The Clearing Agencies would also revise the Framework to specify that in the event a Pricing Vendor becomes unavailable, unreliable, or otherwise unusable with respect to a CUSIP, back-up pricing would be utilized to provide accurate and timely pricing data with respect to such CUSIP. The proposed change would more accurately reflect that backup pricing may be sourced from an alternative Pricing Vendor, where applicable, or may also be determined, in the absence of an alternative Pricing Vendor, pursuant to the Clearing Agencies' applicable policies and procedures to ensure that timely pricing data is applied.

End-of-Day and Intraday Price Processing

The Clearing Agencies also propose to clarify their processes for recording end-of-day and intraday pricing. The Clearing Agencies would revise the Framework to clarify that, with respect to end-of-day and intraday pricing, if Pricing Vendor data is unavailable, unreliable, or otherwise unusable for a CUSIP, the Securities Valuation team does not ''assign'' the last available price to the CUSIP, but rather, the last available price is recorded in the Clearing Agencies' pricing database, which is consumable for applicable stakeholders. The proposed rule change would also further clarify that this process would apply if pricing data were unavailable, unreliable, or otherwise unusable from ''all'' Pricing Vendors, and not just the primary or secondary Pricing Vendors, for the reasons discussed above. The Clearing Agencies believe the proposed changes concerning end-of-day and intraday price processing would improve the accuracy and clarity of the Framework.

Other Non-Substantive Clean-Up Changes

Finally, the Clearing Agencies propose to make several non-substantive changes to the Framework. For example, the Clearing Agencies would revise a statement that the Securities Valuation team values each ''applicable'' CUSIP to say each ''eligible'' CUSIP to align this statement more clearly with the scope of the policy (*i.e.,* those securities eligible for clearance and settlement or for each CCPs' clearing fund). The Clearing Agencies would also revise the definition of ''Pricing Vendors'' to define them as third-party pricing ''suppliers'' as opposed to ''vendors'' to eliminate redundancy in the definition and align with other language used in the Framework concerning their role in supplying prices. Additionally, the Clearing Agencies would make several non-substantive, grammatical, and punctuation-related clean-up changes throughout the Framework (including revisions to a footnote in the policy regarding the possibility that certain CUSIPs might not be priced as expected). The proposed changes are not intended to change the meaning or purpose of the Framework but rather improve the drafting and clarity of the Framework.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [9] and Rules 17Ad–22(e)(4)(i) [10] and (e)(6)(iv) [11] under the Act, for the reasons set forth below.

Section 17A(b)(3)(F) of the Act [12] requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The proposed rule change would improve descriptions of the Clearing Agencies' processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data for securities valuation purposes. The proposed rule change is designed to improve the accuracy and clarity of the Framework document. The Framework and the policies and procedures that support the Framework help assure that each Clearing Agency is using reliable sources of timely price data for collateral valuation, risk management and settlement purposes. Since margin and collateral play key roles in the applicable Clearing Agency's risk management process, having accurate margin system and collateral valuation facilitates the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. The Clearing Agencies therefore believe that enhancing the quality and accuracy of the Framework is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(4)(i) [13] under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. The

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(4)(i).

[11] 17 CFR 240.17Ad–22(e)(6)(iv).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(4)(i).

Framework describes how the Clearing Agencies identify, measure, monitor, and manage the risks related to the pricing of securities processed or otherwise held by the Clearing Agencies. The processes, systems, and controls used by the Clearing Agencies to identify, measure, monitor, and manage such risks, as described in the Framework, and the policies and procedures that support these activities, help assure that each Clearing Agency is using (i) reliable sources of timely price data when pricing securities processed or otherwise held by the applicable Clearing Agency and (ii) procedures and sound valuation models when pricing data are not readily available or reliable. The proposed rule change would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation practices, and specifically, its processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data. By appropriately pricing securities, the Clearing Agencies can more accurately calculate the value of the securities that the Clearing Agencies monitor or hold for risk management purposes. The proposed changes are therefore intended to facilitate the maintenance of policies and procedures that are reasonably designed to effectively identify, measure, monitor and manage the Clearing Agencies' credit exposures to participants and those arising from its payment, clearing, and settlement processes and determine the amount of financial resources required to cover its credit exposure to each participant with a high degree of confidence in accordance with the requirements of Rule 17Ad–22(e)(4)(i).

Rule 17Ad–22(e)(6)(iv) [14] under the Act requires each covered clearing agency that is a CCP to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. The Framework describes how the CCPs identify, measure, monitor, and manage the risks related to the pricing of securities processed or otherwise held by the CCPs. As noted above, the proposed rule change would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation practices, and specifically, its processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data. The processes, systems, and controls used by the CCPs to identify, measure, monitor, and manage such risks, as described in the Framework, and the policies and procedures that support these activities, help assure that each CCP is using reliable sources of timely price data as well as procedures and sound valuation models when pricing data are not readily available or reliable. The Clearing Agencies therefore believe the proposed changes to the Framework are consistent with the requirements of Rule 17Ad–22(e)(6)(iv).

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation processes. The Framework itself, and the proposed rule changes described herein, would not advantage or disadvantage any particular participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. The Clearing Agencies therefore do not believe that the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

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.

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–FICC–2023–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

[14] 17 CFR 240.17Ad–22(e)(6)(iv).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

All submissions should refer to File Number SR–FICC–2023–004. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2023–004 and should be submitted on or before May 8, 2023].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–07962 Filed 4–14–23; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97280; File No. SR–NSCC–2023–003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the Clearing Agency Securities Valuation Framework

April 11, 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 March 28, 2023, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Securities Valuation Framework (''Framework'') of NSCC and its affiliates, Fixed Income Clearing Corporation (''FICC,'' and together with NSCC, the central counterparties or ''CCPs'') and The Depository Trust Company (''DTC,'' and together with the CCPs, the ''Clearing Agencies''), as described below. The proposed changes to the Framework would apply to DTC, NSCC, and both of FICC's divisions, the Government Securities Division and the Mortgage-Backed Securities Division.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to the Framework to clarify the Clearing Agencies' practices concerning the valuation of (i) securities eligible for clearance and settlement processing by the applicable Clearing Agency and (ii) with respect to the CCPs, eligible securities in their respective Clearing Funds (each, a ''CUSIP''). Specifically, the proposed rule change would clarify certain aspects of the Framework concerning (i) the selection of third-party pricing vendors (''Pricing Vendors''); (ii) the monitoring and review of Pricing Vendor data; (iii) the processing and use of Pricing Vendor data; and (iv) other non-substantive aspects of the Framework. The proposed changes are discussed in detail below.

(i) Background

The Clearing Agencies maintain a Framework that sets forth the manner in which each of the Clearing Agencies identifies, measures, monitors, and manages the risks related to the pricing of securities processed or otherwise held by such Clearing Agencies, including (i) CUSIPs eligible for clearance and settlement processing by the applicable Clearing Agency and (ii) with respect to the CCPs, eligible CUSIPs in their respective Clearing Funds.[5] The Framework describes, among other things, the Clearing Agencies' use of Pricing Vendors and the monitoring, reviewing and processing of pricing data for end-of-day and intraday pricing.

The Framework is owned and managed by an officer within the DTCC Securities Valuation team, which is part of the Group Chief Risk Office of DTCC, on behalf of the Clearing Agencies.[6] The processes and systems described in the Framework, and any policies, procedures, or other documents created to support those processes, support the Clearing Agencies' compliance with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 82006 (November 2, 2017), 82 FR 51892 (November 8, 2017) (SR–DTC–2017–016; SR–NSCC–2017–016; SR–FICC–2017–020).

[6] The parent company of the Clearing Agencies is The Depository Trust & Clearing Corporation (''DTCC''). DTCC operates on a shared services model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a Clearing Agency.

requirements of Rule 17Ad–22(e)(4)(i) [7] and, with respect to the CCPs, Rule 17Ad–22(e)(6)(iv) [8] under the Act.

(ii) Proposed Rule Change

The Clearing Agencies propose to revise the Framework to improve the accuracy and clarity of the descriptions of the Clearing Agencies' practices concerning securities valuation. Specifically, the Clearing Agencies propose to revise the Framework to: (i) clarify certain aspects of the Pricing Vendor selection process; (ii) clarify the description of the Clearing Agencies' practices for monitoring and reviewing Pricing Vendor data; (iii) clarify the description of the Clearing Agencies' processes concerning the use of end-of day and intraday CUSIP pricing data; and (iv) make other non-substantive clarifying and clean-up changes to the Framework. Each of these categories of changes are discussed in further detail below.

Selection of Pricing Vendors

Pursuant to the Framework, the Clearing Agencies select Pricing Vendors based on a review of their services, which includes a review of their securities coverage, price quality checks, and other due diligence prior to engagement. Once a Pricing Vendor is engaged, the Securities Valuation team assesses the reliability of each Pricing Vendor at least annually.

The Clearing Agencies propose minor modifications to the Framework concerning the Pricing Vendor selection process. The Clearing Agencies propose to revise the Framework to state that Pricing Vendors are selected based on a ''service review'' as opposed to a ''review of their service.'' The proposed rule change is not intended to reflect a material change to the Pricing Vendor selection process, but rather, would more accurately reflect the scope of any potential review performed for Pricing Vendors, which may include factors beyond just the specific service provided (*e.g.,* it may include a review of certain attributes of the Pricing Vendor itself).

The Clearing Agencies also propose to revise the Framework to clarify that when reviewing the reliability of a Pricing Vendor, the Clearing Agencies would consider whether the Pricing Vendor actually provides accurate and timely pricing data as opposed to whether the Pricing Vendor is ''able to provide'' accurate and timely data. The Clearing Agencies believe the proposed rule change would more clearly and accurately reflect the expectation that the Pricing Vendor has actually provided accurate and timely pricing data and thereby further ensure that the Clearing Agencies' policies and procedures are reasonably designed to use reliable sources of timely price data.

Monitoring and Review of Pricing Vendor Data

Pursuant to the Framework, the Securities Valuation team monitors and reviews each Pricing Vendor's pricing at least once each business day. This includes a review of whether any CUSIP's price has remained unchanged for an extended period of time, whether a CUSIP has been dropped from the Pricing Vendor's file and whether other circumstances exist that may call into question the reliability of any CUSIP's price.

The Clearing Agencies propose to make certain non-substantive clarifying and grammatical corrections to the Framework concerning the monitoring of Pricing Vendors. The proposed changes would clarify that the scope of daily monitoring and review includes a determination of whether (i) an ''eligible'' CUSIP's price has remained unchanged for an extended period (as opposed to inferring ''all CUSIPS'' for which a vendor may provide pricing in a given file) and (ii) other ''relevant'' circumstances exist that ''could'' call into question the reliability of a CUSIP's price. These proposed changes are intended to enhance the clarity and drafting of the Framework and are not intended to result in a material change to the monitoring and review processes.

Processing and Use of Pricing Vendor Data

The Framework currently provides that the Securities Valuation team assigns each CUSIP a primary source Pricing Vendor and a secondary source Pricing Vendor and that, in the event that the primary Pricing Vendor becomes unavailable, unreliable, or otherwise unusable with respect to a CUSIP, the secondary Pricing Vendor will be designated as the replacement for the primary Pricing Vendor with respect to such CUSIP. The Framework also describes the processing of end-of-day and intraday pricing from Pricing Vendors. Specifically, the Framework provides that each CUSIP's price is date stamped (and in the case of intraday pricing, time-stamped) and identified with its Pricing Vendor source, and in the event that both primary Pricing Vendor and secondary Pricing Vendor become unavailable, unreliable, or otherwise unusable with respect to a CUSIP, the Securities Valuation team assigns such CUSIP its last available price.

Pricing Vendor Assignments

The Clearing Agencies propose to revise the Framework to remove the statement that the Securities Valuation team assigns each CUSIP a primary and secondary source Pricing Vendor and remove corresponding references to ''Primary Pricing Vendor'' and ''Secondary Pricing Vendor'' throughout the Framework. The Clearing Agencies maintain relationships with more than one Pricing Vendor for the majority of their products; however, this may not be the case in all circumstances. For example, the Clearing Agencies may not maintain multiple Pricing Vendors for products that are cleared based on the pricing of another similar product for which they also maintain Pricing Vendor relationships. The Clearing Agencies also may not perform intra-day pricing for certain asset classes that are not subject to clearance and netting services. The Clearing Agencies therefore believe the proposed change would more accurately reflect the Clearing Agencies' practices for maintaining Pricing Vendors. The proposed changes would further clarify that the Clearing Agencies may not maintain ''primary'' and ''secondary'' vendors for all CUSIPs, and that the Clearing Agencies may use whichever Pricing Vendor proves to be available and reliable for a CUSIP at a given time without relying on such ''primary'' and ''secondary'' designations. The proposed changes would also provide additional clarity and flexibility for the Clearing Agencies to maintain more than two Pricing Vendors for a product area/CUSIP or, where appropriate, reduce the number of Pricing Vendor relationships it may maintain for any given product area or CUSIP, as governed by applicable Securities Valuation policies and procedures.

The Clearing Agencies would also revise the Framework to specify that in the event a Pricing Vendor becomes unavailable, unreliable, or otherwise unusable with respect to a CUSIP, back-up pricing would be utilized to provide accurate and timely pricing data with respect to such CUSIP. The proposed change would more accurately reflect that backup pricing may be sourced from an alternative Pricing Vendor, where applicable, or may also be determined, in the absence of an alternative Pricing Vendor, pursuant to the Clearing Agencies' applicable policies and procedures to ensure that timely pricing data is applied.

[7] 17 CFR 240.17Ad–22(e)(4)(i).

[8] 17 CFR 240.17Ad–22(e)(6)(iv).

End-of-Day and Intraday Price Processing

The Clearing Agencies also propose to clarify their processes for recording end-of-day and intraday pricing. The Clearing Agencies would revise the Framework to clarify that, with respect to end-of-day and intraday pricing, if Pricing Vendor data is unavailable, unreliable, or otherwise unusable for a CUSIP, the Securities Valuation team does not ''assign'' the last available price to the CUSIP, but rather, the last available price is recorded in the Clearing Agencies' pricing database, which is consumable for applicable stakeholders. The proposed rule change would also further clarify that this process would apply if pricing data were unavailable, unreliable, or otherwise unusable from ''all'' Pricing Vendors, and not just the primary or secondary Pricing Vendors, for the reasons discussed above. The Clearing Agencies believe the proposed changes concerning end-of-day and intraday price processing would improve the accuracy and clarity of the Framework.

Other Non-Substantive Clean-Up Changes

Finally, the Clearing Agencies propose to make several non-substantive changes to the Framework. For example, the Clearing Agencies would revise a statement that the Securities Valuation team values each ''applicable'' CUSIP to say each ''eligible'' CUSIP to align this statement more clearly with the scope of the policy (*i.e.,* those securities eligible for clearance and settlement or for each CCPs' clearing fund). The Clearing Agencies would also revise the definition of ''Pricing Vendors'' to define them as third-party pricing ''suppliers'' as opposed to ''vendors'' to eliminate redundancy in the definition and align with other language used in the Framework concerning their role in supplying prices. Additionally, the Clearing Agencies would make several non-substantive, grammatical, and punctuation-related clean-up changes throughout the Framework (including revisions to a footnote in the policy regarding the possibility that certain CUSIPs might not be priced as expected). The proposed changes are not intended to change the meaning or purpose of the Framework but rather improve the drafting and clarity of the Framework.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [9] and Rules 17Ad–22(e)(4)(i) [10] and (e)(6)(iv) [11] under the Act, for the reasons set forth below.

Section 17A(b)(3)(F) of the Act [12] requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The proposed rule change would improve descriptions of the Clearing Agencies' processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data for securities valuation purposes. The proposed rule change is designed to improve the accuracy and clarity of the Framework document. The Framework and the policies and procedures that support the Framework help assure that each Clearing Agency is using reliable sources of timely price data for collateral valuation, risk management and settlement purposes. Since margin and collateral play key roles in the applicable Clearing Agency's risk management process, having accurate margin system and collateral valuation facilitates the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. The Clearing Agencies therefore believe that enhancing the quality and accuracy of the Framework is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(4)(i) [13] under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. The Framework describes how the Clearing Agencies identify, measure, monitor, and manage the risks related to the pricing of securities processed or otherwise held by the Clearing Agencies. The processes, systems, and controls used by the Clearing Agencies to identify, measure, monitor, and manage such risks, as described in the Framework, and the policies and procedures that support these activities, help assure that each Clearing Agency is using (i) reliable sources of timely price data when pricing securities processed or otherwise held by the applicable Clearing Agency and (ii) procedures and sound valuation models when pricing data are not readily available or reliable. The proposed rule change would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation practices, and specifically, its processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data. By appropriately pricing securities, the Clearing Agencies can more accurately calculate the value of the securities that the Clearing Agencies monitor or hold for risk management purposes. The proposed changes are therefore intended to facilitate the maintenance of policies and procedures that are reasonably designed to effectively identify, measure, monitor and manage the Clearing Agencies' credit exposures to participants and those arising from its payment, clearing, and settlement processes and determine the amount of financial resources required to cover its credit exposure to each participant with a high degree of confidence in accordance with the requirements of Rule 17Ad–22(e)(4)(i).

Rule 17Ad–22(e)(6)(iv) [14] under the Act requires each covered clearing agency that is a CCP to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. The Framework describes how the CCPs identify, measure, monitor, and manage the risks related to the pricing of securities processed or otherwise held by the CCPs. As noted above, the proposed rule change would

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(4)(i).

[11] 17 CFR 240.17Ad–22(e)(6)(iv).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(4)(i).

[14] 17 CFR 240.17Ad–22(e)(6)(iv).

enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation practices, and specifically, its processes for selecting Pricing Vendors, reviewing the reliability of Pricing Vendors, monitoring and reviewing each Pricing Vendor's pricing data, and the processing and use of Pricing Vendor data. The processes, systems, and controls used by the CCPs to identify, measure, monitor, and manage such risks, as described in the Framework, and the policies and procedures that support these activities, help assure that each CCP is using reliable sources of timely price data as well as procedures and sound valuation models when pricing data are not readily available or reliable. The Clearing Agencies therefore believe the proposed changes to the Framework are consistent with the requirements of Rule 17Ad–22(e)(6)(iv).

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' securities valuation processes. The Framework itself, and the proposed rule changes described herein, would not advantage or disadvantage any particular participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. The Clearing Agencies therefore do not believe that the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

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.

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–NSCC–2023–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2023–003. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2023–003 and should be submitted on or before May 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–07961 Filed 4–14–23; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17866 and #17867; Tennessee Disaster Number TN–00143]

Presidential Declaration of a Major Disaster for the State of Tennessee

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4701–DR), dated 04/07/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 03/31/2023 through 04/01/2023.

DATES: Issued on 04/07/2023.

Physical Loan Application Deadline Date: 06/06/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/08/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/07/2023, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cannon, Hardeman, Hardin, Haywood, Lewis, Macon, McNairy, Rutherford, Tipton, Wayne.

Contiguous Counties (Economic Injury Loans Only):

Tennessee: Bedford, Chester, Clay, Coffee, Crockett, Davidson, Decatur, Dekalb, Fayette, Henderson, Hickman, Jackson, Lauderdale, Lawrence, Madison, Marshall, Maury, Perry, Shelby, Smith, Sumner, Trousdale, Warren, Williamson, Wilson.

Alabama: Lauderdale.

Arkansas: Crittenden, Mississippi.

Kentucky: Allen, Monroe.

Mississippi: Alcorn, Benton, Tippah, Tishomingo.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17866 C and for economic injury is 17867 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–08004 Filed 4–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17868 and #17869; Kentucky Disaster Number KY–00099]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of Kentucky

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–4702–DR), dated 04/10/2023.

Incident: Severe Storms, Straight-line Winds, Tornadoes, Flooding, Landslides, and Mudslides.

Incident Period: 03/03/2023 through 03/04/2023.

DATES: Issued on 04/10/2023.

Physical Loan Application Deadline Date: 06/09/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/10/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/10/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adair, Allen, Anderson, Barren, Bourbon, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Casey, Christian, Clark, Clay, Crittenden, Cumberland, Daviess, Edmonson, Estill, Floyd, Franklin, Gallatin, Garrard, Grant, Graves, Grayson, Green, Hancock, Hardin, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Jefferson, Johnson, LaRue, Laurel, Lee, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Martin, McCracken, McLean, Meade, Menifee, Metcalfe, Monroe, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Powell, Robertson, Rockcastle, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Webster, Whitley, Wolfe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17868 B and for economic injury is 17869 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–08006 Filed 4–14–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12046]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Dig Deeper: Discovering an Ancient Glass Workshop'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Dig Deeper: Discovering an Ancient Glass Workshop'' at The Corning Museum of Glass, Corning, 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.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–08072 Filed 4–14–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12000]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Notice of a new system of records.

SUMMARY: Information in Special Presidential Envoy for Hostage Affairs and Related Records is used to support diplomatic and consular efforts to secure the recovery of and provide assistance and support services to individuals taken hostage or wrongfully detained abroad.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records notice is effective upon publication, with the exception of the routine uses that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by May 17, 2023.

ADDRESSES: Questions can be submitted by mail, email, or by calling Eric F. Stein, the Senior Agency Official for Privacy, on (202) 485–2051. If mail, please write to: U.S. Department of State; Office of Global Information Systems, A/GIS; Room 1417, 2201 C St. NW; Washington, DC 20520. If email, please address the email to the Senior Agency Official for Privacy, Eric F. Stein, at *Privacy@state.gov.* Please write ''Special Presidential Envoy for Hostage Affairs and Related Records, State-60'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Eric F. Stein, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; Room 1417, 2201 C St. NW; Washington, DC 20520 or by calling (202) 485–2051.

SUPPLEMENTARY INFORMATION: None.

SYSTEM NAME AND NUMBER:

Special Presidential Envoy for Hostage Affairs and Related Records, STATE–60.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State, including overseas at U.S. embassies, U.S. consulates, and U.S. consular agencies and within a government cloud provided, implemented, and overseen by the Department's Enterprise Server Operations Center (ESOC), 2201 C Street NW, Washington, DC 20520.

SYSTEM MANAGER(S):

The Special Presidential Envoy for Hostage Affairs (SPEHA), Special Assistant, Office of the Special Presidential Envoy for Hostage Affairs; U.S. Department of State, 2201 C Street NW, Washington, DC 20520, phone: 202–647–4611.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 22 U.S.C. 3904 (Functions of the Foreign Service, including protection of U.S. citizens in foreign countries under the Vienna Convention on Consular Relations and providing assistance to other agencies);

(b) 22 U.S.C. 1731 (Protection of naturalized U.S. citizens in foreign countries);

(c) 22 U.S.C. 1732 (Release of citizens imprisoned by foreign governments);

(d) 22 U.S.C. 2670(j) (Provision of emergency medical, dietary and other assistance);

(e) 22 U.S.C. 2715a (Responsibility to inform victims and their families regarding crimes against U.S. citizens abroad);

(f) 22 U.S.C. 2715b (Notification of next of kin of death of U.S. citizens in foreign countries);

(g) Sec. 599C of Public Law 101–513, 104 Stat. 1979, as amended (Claims to benefits by virtue of hostage status) (Benefits ended, but applicable to past records);

(h) Presidential Executive Order 13698 (Hostage Recovery Activities) (June 29, 2015);

(i) Presidential Policy Directive 30 (U.S. Nationals Taken Hostage Abroad and Personnel Recovery Efforts) (June 24, 2015);

(j) Section 302(c) of the Robert Levinson Hostage Recovery and Hostage-taking Accountability Act (Div. FF, Title III, Subtitle A of the Consolidated Appropriations Act, 2021, P.L. 116–260) (Hostage and Wrongful Detention Recovery Efforts and Codifying the Special Presidential Envoy for Hostage Affairs) (December 27, 2020); and

(k) Presidential Executive Order 14078 (Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home) (July 19, 2022).

PURPOSE(S) OF THE SYSTEM:

The information in the Special Presidential Envoy for Hostage Affairs and Related Records system of records is used to support diplomatic and consular efforts to secure the recovery of and provide assistance and support services to individuals taken hostage or wrongfully detained abroad.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are, may be, or were previously taken hostage, detained but unacknowledged by a foreign government, subject to coercive travel restrictions, or detained unlawfully or wrongfully by a foreign government (hereinafter, for purposes of this notice, ''individuals taken hostage or wrongfully detained abroad'') and such individuals and offices involved in or engaging on their cases, including family members, congresspersons, third party intermediaries, and attorneys, who receive assistance or engage with the Office of the Special Presidential Envoy for Hostage Affairs (SPEHA) or other offices or bureaus in the Department of State. The Privacy Act defines an individual at 5 U.S.C. 552a(a)(2) as a United States citizen or lawful permanent resident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to individuals who are taken hostage or wrongfully detained abroad. These records may include biographic and contact information, such as name, place of birth, current mailing address, zip code,

email address, phone number, Social Security number, title, date of birth, gender, passport information, photographs, video recordings, health information, and employment information; information related to the individual's detention or treatment by a foreign government or non-state actor and actions by the United States government and other actors in relation to their case; information about foreign, personal, family, emergency contacts; and information about third party intermediaries and their engagement. These records may also include communications to and from U.S. embassies, U.S. consulates, and consular agencies; foreign, federal, state, and local government agencies, including law enforcement agencies; members of Congress; U.S. and foreign courts; U.S. and foreign nongovernmental organizations; the United Nations and other international organizations; and the subject(s) of the records, their family members, and other interested parties. Certain records in this system are consular records that are also maintained pursuant to the Office of Overseas Citizen Services (OCS) System of Records Notice (State-05) (81 FR 62235), available at *https://www.state.gov/system-of-records-notices-privacy-office/.*

RECORD SOURCE CATEGORIES:

These records contain information that is obtained from the individual who is the subject of the records, their family members, their attorneys, and third-party intermediaries. Information may also be obtained from federal, state, local and foreign government authorities and nongovernmental entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Special Presidential Envoy for Hostage Affairs and Related Records may be disclosed to:

(a.) Federal agencies and federal interagency bodies in connection with the recovery of and investigation and prosecution of cases involving individuals taken hostage or wrongfully detained abroad;

(b.) Domestic, international, and foreign law enforcement agencies in connection with law enforcement issues and health, safety, welfare and related matters involving individuals taken hostage, or wrongfully detained abroad;

(c.) Foreign governments and international organizations to facilitate resolution of cases involving individuals taken hostage or wrongfully detained abroad;

(d.) Federal, state, and local agencies in connection with the administration of U.S. federal, state, or local benefits or foreign benefits for individuals taken hostage or wrongfully detained abroad;

(e.) Federal, state, foreign, and local agencies responsible for investigating and/or prosecuting hostage and wrongful detention cases or assisting those who have been taken hostage or wrongfully detained abroad and/or their family members;

(f.) Federal, state, and foreign courts where the information is relevant and necessary to litigation involving an individual who has been taken hostage or wrongfully detained abroad;

(g.) Family members of an individual who has been taken hostage or wrongfully detained abroad;

(h.) The individual's employer when the disclosure is for the benefit of an individual who has been taken hostage or wrongfully detained abroad;

(i.) Congressional offices and Congressional committees when the disclosure is for the benefit of an individual who has been taken hostage or wrongfully detained abroad;

(j.) Third parties designated by a family member of an individual taken hostage or wrongfully detained abroad when the disclosure is for the benefit of an individual who has been taken hostage or unlawfully or wrongfully detained abroad;

(k.) Attorneys when the individual to whom the information pertains has been taken hostage or wrongfully detained abroad, and that individual is the client of the attorney making the request, or when the attorney is acting on behalf of some other individual to whom access is authorized under this notice;

(l.) The news media or the public where such disclosure is in furtherance of the Special Presidential Envoy for Hostage Affairs' mission, and where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy or to have an undue adverse effect on either the subject or individuals associated with the subject, and where there is a legitimate public interest in the information disclosed.

(m.) To appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(n.) To another Federal agency or Federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement (published in Volume 73, Number 136, Public Notice 6290, on July 15, 2008). All these standard routine uses apply to Special Presidential Envoy for Hostages Affairs and Related Records system, State–60. Records in this system that are also consular records are subject to the routine uses identified in the Overseas Citizen Services Records and Other Overseas Records system of records notice STATE–05, as well as those in this notice.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored both in hard copy and on electronic media. A description of standard Department of State policies concerning storage of electronic records is found here *https://fam.state.gov/FAM/05FAM/05FAM0440.html.* All hard copies of records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By individual name, birth date, passport number, or other personal identifier, such as country/location of detention, if available.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA) and outlined here *https://foia.state.gov/Learn/RecordsDisposition.aspx.* The range of disposition for records maintained in the system is one to

twenty years. More specific information may be obtained by writing to the following address: U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified (SBU) information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Department OpenNet users are required to take the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Special Presidential Envoy for Hostage Affairs and Related Records, a user must first be granted access to the Department of State computer system.

Department of State employees and contractors may remotely access this system of records using non-Department owned information technology. Such access is subject to approval by the Department's access program and is limited to information maintained in unclassified information systems. Remote access to the Department's information systems is configured in compliance with OMB Circular A–130 multifactor authentication requirements and includes a time-out function.

All Department of State employees and contractors with authorized access to records maintained in this system of records have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

The safeguards in the following paragraphs apply only to records that are maintained in government-certified cloud systems. All cloud systems that provide IT services and process Department of State information must be specifically authorized by the Department of State Authorizing Official and Senior Agency Official for Privacy.

Information that conforms with Department-specific definitions for Federal Information Security Management Act (FISMA) low, moderate, or high categorization are permissible for cloud usage and must specifically be authorized by the Department's Cloud Program Management Office and the Department of State Authorizing Official. Specific security measures and safeguards will depend on the FISMA categorization of the information in a given cloud system. In accordance with Department policy, systems that process more sensitive information will require more stringent controls and review by Department cybersecurity experts prior to approval. Prior to operation, all Cloud systems must comply with applicable security measures that are outlined in FISMA, The Federal Risk and Authorization Management Program (FedRAMP), OMB regulations, National Institute of Standards and Technology's (NIST) Special Publications (SP) and Federal Information Processing Standards (FIPS) and Department of State policies and standards.

All data stored in cloud environments categorized above a low FISMA impact risk level must be encrypted at rest and in-transit using a federally-approved encryption mechanism. The encryption keys shall be generated, maintained, and controlled in a Department data center by the Department key management authority. Deviations from these encryption requirements must be approved in writing by the Department of State Authorizing Official. High FISMA impact risk level systems will additionally be subject to continual auditing and monitoring, multifactor authentication mechanism utilizing Public Key Infrastructure (PKI) and NIST 800 53 controls concerning virtualization, servers, storage and networking, as well as stringent measures to sanitize data from the cloud service once the contract is terminated.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520. The individual must specify that they wish Special Presidential Envoy for Hostage Affairs and Related Records to be checked. At a minimum, the individual must include: full name and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that Special Presidential Envoy for Hostage Affairs and Related Records includes records pertaining to them. Detailed instructions on Department of State procedures for accessing and amending records can be found on the Department's FOIA website at *https://foia.state.gov/Request/Guide.aspx.*

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest record procedures should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street, NW, Room B–266; Washington, DC 20520.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to them may write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520. The individual must specify that the Special Presidential Envoy for Hostage Affairs and Related Records should be checked. At a minimum, the individual must include: full name and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that Special Presidential Envoy for Hostage Affairs and Related Records include records pertaining to them.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), records subject to the provisions of section 552(b)(1) are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Pursuant to 5 U.S.C. 552a(k)(2), records that consist of investigatory material compiled for law enforcement purposes are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

HISTORY:

None.

Eric F. Stein,

Deputy Assistant Secretary, Global Information Services (A/GIS), Department of State.

[FR Doc. 2023–07973 Filed 4–14–23; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 12044]

Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization MSC 107 Meeting

The Department of State will conduct a public meeting of the Shipping Coordinating Committee at 10:00 a.m. on Monday, May 22, 2023, both in-person at Coast Guard Headquarters and via teleconference. The primary purpose of the meeting is to prepare for the one-hundred seventh session of the International Maritime Organization's (IMO) Maritime Safety Committee (MSC 107) to be held at IMO Headquarters in London, United Kingdom from Wednesday, May 31, 2023 to Friday June 9, 2023.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants or up to the seating capacity of the room if attending in person. The meeting location will be the United States Coast Guard Headquarters, Ray Evans Conference Center, Section A, and the teleconference line will be provided to those who RSVP. To RSVP, participants should contact the meeting coordinator, LCDR Jessica Anderson, by email at *jessica.p.anderson@uscg.mil.* LCDR Anderson will provide access information for in-person and virtual attendance.

The agenda items to be considered by the advisory committee at this meeting mirror those to be considered at MSC 107, and include:

- Opening of the session
- Adoption of the agenda; report on credentials
- Decisions of other IMO bodies
- Consideration and adoption of amendments to mandatory instruments
- Goal-based new ship construction standards
- Development of a goal-based instrument for Maritime Autonomous Surface Ships (MASS)
- Development of further measures to enhance the safety of ships relating to the use of fuel oil
- Measures to enhance maritime security
- Piracy and armed robbery against ships
- Unsafe mixed migration by sea
- Formal safety assessment
- Carriage of cargoes and containers (Report of the eighth session of the Sub-Committee)
- Human element, training and watchkeeping (Report of the ninth session of the Sub-Committee)
- Ship systems and equipment (Report of the ninth session of the Sub-Committee)
- Navigation, communications and search and rescue (Urgent matters emanating from the tenth session of the Sub-Committee)
- Application of the Committee's method of work
- Work programme
- Election of the Chair and Vice-Chair for 2024
- Any other business

Please note: the IMO may, on short notice, adjust the MSC 107 agenda to accommodate the constraints associated with the meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate should contact the meeting coordinator, LCDR Jessica Anderson, by email at *Jessica.P.Anderson@uscg.mil,* or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509 no later than May 17, 2023. Please note that, due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's. This building is accessible by taxi, public transportation, and privately owned conveyance (upon request). Additionally, members of the public needing reasonable accommodation should advise the meeting coordinator not later than May 17, 2023. Requests made after that date will be considered but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 1009.)

Emily A. Rose,

Executive Secretary, Shipping Coordinating Committee, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2023–08016 Filed 4–14–23; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission is seeking public comment on a new proposed general permit, General Permit GP–02 Groundwater Withdrawals for Emergency Uses or Maintenance (GP–02). The proposed General Permit would approve the withdrawal of groundwater from wells for (1) emergency uses or (2) maintenance activities. The Commission will take oral testimony on the proposed General Permit at its regularly scheduled public hearing on May 4, 2023. The Commission will hold this hearing in person and telephonically. The deadline for the submission of written comments on the General Permit is May 30, 2023.

DATES: The public hearing will convene on May 4, 2023, at 6:30 p.m. The public hearing will end at 9 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for submitting written comments on the General Permit is Tuesday, May 30, 2023.

ADDRESSES: This public hearing will be conducted in person and virtually. You may attend in person at Susquehanna River Basin Commission, 4423 N Front St., Harrisburg, Pennsylvania, or join by telephone at Toll-Free Number 1–877–304–9269 and then enter the guest passcode 2619070 followed by #.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or *joyler@srbc.net.*

The proposed General Permit and Fact Sheet are available on the Commission's website at *https://www.srbc.net.*

SUPPLEMENTARY INFORMATION: GP–02 is designed to provide a pathway for projects that require temporary groundwater withdrawals, generally from back-up or reserve wells, to address an emergency or maintenance activity. Under SRBC regulations, these wells are subject to full technical review under 18 CFR part 806. For drinking water wells, they must also be fully permitted under the Safe Drinking Water laws and regulations of our member jurisdictions.

GP–02 allows for and encourages proactive planning for how a project conducts and maintains operations during emergency or maintenance

outages of primary water sources. For public water supply sources specifically, GP–02 would focus the Commission's role with respect to wells needed for emergency or maintenance and activities, in part, by deferring to the member jurisdictions' safe drinking water permits as the primary sources of regulation. The proposed fee for coverage under GP–02 is $3,000, which includes review of the project's Contingency Plan and project details. This is less costly than the current regulatory review fees faced by these projects when they go through the full docket review process. GP–02 has a proposed term of fifteen (15) years, in keeping with Commission regulations at 18 CFR 806.31 where projects generally have a term of 15 years.

Opportunity To Appear and Comment

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* before the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to control the course of the hearing otherwise. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* before the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/*. Comments on the GP–02 mailed or electronically submitted must be received by the Commission on or before Tuesday, May 30, 2023, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*; 18 CFR 806.17.

Dated: April 12, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–08067 Filed 4–14–23; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–0975]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Experimental Permits for Reusable Suborbital Rockets

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 FAA collects information from applicants for experimental permits in order to determine whether they satisfy the requirements for obtaining an experimental permit.

DATES: Written comments should be submitted by June 16, 2023.

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.

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: 2120–0722.

Title: Experimental Permits for Reusable Suborbital Rockets.

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 19, 2017 (82 FR 27949). There were no comments. 14 CFR part 437 established requirements for the FAA's authority to issue experimental permits for reusable suborbital rockets to authorize launches for the purpose of research and development, crew training and showing compliance with the regulations. The information collected includes data required for performing a safety review, which includes a technical assessment to determine if the applicant can launch a reusable suborbital rocket without jeopardizing public health and safety and the safety of property. This information collection requirement is intended for incorporating acquired data into the experimental permit, which then becomes binding on the launch or reentry operator. The applicant is required to submit information that enables FAA to determine, before issuing a permit, if issuance of the experimental permit would jeopardize the foreign policy or national security interests of the U.S.

Respondents: Approximately 10 applicants for experimental permits.

Frequency: On occasion.

Estimated Average Burden per Response: 18.6 Hours.

Estimated Total Annual Burden: 2,567 Hours.

James A. Hatt,

Space Policy Division Manager, Office of Commercial Space Transportation.

[FR Doc. 2023–08042 Filed 4–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2023–0530]

Fiscal Year 2023 Competitive Funding Opportunity: Airport Improvement Program Discretionary Grants

AGENCY: Federal Aviation Administration, U.S. Department of Transportation.

ACTION: Notice of funding opportunity.

SUMMARY: The U.S. Department of Transportation's Federal Aviation Administration (FAA) announces the opportunity to apply for an estimated $1.5 billion in fiscal year (FY) 2023 discretionary grants under the Airport Improvement Program (AIP). The FAA awards these annually appropriated discretionary funds through the FAA's long-standing iterative, competitive grant process. Prior to the publication of this Notice of Funding Opportunity

(NOFO), the FAA identified eligible applicants in its National Plan of Integrated Airport Systems (NPIAS) and compiled potentially eligible projects through the 3-year Airports Capital Improvement Plan (ACIP). Both of these processes are described in FAA Order 5090.5, ''Formulation of NPIAS and ACIP,'' which authorizes discretionary funds. The AIP funds airport capital improvements and rehabilitation projects. All discretionary grant funding is subject to appropriations, statutory requirements, and related program funding availability.

DATES: Sponsors that wish to be considered for all opportunities for AIP discretionary funding throughout FY 2023 should submit applications that meet NOFO requirements as soon as possible, but no later than Friday, July 14, 2023, 11:59 p.m. Eastern Daylight Time to FAA Regional or Airport District Offices per instructions in this NOFO. The FAA considers all applications properly submitted prior to this NOFO. Final discretionary grant application funding requests should be based on bids or firm costs, not estimates.

FOR FURTHER INFORMATION CONTACT: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500, at (202) 267–8827.

SUPPLEMENTARY INFORMATION:

A. Program Description

Under 49 U.S.C. 47104, the FAA may issue grants for airport planning and development in the United States. Eligible projects include those improvements related to enhancing airport safety, capacity, security, and environmental concerns. In addition, 49 U.S.C. 47101(a)(1) states that it is the policy of the United States that the safe operation of the airport and airways system is the highest aviation priority, and 49 U.S.C. 47101(a)(7) states that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease.

The FAA is committed to advancing safe, efficient transportation through the AIP. The FAA's safety mission is incorporated into many aspects of the AIP, including, for example, justification requirements for safety and security projects, allowance for certain Safety Management System (SMS) and Safety Risk Management (SRM) costs, and allowance for safety and security equipment projects. Within discretionary funding, safety is incorporated as a scoring factor in the quantitative formula, which is the National Priority Rating (NPR) discussed below.

The AIP provides grants to public agencies and, in some cases, to private owners and entities for the planning and development of public-use airports that are included in the NPIAS. The AIP was authorized by the Airport and Airway Improvement Act of 1982 (Pub. L. 97–248), which Congress recodified in 1994 as 49 U.S.C. 47101, *et seq.* (Pub. L. 103–272). The AIP statutes have been amended several times, most recently with the passage of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) and subsequent legislation.

The AIP Assistance Listing number is 20.106. The AIP assists sponsors, owners, or operators of public-use airports in the development of a nationwide system of airports sufficient to meet the needs of civil aeronautics. This includes preserving existing airport infrastructure in a safe and functional operational condition; bringing airport facilities into conformity with current Federal safety standards; constructing, modifying, or expanding facilities as necessary to meet demonstrated aeronautical demand; enhancing environmental sustainability; and providing a balanced system of airports to meet the roles and functions necessary to support civil aeronautical demand.

The FAA implements AIP as appropriate and consistent with AIP statutory criteria and Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad'' (86 FR 7619). In addition to promoting safety, the FAA seeks to fund projects under AIP that reduce greenhouse gas emissions in the transportation sector, incorporate evidence-based climate resilience measures and features, reduce the lifecycle greenhouse gas emissions from the project materials, avoid adverse environmental impacts to air or water quality, wetlands, and endangered species, and address the disproportionate negative environmental impacts of transportation on disadvantaged communities. Also, the FAA encourages applicants to consider how a proposed project directly benefits investments in Voluntary Airport Low Emission (VALE) and Zero Emissions Vehicle (ZEV) programs to disadvantaged communities and ensures meaningful public engagement under Executive Order 14008, section 223, recognizing that these limited programs direct vehicles for primarily on-airport uses.

The FAA seeks to award projects under the AIP that will create proportional impacts to all populations in a project area, remove transportation-related disparities to all populations in a project area, and increase equitable access to project benefits, consistent with Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (86 FR 7009).

The FAA intends to use the AIP to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships, in project planning stages, consistent with Executive Order 14025, ''Worker Organizing and Empowerment'' (86 FR 22829), and Executive Order 14052, ''Implementation of the Infrastructure Investment and Jobs Act'' (86 FR 64335). The FAA also intends to use the AIP to support wealth creation, consistent with the Department of Transportation's Equity Action Plan through the inclusion of local inclusive economic development and entrepreneurship, such as the utilization of Disadvantaged Business Enterprises, Minority-owned Businesses, Women-owned Businesses, or 8(a) firms.

Recipients of Federal transportation funding must comply fully with title VI of the Civil Rights Act of 1964 and implementing regulations, the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements, as described further below. The Department of Transportation's (DOT's) and the FAA's Office of Civil Rights may provide resources and technical assistance to ensure full and sustainable compliance with Federal civil rights requirements.

B. Federal Award Information

On average, for the last ten years, $3.35 billion has been appropriated annually for AIP. AIP grants include both apportioned (or entitlement) and discretionary (or competitive) funds. Apportioned funds are allocated in accordance with 49 U.S.C. 47114 based on an airport's size and level of activity. Discretionary funds are made available in accordance with 49 U.S.C. 47115 and 49 U.S.C. 47117.

Public Law 115–254, titled ''FAA Reauthorization Act of 2018,'' authorizes $3.35 billion in funding authority for the AIP to administer grants for airport planning, development, and noise compatibility planning and programs each fiscal year from October 1, 2018, through September 30, 2023.

This NOFO is being issued under the Consolidated Appropriations Act, 2023 (Pub. L. 117–328). Funding beyond the current available program amount is subject to appropriations and the availability of future funds.

In FY 2022, 374 discretionary grants were issued, totaling approximately $1.76 billion. The discretionary grants ranged in amount from $37,000 to $44,400,000. The average AIP discretionary grant was $4,700,000. In FY 2023, the FAA anticipates awarding discretionary grants beginning in April 2023, with an individual grant period of performance of 4 years. The AIP is an annual program, and AIP projects are funded based on a planning process described in Order 5090.5, ''Formulation of NPIAS and ACIP.'' In this process, the FAA works with potential award recipients on eligible and justified development needs.

The FAA uses the NPIAS to identify airports that have a role in the National Airspace System (NAS) and all potential airport development projects that are eligible for AIP funding at those airports. The FAA formulates a 3-year ACIP to guide the assignment of AIP funding to projects based on airport development needs identified in the NPIAS. The 3-year ACIP, as a subset of the NPIAS, is an annual process for reviewing the NPIAS for development project needs. From this ACIP the FAA identifies candidates that are ready to accept a grant, including those that may apply for discretionary funding. Discretionary funding includes five types of set-aside funding categories, further described in section D.5. The process begins with each eligible airport operator submitting an individual airport capital improvement plan and follows with the formulation of the NPIAS Report, the National ACIP, and the Discretionary Candidate List (DCL). The DCL accounts for all AIP projects competing for discretionary funding for the first fiscal year of the 3-year ACIP. The DCL is prioritized based on quantitative and qualitative criteria, which are discussed in greater detail in this NOFO sections E.1. and E.2.

C. Eligibility Information

1. Eligible Applicants.

Eligible applicants are public agencies owning a public-use NPIAS airport; private entities owning a public-use NPIAS airport; States acting as a sponsor for one or more specific NPIAS airports in the State; Indian tribes or pueblos owning or leasing a public-use NPIAS airport; the Secretary of the Interior for Midway Island Airport; the Republic of the Marshall Islands; the Federated States of Micronesia; the Republic of Palau; and other applicants as outlined in table 2–1 of Order 5100.38, Airport Improvement Program Handbook (AIP Handbook) available at: *https://www.faa.gov/airports/aip/aip_handbook/.*

2. Cost Sharing or Matching

AIP grants generally have Federal shares ranging from 70 percent to 95 percent. The Federal share percentage is based on the airport size and type of project per statute. Federal share by airport and project type can be found in chapter 4 of the AIP Handbook.

3. Project Eligibility

Discretionary funds are made available in accordance with 49 U.S.C. 47115, 49 U.S.C. 47117, and 49 U.S.C. 47120 to fund needs that exceed an airport's available apportioned funds. Apportioned funds are allocated in accordance with 49 U.S.C. 47114 and must be used on an airport's highest-priority project(s). Discretionary funding is determined after entitlement funding has been determined. However, the FAA reviews both discretionary grants and entitlement grants for eligibility and justification per the statutory ACIP process described below.

All projects funded with AIP must be justified and eligible under 49 U.S.C. chapters 471 and 475, as further outlined in chapter 3 of the AIP Handbook. Eligible projects include those improvements related to enhancing airport safety, capacity, security, and environmental sustainability, as well as evidence showing compliance with Federal civil rights laws. In general, sponsors can receive AIP funds for most airfield capital improvements or rehabilitation projects and, in some specific situations, for terminals, hangars, and non-aviation development. Certain professional services that are necessary for eligible projects (such as planning, surveying, and design) may also be eligible. The FAA must be able to determine whether a proposed project is justified based on civil aeronautical demand. The projects must also meet Federal environmental, Buy American, and 2 CFR part 200 procurement requirements.

The discretionary planning process is a subset of the ACIP formulation process. Funds are assigned to projects in the ACIP based on project priority, funding types, and project type. Assignment of funds in the ACIP does not guarantee funding. Funding levels may vary based on annual appropriations. Discretionary projects in the ACIP are evaluated for priority and readiness in accordance with the AIP Handbook. The inclusion of a project in the national ACIP does not constitute a commitment of Federal funding. For a project to be funded under AIP, it must meet the prerequisites for funding, as found in the AIP Handbook table 3–1, ''The 16 General Requirements for Project Funding.'' These prerequisites include, but are not limited to, the project being included in the airport's approved layout plan, an environmental determination, all necessary airspace studies, title to land, the satisfaction of intergovernmental review and airport user consultation requirements, and reasonable project readiness. For the complete list, refer to the AIP Handbook table 3–1, available at *https://www.faa.gov/airports/aip/aip_handbook/?Chapter=3#S0301.* The release of funds for each individual grant project is contingent upon grant recipients meeting all of these prerequisite milestones.

D. Application and Submission Information

1. Address To Request Application Package

All inquiries should be directed to the appropriate Regional Office (RO) or Airport District Office (ADO). RO/ADO contact information is below *https://www.faa.gov/airports/regions/.*

Application forms are at: *https://www.faa.gov/airports/resources/forms/.*

2. Content and Form of Application Submission

For content and application information, reference the ''Standard Operating Procedure for FAA Review and Approval of an Airport Improvement Program (AIP) Grant Application.'' *https://www.faa.gov/sites/faa.gov/files/airports/resources/sops/arp-sop-600-grant-application.pdf.*

The final grant application funding requests should be based on bids or firm costs, not estimates. Grant Funds, Sources and Uses of Project Funds—Project budgets should show how different funding sources will share in each activity and present those data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to use. Funding sources should be grouped into three categories: non-Federal, AIP, and other Federal, with specific amounts from each funding source.

The FAA considers eligible and justified projects per 49 U.S.C. 47103, 47104, 47106, 47107, 47108, and 47109 that align with Executive Orders identified in the NOFO and further the

Administration's goals of safety, environmental stewardship, climate change and sustainability, equity, creation of good jobs and infrastructure investment. Applications should briefly describe how the proposed project meets at least one of these goals. The Administration's goals are identified for each discretionary project based on the following definitions.

Safety—As stated, safety enhancements and the preservation of a safe environment is an element of nearly every AIP project. Applicants are encouraged to address how their project provides substantial safety benefits. Prior to receiving funds, all projects are expected to, at a minimum, identify and mitigate to the extent practicable any significant safety risks that could result after the project completion.

Equity—Applicants are encouraged to address how their project will advance equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Examples are projects in Economically Distressed Areas (EDA), projects to meet ADA requirements, and projects in Tribal communities. The statutory criteria used for EDA-impacted communities is explained on the Economically Distressed Areas (EAS/EDA Determinations) Special Rule web page. This definition also applies to statutory requirements under 49 U.S.C. 47102(3)(f) ''Airport Development'' and section 47123 ''Nondiscrimination.'' In addition, the FAA must assess that all grantees are compliant with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act, and other Federal civil rights statutes. Applicants are encouraged to address how their project will include an equity assessment which evaluates whether a project will create proportional impacts and remove transportation-related disparities to all populations in a project area. Applicants may demonstrate how meaningful public engagement will occur throughout a project's life cycle. Applicants may address how project benefits will increase affordable transportation options, improve safety, connect Americans to good-paying jobs, fight climate change, and/or improve access to resources and quality of life.

Climate Change and Sustainability—Applicants are encouraged to address how their project will promote an equitable, clean energy future as well as standards that protect our air, water, and communities. Examples are any environmental improvements, noise projects, VALE/ZEV, deicing containment, and drainage improvements. Applicants are encouraged to address how the project will consider climate change and environmental justice in the planning stage and in project delivery. In particular, applicants may address how the project reduces greenhouse gas emissions in the transportation sector, taking into account relevant domestic and international standards and recommended practices; incorporates evidence-based climate resilience measures and features, and reduces the lifecycle greenhouse gas emissions from the project materials. Applicants also may address the extent to which the project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, as well as address disproportionate negative impacts of climate change and pollution on disadvantaged communities, including natural disasters, with a focus on prevention, response, and recovery.

Workforce Development, Job Creation and Wealth Creation—Applicants are encouraged to address how their project will that create good jobs in the community and support good-paying construction jobs. Examples are projects to expand cargo or manufacturing operations, fuel farms, hangars, and terminals. Applicants are encouraged to address how their project will create good-paying jobs with the free and fair choice to join a union; promote investments in high-quality workforce development programs with supportive services to help train, place, and retain people in good-paying jobs or registered apprenticeship, with a focus on women, people of color, and others that are underrepresented in infrastructure jobs; and change hiring policies and workplace cultures to promote the entry and retention of underrepresented populations. Applicants may also address how the project promotes local inclusive economic development and entrepreneurship, such as the utilization of Disadvantaged Business Enterprises, Minority-owned Businesses, Women-owned Businesses, or 8(a) firms.

Infrastructure Investment—Capital airport development projects. Applicants are encouraged to address how their project will repair, renew, and upgrade the airports' infrastructure. Airport development is defined in 49 U.S.C. 47102(3) and includes a list of activities if those activities are undertaken by the sponsor, owner, or operator of a public-use airport.

Sharing of Application Information—The FAA may share application information within the Department of Transportation or with other Federal agencies if the FAA determines that sharing is relevant to the respective program's objectives.

3. Unique Entity Identifier and System for Award Management (SAM)

Applicants must comply with 2 CFR part 25—Universal Identifier and System for Award Management. All applicants must provide a unique entity identifier provided by SAM. Additional information about obtaining a Unique Entity Identifier (UEI) and registration procedures may be found on the SAM website (currently at *http://www.sam.gov*). Each applicant is required to: (1) be registered in SAM before submitting an application; (2) provide a valid UEI in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by the FAA. Under the AIP, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute AIP grants.

Once awarded, the FAA grant recipient must maintain the currency of its information in the SAM until the grant recipient submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

The FAA may not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time the FAA is ready to make an award, the FAA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant.

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM (Responsibility/Qualification at *https://sam.gov/content/fapiis*) to ensure registration information is current and complies with Federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

4. Submission Dates and Times

Sponsors wishing to be considered for AIP discretionary funding throughout FY 2023 should submit applications that meet these NOFO requirements as soon as possible to FAA Regional or

Airport District Offices. The FAA considers all applications submitted prior to this NOFO if they meet all existing law, Federal regulations, NOFO requirements, and FAA policy.

The FAA considers applications on a rolling basis. The final deadline to submit discretionary grant applications is Friday, July 14, 2023, 11:59 p.m. Eastern Daylight Time. Under 49 U.S.C. 47115, the FAA, considers projects that are the most appropriate to carry out the statute at any time prior to September 30, 2023.

Information about entitlement funds can be found at 88 FR 5955, published on January 30, 2023.

5. Funding Restriction

Under 49 U.S.C. 47115 and 47116, projects must meet airport and project eligibility and justification criteria. Eligibility is derived from statute and may include projects to enhance airport safety, capacity, security, and environmental concerns. In general, sponsors may receive AIP funds for most airfield capital improvements and, in specific situations, for terminals, hangars, equipment, and non-aeronautical development. Projects related to airport operations are not eligible for funding. Operational costs—such as salaries, equipment, and supplies—are not eligible for AIP grants.

Furthermore, chapter 4 of the AIP Handbook describes the funding restrictions by airport type (table 4–4) and project restrictions by fund type (table 4–5). Discretionary funding is broken down into five categories: 1. Environmental Set Aside, which includes Noise Compatibility and Mitigation Programs, the VALE Program, and ZEV Program; 2. Reliever Set Aside; 3. Military Airport Program (MAP) Set Aside; 4. Capacity/Safety/Security/Noise (C/S/S/N); and 5. Pure Discretionary. Each of these fund types has certain public-use NPIAS airport categories that can use this funding, as described in table 4–4 of the AIP Handbook, for example, C/S/S/N funding is only available to primary and reliever airports. Each of the discretionary fund types also has certain project restrictions by fund type, as outlined in table 4–5 of the AIP Handbook, for example, Reliever Set Aside funding may not be used for terminal buildings.

The AIP has funding restrictions by airport and/or project type. See the criteria below and refer to AIP Handbook, chapters 3 and 4, for further details on eligibility criteria and funding restrictions available at: *https://www.faa.gov/airports/aip/aip_handbook/*. The AIP Handbook is the published policy for AIP. Except where options are specifically noted or where non-mandatory language is used, the procedures and requirements are mandatory. The general requirements for project funding include considerations of: project eligibility; project justification; good title of airport property; an FAA-approved airport layout plan; a complete intergovernmental review; airport-user consultations; complete required environmental reviews; a determination that the grant will yield a usable unit of work; certification that the project specification meets FAA standards; applicable cost justifications; and a work plan to complete the project without unreasonable delay.

6. Other Submission Requirements

Contact RO/ADO for the submission process. RO/ADO contact information is below.

https://www.faa.gov/airports/regions/

i. Pre-Award Authority

Under 49 U.S.C. 47110(b)(2), all project costs must be incurred after the grant execution date unless specifically permitted under the AIP statutes. Table 3–60 of the AIP Handbook lists the rules regarding when project costs can be incurred in relation to the grant execution date, the type of funding, and the type of project. Certain airport development costs incurred before execution of the grant agreement are allowable, but only if certain conditions under 49 U.S.C. 47110(b)(2)(D) and table 3–60 of the AIP Handbook are met. Specifically, all allowable costs using passenger, cargo, and non-primary entitlement (formula) funding after 9/30/1996 may be reimbursed regardless of whether they were incurred before the grant was executed as long as all other applicable AIP requirements have been met. In addition, allowable costs using any or all of the following must have been incurred after the grant execution date: discretionary, state apportionment (including insular), and Alaska supplemental funding. The only exceptions are based on statute, and are: the part 150 Noise Mitigation program, project formulation for development and planning projects, land acquisition, letters of intent, design-build projects, Military Airport Program, and climate-related conditions.

E. Application Review Information

1. Criteria

The FAA evaluates and administers AIP applications consistent with the statutory criteria as described in 49 U.S.C. 47115(d). Under 49 U.S.C. 47115(d), capacity enhancement projects have additional considerations, including a project's impact on national transportation system capacity, airport capacity, and global air cargo activity. For all projects, 49 U.S.C. 47115(d)(2) states that in selecting a project for a grant under that section, the FAA shall consider, among other factors, whether funding has been provided for all other projects qualifying for funding during the fiscal year under this chapter that have attained a higher score under the numerical priority system employed by the FAA in administering the fund; and the sponsor will be able to commence the work identified in the project application in the fiscal year in which the grant is made or within six months after the grant is made, whichever is later. The ACIP emphasizes using AIP funding on the highest priority projects as required by statute. The numerical priority system is described in section E.2. of this NOFO.

Annual submission from a sponsor of its 5-year Capital Improvement Program (CIP) to the FAA typically initiates the review process. In order for the FAA to include a project in the ACIP, the project must be eligible and justified. The AIP Handbook explains what types of capital projects may be eligible and justified for AIP funding depending on the airport category, project type, and specific category or categories of AIP funding to be requested. Available online at: *https://www.faa.gov/airports/aip/aip_handbook/*.

Merit criteria are data-driven criteria as described in section E.2 and are based on project eligibility, justification, readiness, and the availability of funds. For a project to be funded through the AIP, certain prerequisites must be completed. These prerequisites are: the project is included in the airport's approved layout plan, an environmental determination has been made, and all necessary airspace studies are complete. Prerequisites must be met in order for grant funding to be released.

While a project is not required to meet the following criteria, the FAA gives favorable consideration to applications that have a positive benefit on safety; climate change and sustainability; equity; and workforce development, job quality, and wealth creation, as described in section D.2 above.

2. Review and Selection Process

The FAA's review of submitted projects takes place during the formulation of the ACIP. Through the annual ACIP process, the FAA systematically identifies, plans, and prioritizes airport planning and development projects for AIP funding to

produce a three-year funding plan. The ACIP is a needs-based and financially-constrained plan for funding development over a rolling three-year period. The National Priority System (NPS) equation is used to calculate the National Priority Rating (NPR), a quantitative measure used for ranking project importance. The NPR is calculated using the NPS equation, which considers the type of airport, the purpose of the project, the component of the project, and the type of action. The resulting score, between 1 and 100, is known as the NPR. The NPR score prioritizes airport development projects according to FAA goals and objectives, with higher numerical scores indicating the project is more aligned with FAA goals and objectives. The maximum value of the NPS equation is 100. NPIAS–ACIP Order section 5.7.3 and NPIAS–ACIP Order appendix B provide a detailed explanation of the NPS Equation, which is available at *https://www.faa.gov/airports/planning_capacity/npias_acip_order/.*

In the administration of the AIP, the FAA gives the highest priority to projects that enhance safety and security at airports. Other major objectives are achieved by awarding AIP funds to projects that maintain existing airport infrastructure and increase or maintain the capacity of existing facilities to accommodate increasing passenger and cargo demand.

DCL projects are prioritized based on the NPR. The NPR emphasizes using AIP funding on the highest priority projects as required by statute. However, the NPR is not always the only factor for determining a project's priority. For this reason, the ACIP process considers other qualitative factors to supplement the NPR score in determining priorities. Qualitative factors are assessed through project justifications and priority project identification. Long-standing goals that the FAA has considered in project justifications include Safety or Security, System Capacity, Environment, and Access. Qualitative factors do not impact the NPR for a given project, but are taken into account in funding decisions. These qualitative factors include selection consideration for applications that have a positive benefit on safety; climate change and sustainability; equity; and workforce development, job quality, and wealth creation, as described in section D.2 above.

This program supports the President's goals to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future while supporting the creation of good jobs. The FAA considers discretionary grants that advance the goals of the President's Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government;'' the President's Executive Order 13988, ''Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation;'' the President's Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad;'' and the President's Executive Order 14025, ''Worker Organizing and Empowerment.'' The FAA considers the extent to which the project incorporates considerations of climate change and sustainability, to the extent possible within the program. The FAA considers the extent to which the project proactively addresses racial equity and barriers to opportunity, to the extent possible within the program.

3. Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the FAA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. The FAA considers any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

AIP awards are announced through Congressional notification. The FAA RO/ADO representative contacts sponsors with further information and instructions. Once all pre-grant actions are complete, the FAA RO/ADO offers the sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means, and it includes an offer letter and a grant agreement. Once the sponsor accepts the offer and has fully executed the grant agreement, that agreement becomes the legally binding grant award document. Awards made under this program are subject to conditions and assurances in the grant agreement. The FAA announces awards several times throughout the fiscal year, but no later than September 30 of each fiscal year. These announcements can include entitlement and discretionary awards.

2. Administrative Requirements

i. Pre-Award Authority

Under 49 U.S.C. 47110(b)(2), all project costs must be incurred after the grant execution date unless specifically permitted under the AIP statutes. Table 3–60 of the AIP Handbook lists the rules regarding when project costs can be incurred in relation to the grant execution date, the type of funding, and the type of project. Certain airport development costs incurred before execution of the grant agreement are allowable, but only if certain conditions under 49 U.S.C. 47110(b)(2)(D) and table 3–60 of the AIP Handbook are met. Specifically, all allowable costs using passenger, cargo, and non-primary entitlement (formula) funding after 9/30/1996 may be reimbursed regardless of whether they were incurred before the grant was executed as long as all other applicable AIP requirements have been met. In addition, allowable costs using any or all of the following must have been incurred after the grant execution date: discretionary, state apportionment (including insular), and Alaska supplemental funding. The only exceptions are based on statute, and are: the part 150 Noise Mitigation program, project formulation for development and planning projects, land acquisition, letters of intent, design-build projects, Military Airport Program, and climate-related conditions.

ii. Planning

The FAA encourages applicants to review and understand the long-term planning process in the lifecycle of an AIP grant. The planning process for a particular project begins several years before a fiscal year in which a grant is awarded. FAA Order 5090.5 establishes guidelines for the two Federal plans essential to airport development: The National Plan of Integrated Airport Systems (NPIAS) and the Airports Capital Improvement Plan (ACIP), and is available at *https://www.faa.gov/airports/planning_capacity/npias_acip_order/.*

iii. Grant Requirements

All grant recipients are subject to the grant requirements of the AIP, which includes requirements of 49 U.S.C.

chapter 471. Grant recipients are subject to requirements in the FAA's Agreement for AIP for financial assistance awards, the annual Certifications and Assurances required of applicants, and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements, 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Grant requirements include, but are not limited to, approved project on an airport layout plan, compliance with Federal civil rights laws, Buy American requirements under 49 U.S.C. 50101, Build America, Buy America Act requirements under Public Law 117–58, Transportation Disadvantaged Business Enterprise (DBE) program regulations for Airports (49 CFR parts 23 and 26), and Davis-Bacon Act, as amended (40 U.S.C. 3141–3144, 3146, and 3147).

iv. Standard Assurances

Each applicant must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FAA circulars, and other Federal administrative requirements in carrying out any project supported by the AIP grant. Applicants must acknowledge that they are under a continuing obligation to comply with the terms and conditions of the grant agreement issued for their project with the FAA. Applicants understand that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. Applicants must agree that the most recent Federal requirements apply to the project unless the FAA issues a written determination otherwise.

Applicants must submit the Certifications and Assurances before receiving a grant, including sponsor grant assurances and 2 CFR part 200. The Airport Sponsor Assurances are available on the FAA website at: *https://www.faa.gov/airports/aip/grant_assurances/.*

v. Critical Infrastructure Security and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for Federal funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department of Transportation and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with Presidential Policy Directive 21—Critical Infrastructure Security and Resilience and the National Security Presidential Improving Cybersecurity for Critical Infrastructure Control Systems.

vi. Domestic Preference Requirements

As expressed in Executive Order 14005, ''Ensuring the Future Is Made in All of America by All of America's Workers'' (86 FR 7475), the executive branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Funds made available under this notice are subject to the domestic preference requirement at Buy American requirements under 49 U.S.C. 50101 and Build America, Buy America requirements under Public Law 117–58. The FAA expects all applicants to comply with that requirement.

vii. Civil Rights and Title VI

As a condition of a grant award, you shall demonstrate that you comply with the provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4) and implementing regulations (49 CFR part 21), the Airport and Airway Improvement Act of 1982 (49 U.S.C. 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights Acts, Regulations, and Authorities. This may include, as applicable, providing a current Title VI Program Plan and a Community Participation Plan (alternatively may be called a Public Participation Plan) to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is also required for every grant application for a large or medium hub airport this fiscal year, unless excused by the FAA. You shall affirmatively ensure that when carrying out any project supported by this grant that you will comply with all federal nondiscrimination and equity laws based on race, color, national origin (including persons who are limited English proficient), sex (including sexual orientation and gender identity), creed, age, disability, genetic information, or environmental justice in consideration for federal financial assistance. Applicants who have not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds. The DOT's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

viii. Federal Contract Compliance

As a condition of grant award and consistent with E.O. 11246, Equal Employment Opportunity (30 FR 12319, and as amended), all Federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color. If applicable, under section 503 of the Rehabilitation Act and its implementing regulations, affirmative action obligations for certain contractors include an aspirational employment goal of 7 percent workers with disabilities.

ix. Performance and Program Evaluation

As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT or another agency or partner. The evaluation may take different forms, such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation and/or use information available through other reporting. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow

evaluation procedures as specified by the evaluation contractor or DOT staff.

Recipients and sub-recipients are also encouraged to incorporate program evaluation, including associated data collection activities from the outset of their program design and implementation, to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115–435 (2019) urges Federal awarding agencies and Federal assistance recipients and sub-recipients to use program evaluation as a critical tool to learn, improve equitable delivery, and elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.'' 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (Office of Management and Budget (OMB) Circular A–11, part 6 section 290).

For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation. (2 CFR part 200).

x. In addition to the Administration's priority of promoting building infrastructure with American workers detailed in the President's Executive Order 14005, ''Ensuring the Future is Made in all of America by All of America's Workers,'' every AIP grant recipient must comply with the requirements under the Build America, Buy America Act (Pub. L. 117–58) as well as Buy American requirements under 49 U.S.C. 50101 as an integrated process at the direction of the FAA.

xi. In addition to this program supporting the President's Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' all recipients of Federal funding are subject to title VI of the Civil Rights Act of 1964, which includes the requirement that, in certain circumstances, grant recipients ensure that persons with limited English proficiency can effectively participate in or benefit from Federally assisted programs and activities, such as those arising from an AIP grant pursuant to this NOFO, and the terms of any AIP grant agreement.

3. Reporting

The grant recipient is subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under the AIP, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in the FAA October 2020 Financial Reporting Policy, which is available at *https://www.faa.gov/sites/faa.gov/files/airports/aip/grant_payments/aip-grant-payment-policy.pdf.*

The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients, if applicable, must comply with 2 CFR part 200 subpart F Audit requirements. The grant recipient must comply with any reporting requirements outlined in 2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension.

G. Federal Awarding Agency Contact(s)

Please contact your local Regional Office or District Office. Contact information is available at *https://www.faa.gov/airports/regions/.*

Issued in Washington, DC, on April 11, 2023.

Lisa A. Holden,

Acting Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 2023–07984 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2023–10]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

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 or 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 May 8, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0838 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 (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 *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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–646, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *deana.stedman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 11, 2023.

Candace E. Keefe,

Acting Manager, Technical Writing Section.

Petition for Exemption

Docket No.: FAA–2023–0838
Petitioner: The Boeing Company
Section(s) of 14 CFR Affected: §§ 25.671(c), 25.672(c), 25.1301(a)(1), 25.1309(b)(1),

25.1309(c), 25.1309(d), 25.1316(a), 25.1317(a).

Description of Relief Sought: The Boeing Company is petitioning for a temporary exemption from the affected sections of 14 CFR until March 1, 2027 to allow it time to incorporate necessary design changes for the High Lift Flap-Slat Electronics Unit on the Model 737–7 airplane.

[FR Doc. 2023–07960 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2023–11]

Petition for Exemption; Summary of Petition Received; Dassault Aviation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

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 or 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 May 8, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0526 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 (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 *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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–646, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *deana.stedman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 11, 2023.

Candace E. Keefe,

Acting Manager, Technical Writing Section.

Petition for Exemption

Docket No.: FAA–2023–0526.

Petitioner: Dassault Aviation.

Section(s) of 14 CFR Affected: § 25.1322(b), (c)(2), and (e)(1).

Description of Relief Sought: Dassault Aviation is seeking relief from certain requirements of 14 CFR 25.1322, until September 30, 2027, while it incorporates design changes and retrofit of the Model Falcon 6X airplane that would bring the airplane into compliance with FAA requirements.

[FR Doc. 2023–07959 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0004]

Inflation Reduction Act, Request for Information

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for information (RFI).

SUMMARY: FHWA seeks public input on the implementation of section 60505: Environmental Review Implementation Funds, of the Inflation Reduction Act (IRA).

DATES: Comments must be received on or before June 1, 2023.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following ways:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and the docket number, FHWA–2021–0021, at the beginning of your comments. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.
- *Privacy Act:* Except as provided below, all comments received into the docket will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.regulations.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For questions about this RFI, please contact James G. Gavin, FHWA Office of Planning, Environment, and Realty, (202) 366–1473, or via email at *James.Gavin@dot.gov.* For legal questions, please contact Ms. Diane Mobley, FHWA Office of the Chief Counsel, (202) 366–1366, or via email at *Diane.Mobley@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of this notice, all comments received on this notice, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are also available at *https://www.regulations.gov.* An electronic copy of this document may be downloaded from the Office of the Federal Register's website at: *www.FederalRegister.gov* and the Government Publishing Office's website at: *www.GovInfo.gov.*

Background

On August 16, 2022, President Joseph R. Biden, Jr. signed the IRA, Public Law 117–159 (August 16, 2022), delivering on his promise to build an economy that works for working families.

The IRA provides over $1 billion over the next 10 years to several Federal agencies to facilitate efficient and effective reviews under the National Environmental Policy Act and other Federal processes. This could include identifying new strategies that would mitigate environmental impacts and thereby reduce timeframes for environmental reviews. More information on the IRA can be located at *www.whitehouse.gov* or at *https://www.congress.gov/bill/117th-congress/house-bill/5376/.*

To make the most of the IRA's historic investment and new opportunities, FHWA is seeking input on section 60505, Environmental Review Implementation Funds. This provision amends title 23, United States Code (U.S.C.) by adding 23 U.S.C. 178, and provides $100 million, available until September 30, 2026, to the Federal Highway Administrator. Funds under this program may be made available to eligible entities to support environmental reviews of surface transportation projects. Eligible entities for this purpose are: a State; a unit of local government; a political subdivision of a State; a Territory of the United States; an entity described in 23 U.S.C. 207(m)(1)(E); a recipient of funds under 23 U.S.C. 203; and a metropolitan planning organization (as defined in 23 U.S.C. 134(b)(2)). The funds may also be used by FHWA to develop guidance, technical assistance, templates, training, or other tools to facilitate an efficient and effective environmental review process for surface transportation projects.

The overwhelming majority of transportation projects can generally be processed with limited environmental documentation as categorical exclusions (CE). Project delay issues are more likely to occur on projects with the potential to cause significant environmental effects. However, even for that subset of projects, environmental review and permitting is often not the primary source of project delay. Previous efforts to assess challenges to project delivery have identified multiple factors that are greater contributors to project delays than issues with environmental review and permitting. These factors include inadequate project funding, increased capital costs, lack of consensus on multi-jurisdictional projects, low project prioritization, project complexity, local controversy, and changes in project scope.[1] While improvements to the environmental review and permitting process may not directly address these challenges, FHWA is seeking evidence-based solutions that can both increase the efficiency of environmental reviews and potentially mitigate the primary sources of delay.

Through this RFI, FHWA is soliciting information and suggestions from the public and stakeholders across the public and private sectors on how best to facilitate FHWA's implementation of this provision. While the public will have further opportunities to provide input as the implementation process unfolds, this notice provides an early way for stakeholders to submit information that can help inform FHWA's implementation of this provision.

Request for Information

This RFI is intended to solicit information on potential opportunities and challenges for implementing section 60505 of the IRA, including: (i) suggestions as to how FHWA might implement this section; (ii) necessity for additional guidance, tools, training, templates, or program changes; (iii) program areas requiring new and continued research. While Congress has specified that these funds will be administered by FHWA, the purpose of the funds is broadly to support environmental reviews of surface transportation projects, which may include rail projects funded by the Federal Railroad Administration and public transportation projects funded by the Federal Transit Administration. FHWA specifically requests comments on how these funds may be used to support this broader group of projects, including those that do not have FHWA involvement.

Content of Comments

The Department will review all comments submitted to the docket associated with this Notice, FHWA–2023–0004. FHWA encourages commenters to provide the following information:

1. Detailed information that you think FHWA should consider while implementing section 60505 of IRA. For example: Are there constraints in existing programs that could be addressed with additional funding?

2. Detailed description of the action(s) you think FHWA should take in response to the opportunity or challenge(s) identified within existing program areas. For example: financial assistance in the development of statewide databases to facilitate project reviews; development of an aid to assist FHWA in early coordination; or the development of programmatic consultations to accelerate review processes.

3. Detailed information on what types of assistance and on what topical areas would be most beneficial to recipients of direct funding and will facilitate an efficient and effective environmental review process for surface transportation projects. For example: types of technical assistance or training, liaisons to assist in resource studies, tools like geographic information systems to assist with project planning, scoping, or analysis.

4. Detailed information on what program areas would most benefit from new or continued research. For example: Are there additional research needs for specific subject or program areas (planning and environment linkages, public involvement, use of CEs, etc.)?

5. Detailed information on ways in which FHWA can make resources available to the eligible entities described in 23 U.S.C. 178(c)(2) while promoting equity and maximizing the opportunity to improve the efficiency and effectiveness of the environmental review process. For example: Webinars and training to promote the Screening Tool for Equity Analysis of Projects and the FHWA Environmental Review Toolkit.

Scope of Comments

The FHWA is interested if there are additional opportunities to make improvements or accelerate the environmental review process for existing surface transportation programs, in addition to other State, local, and Tribal programs, for example through the use of Programmatic Approaches.

Although FHWA is seeking public input on the implementation on section 60505 of the IRA through this RFI, it may issue guidance and begin other activities related to implementation while this docket remains open.

Under this notice, FHWA is not soliciting petitions for rulemaking or

[1] See U.S. Department of the Treasury *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance* (2016), Congressional Research Service *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress* (2011), and National Cooperative Highway Research Program *Accelerating Transportation Project and Program Delivery: Conception to Completion* (2010).

comments on any ongoing rulemaking action.

Andrew Rogers,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2023–08012 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2003–15623]

Request for Comments of a Previously Approved Information Collection: Aircraft Accident Liability Insurance

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments.

DATES: Comments must be submitted on or before May 17, 2023.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department'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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 7, 2023 (88 FR 8039). No comments were received.

OMB Control Number: 2106–0030.

Title: Aircraft Accident Liability Insurance, 14 CFR part 205.

Type of Request: Extension of a previously approved collection.

Abstract: 49 U.S.C. 41112 provides that an air carrier may not be issued or continue to hold air carrier authority unless it has filed with DOT evidence that it possesses insurance in accordance with DOT regulations. 14 CFR part 205 establishes procedures for filing evidence of liability insurance for air carriers, and contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department. This insurance information is submitted to DOT using OST Form 6410 (U.S. air carriers) or OST Form 6411 (foreign air carriers). DOT expects to receive approximately 2,012 filed insurance certificates from U.S. air carriers and approximately 550 filed certificates from foreign air carriers. DOT expects to receive approximately 2,676 amended certificates each year from U.S. air carriers and approximately 732 amended filings from foreign air carriers. Total respondents expected is approximately 3,408. Further, DOT expects filers of certificates to take 30 minutes to complete the form and approximately 15 minutes (for approximately 5 percent of respondents) to prepare amendments to the form. Thus, the total annual burden is expected to be 894 hours.

Affected Public: U.S. and Foreign Air Carriers.

Number of Respondents: 2,562.

Frequency: On occasion.

Number of Responses: 3,408.

Total Annual Burden: 894 hours.

Authority: The Paperwork Reduction Act of 1995; 14 CFR part 215.

Issued in Washington, DC, on April 12, 2023.

Lauralyn Jean Remo Temprosa,

Associate Director, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2023–08020 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2003–15623]

Request for Comments of a Previously Approved Information Collection: Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments.

DATES: Comments must be submitted on or before May 17, 2023.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department'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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 7, 2023 [88 FR 8038]. No comments were received.

OMB Control Number: 2106–0043.

Title: Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers, 14 CFR part 215.

Type of Request: Extension of a previously approved collection.

Abstract: In accordance with the procedures set forth in 14 CFR part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same name or similar name(s) of the intended name registration.

DOT expects to receive approximately 12 requests from persons to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier. Total respondents expected is approximate 12. Further, DOT expects responders to take 5 hours to complete

the form and to prepare amendments to the form. Thus, the total annual burden is expected to be 60 hours.

Affected Public: U.S. and Foreign Air Carriers.

Number of Respondents: 12.

Frequency: On occasion.

Number of Responses: None.

Total Annual Burden: 60 hours.

Authority: The Paperwork Reduction Act of 1995; 14 CFR part 215.

Issued in Washington, DC, on April 12, 2023.

Lauralyn Jean Remo Temprosa,

Associate Director, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2023–08021 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2003–15623]

Request for Comments of a Previously Approved Information Collection: Procedures and Evidence Rules for Air Carrier Authority Applications

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments.

DATES: Comments must be submitted on or before May 17, 2023.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department'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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 7, 2023 (88 FR 8039). No comments were received.

OMB Control Number: 2106–0023.

Title: Procedures and Evidence Rules for Air Carrier Authority Application: 14 CFR part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code—(Amended); 14 CFR part 291—Cargo Operations in Interstate Air Transportation.

Type of Request: Extension of a previously approved collection.

Abstract: To determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR parts 201 and 204.

Affected Public: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Number of Respondents: 69.

Frequency: On occasion.

Number of Responses: 207.

Total Annual Burden: 10,215 hours.

Authority: The Paperwork Reduction Act of 1995; 14 CFR part 215.

Issued in Washington, DC, on April 12, 2023.

Lauralyn Jean Remo Temprosa,

Associate Director, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2023–08022 Filed 4–14–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

[TREAS–DO–2022–0013]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Emergency Capital Investment Program Initial Supplemental Report and Quarterly Supplemental Report; Correction

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice; correction; extension of comment period.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** on March 27, 2023, concerning request for comments on reporting by Emergency Capital Investment Program participants. The document contained incorrect instructions for submitting comments. This notice also extends the comment period.

DATES: Comments should be received on or before May 8, 2023 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Spencer W. Clark, email: *PRA@treasury.gov,* phone: (202) 927–5331.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 27, 2023, in FR Doc 2023–06214, on page 18223, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent by the date listed above through the Federal eRulemaking Portal: *https://www.regulations.gov/search?filter=treas-do-2022-0013.* This is a direct link to the docket for this notice on *regulations.gov.* If you are unable to comment via *regulations.gov,* you may email your comment to *pra@treasury.gov.*

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2023–08061 Filed 4–14–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0253]

Agency Information Collection Activity Under OMB Review: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link

www.reginfo.gov/public/do/PRAMain, select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or OMB Control No. 2900–0253. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0253.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0253'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3729, 38 CFR 36.4232 and 36.4313.

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter (VA Form 26–8736a).

OMB Control Number: 2900–0253.

Type of Review: Extension of a currently approved collection.

Abstract: Section 3702(d) allows for certain lenders to make automatically guaranteed housing loans under 38 U.S.C. chapter 37. 38 U.S.C. 3702(d). Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to the Department of Veterans Affairs (VA) for issuance of guaranty. Those lenders include (1) any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State; (2) any State; or (3) any lender approved by the Secretary pursuant to standards established by the Secretary. Id. VA implemented those standards in 38 CFR 36.4352. VA refers to lenders described in 38 U.S.C. 3702(d)(1) and (2) as supervised lenders. See 38 CFR 36.4352(a). Unsupervised lenders are those described in 38 U.S.C. 3702(d)(3). See 38 CFR 36.4352(b). This collection addresses the underwriter requirements for those unsupervised lenders as found in 38 CFR 36.4352(b)(2) and (3).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 8343 on February 8, 2023, pages 8343.

Affected Public: Individuals or Households.

Estimated Annual Burden: 500 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,500.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–08018 Filed 4–14–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 73 April 17, 2023

Part II

Department of Health and Human Services

45 CFR Part 160 and 164
HIPAA Privacy Rule To Support Reproductive Health Care Privacy; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0945–AA20

HIPAA Privacy Rule To Support Reproductive Health Care Privacy

AGENCY: Office for Civil Rights (OCR), Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking; notice of Tribal consultation.

SUMMARY: The Department of Health and Human Services (HHS or ''Department'') is issuing this notice of proposed rulemaking (NPRM) to solicit comment on its proposal to modify the Standards for Privacy of Individually Identifiable Health Information (''Privacy Rule'') under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act). The proposal would modify existing standards permitting uses and disclosures of protected health information (PHI) by limiting uses and disclosures of PHI for certain purposes where the use or disclosure of information is about reproductive health care that is lawful under the circumstances in which such health care is provided. The proposal would modify existing standards by prohibiting uses and disclosures of PHI for criminal, civil, or administrative investigations or proceedings against individuals, covered entities or their business associates (collectively, ''regulated entities''), or other persons for seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided.

DATES:

Comments: Submit comments on or before June 16, 2023.

Meeting: Pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Department of Health and Human Services' Tribal Consultation Policy, and the Department's Plan for Implementing Executive Order 13175, the Office for Civil Rights solicits input from Tribal officials as the Department develops the modifications to the HIPAA Privacy Rule at 45 CFR parts 160 and 164, subparts A and E. The Tribal consultation meeting will be held on May 17, 2023, at 2 p.m. to 3:30 p.m. EDT.

ADDRESSES: You may submit comments, identified by RIN Number 0945–AA20, by any of the following methods. Please do not submit duplicate comments.

To participate in the Tribal consultation meeting, you must register in advance at *https://www.zoomgov.com/meeting/register/vJItf-2hqD8jHfdtmYaUoWidy9odBZMYQ4Q.*

- *Federal eRulemaking Portal:* You may submit electronic comments at *http://www.regulations.gov* by searching for the Docket ID number HHS–OCR–0945–AA20. Follow the instructions at *http://www.regulations.gov* for submitting electronic comments. Attachments should be in Microsoft Word or Portable Document Format (PDF).
- *Regular, Express, or Overnight Mail:* You may mail written comments to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: HIPAA and Reproductive Health Care Privacy NPRM, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201. Please allow sufficient time for mailed comments to be timely received in the event of delivery or security delays.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

Inspection of Public Comments: All comments received by the accepted methods and due date specified above may be posted without change to content to *https://www.regulations.gov,* which may include personal information provided about the commenter, and such posting may occur after the closing of the comment period. However, the Department may redact certain non-substantive content from comments or attachments to comments before posting, including: threats, hate speech, profanity, sensitive health information, graphic images, promotional materials, copyrighted materials, or individually identifiable information about a third-party individual other than the commenter. In addition, comments or material designated as confidential or not to be disclosed to the public will not be accepted. Comments may be redacted or rejected as described above without notice to the commenter, and the Department will not consider in rulemaking any redacted or rejected content that would not be made available to the public as part of the administrative record.

Docket: For complete access to background documents or posted comments, go to *https://www.regulations.gov* and search for Docket ID number HHS–OCR–0945–AA20.

FOR FURTHER INFORMATION CONTACT: Lester Coffer at (202) 240–3110 or (800) 537–7697 (TDD).

SUPPLEMENTARY INFORMATION: The discussion below includes an Executive Summary, a description of relevant statutory and regulatory authority and history, the justification for this proposed regulation, a section-by-section description of the proposed modifications, and a regulatory impact analysis and other required regulatory analyses. The Department solicits public comment on all aspects of the proposed rule. The Department requests that persons commenting on the provisions of the proposed rule label their discussion of any particular provision or topic with a citation to the section of the proposed rule being addressed and identify the particular request for comment being addressed, if applicable.

I. Executive Summary

A. Overview

In this notice of proposed rulemaking (NPRM), the Department of Health and Human Services (HHS or ''Department'') proposes modifications to the Standards for Privacy of Individually Identifiable Health Information (''Privacy Rule''), issued pursuant to section 264 of the Administrative Simplification provisions of title II, subtitle F, of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[1] The Privacy Rule[2] is one of several rules, collectively known as the HIPAA Rules,[3] that protect the privacy and security of individuals' protected health information[4] (PHI), which is individually identifiable health information[5] (IIHI) transmitted by or maintained in electronic media or any other form or medium, with certain exceptions.[6]

Under its statutory authority to administer and enforce the HIPAA Rules, the Department modifies the HIPAA Rules as needed, but not more than once every 12 months.[7] The Department makes the determination that such modifications may be needed using information it receives on an ongoing basis—from the public, regulated entities, media reports, and its own analysis of the state of privacy for IIHI. Based on information the Department has received in recent months, we believe it may be necessary to modify the Privacy Rule to avoid the circumstance where an existing provision of the Privacy Rule is used to request the use or disclosure of an individual's PHI as a pretext for obtaining PHI related to reproductive health care for a non-health care purpose where such use or disclosure would be detrimental to any person. The proposals in this NPRM would amend provisions of the Privacy Rule to strengthen privacy protections for individuals' PHI related to reproductive health care.

The Supreme Court's decision in *Dobbs* v. *Jackson Women's Health Organization*[8] (*Dobbs*) makes it more likely than before that individuals' PHI may be disclosed in ways that cause harm to the interests that HIPAA seeks to protect but that are not adequately addressed in this context,[9] such as criminal, civil, or administrative investigations or proceedings that chill access to lawful health care and full communication between individuals and health care providers. These developments in the legal environment increase the potential for uses or disclosures about an individual's reproductive health to undermine access to and the quality of health care generally. Some states have already imposed criminal, civil, or administrative liability for, or created private rights of action against, individuals who obtain certain reproductive health care, including pregnancy termination; the health care providers who furnish such reproductive health care; or other persons who facilitate the furnishing or receipt of certain reproductive health care.[10] Other states may follow suit in the future. And in yet other states, law enforcement agencies may attempt to use general criminal laws to prosecute individuals for seeking or obtaining such reproductive health care.[11]

After *Dobbs,* the Department has heard concerns that civil, criminal, or administrative investigations or proceedings have been instituted or threatened on the basis of reproductive health care that is lawful under the circumstances in which it is provided. The threat that PHI will be obtained and used in such an investigation or proceeding is likely to chill individuals' willingness to seek lawful treatment or to provide full information to their

[1] Subtitle F of title II of HIPAA (Pub. L. 104–191, 110 Stat. 1936 (Aug. 21, 1996)) added a new part C to title XI of the Social Security Act (SSA), Public Law 74–271, 49 Stat. 620 (Aug. 14, 1935), (*see* sections 1171–1179 of the SSA (codified at 42 U.S.C. 1320d–1320d–8)), as well as promulgating section 264 of HIPAA (codified at 42 U.S.C. 1320d–2 note), which authorizes the Secretary to promulgate regulations with respect to the privacy of individually identifiable health information. The Privacy Rule has subsequently been amended pursuant to the Genetic Information Nondiscrimination Act of 2008 (GINA), title I, section 105, Public Law 110–233, 122 Stat. 881 (May 21, 2008) (codified at 42 U.S.C. 2000ff), and the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, Public Law 111–5, 123 Stat. 226 (Feb. 17, 2009) (codified at 42 U.S.C. 139w–4(0)(2)).

[2] 45 CFR parts 160 and 164, subparts A and E. For a history of the Privacy Rule, *see* Section II.B.2., ''Regulatory History,'' below.

[3] *See also* the HIPAA Security Rule, 45 CFR parts 160 and 164, subparts A and C; the HIPAA Breach Notification Rule, 45 CFR part 164, subpart D; and the HIPAA Enforcement Rule, 45 CFR part 160, subparts C, D, and E.

[4] 45 CFR 160.103 (definition of ''Protected health information'').

[5] 42 U.S.C. 1320d. *See also* 45 CFR 160.103 (definition of ''Individually identifiable health information'').

[6] At times throughout this NPRM, the Department uses the terms ''health information'' or ''individuals' health information'' to refer generically to health information pertaining to an individual or individuals. In contrast, the Department's use of the term ''IIHI'' refers to a category of health information defined in HIPAA, and ''PHI'' is used to refer specifically to a category of IIHI that is defined by and subject to the privacy and security standards promulgated in the HIPAA Rules.

[7] 45 CFR 160.104.

[8] 597 U.S. __, 142 S. Ct. 2228 (2022) (No. 19–1392) (June 24, 2022).

[9] *See* National Committee on Vital and Health Statistics (NCVHS or ''Committee'') discussion below, section II.A.1., expressing concern for harm caused by disclosing identifiable health information for non-health care purposes.

[10] *See, e.g.,* S.C. Code Ann. sec. 44–41–80(b), NRS 200.220, Tex. Health & Safety Code Ann. sec. 171.208 (2021); 63 OK Stat sec. 1–745.34–35 (2022). *See also* Abortion Policy Tracker, Kaiser Family Foundation (Jan. 20, 2023), *https://www.kff.org/other/state-indicator/abortion-policy-tracker/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.*

[11] *See* Laura Huss, Farah Diaz-Tello, Goleen Samari, ''Self-Care, Criminalized: August 2022 Preliminary Findings,*'' If/When/How: Lawyering for Reproductive Justice (2022), *https://www.ifwhenhow.org/resources/self-care-criminalized-preliminary-findings/;* Caroline Kitchener and Ellen Francis, ''Talk of prosecuting women for abortion pills roils antiabortion movement,'' The Washington Post (Jan. 11. 2023), *https://www.washingtonpost.com/nation/2023/01/11/alabama-abortion-pills-prosecution/.*

health care providers when obtaining that treatment.

A positive, trusting relationship between individuals and their health care providers is essential to an individual's health and well-being.[12] The prospect of releasing highly sensitive PHI can result in medical mistrust and the deterioration of the confidential, safe environment that is necessary to quality health care, a functional health care system, and the public's health generally.[13] That is even more true in the context of reproductive health care, given the potential for stigmatization and other adverse consequences to individuals resulting from disclosures they do not want or expect.[14]

Experience shows that medical mistrust—especially in vulnerable communities that have been negatively affected by historical and current health care disparities [15]—can create damaging and chilling effects on individuals' willingness to seek appropriate and lawful care for medical conditions that can worsen without treatment.[16] If individuals believe that their PHI may be disclosed without their knowledge or consent to initiate criminal, civil, or administrative investigations or proceedings against them or others based primarily upon their receipt of lawful reproductive health care, they are likely to be less open, honest, or forthcoming about their symptoms and medical history. As a result, individuals may refrain from sharing critical information with their health care providers, regardless of whether they are seeking reproductive health care that is lawful under the circumstances in which it is provided. For instance, an individual who has obtained a lawful abortion in one state may fear receiving emergency care in a state where abortion is unlawful because providing information to a health care provider in such a state could place them into legal jeopardy, even if that information is relevant to the immediate health emergency. If an individual believes they cannot be honest about their health history, the health care provider cannot conduct an appropriate health assessment to reach a sound diagnosis and recommend the best course of action for that individual. Heightened confidentiality and privacy protections enable an individual to develop a trust-based relationship with their health care provider and to be open and honest with their health care provider. That health care provider is then more likely to provide a correct diagnosis and aid the individual in making informed treatment decisions.

Similarly, if a health care provider believes that an individual's highly sensitive PHI is likely to be disclosed without the individual's or the health care provider's knowledge or consent in connection with a criminal, civil, or administrative investigation or proceeding against the individual, their health care provider, or others primarily because of the type of health care the individual received or sought, the health care provider is more likely to omit information about an individual's medical history or condition, leave gaps, or include inaccuracies when preparing the individual's medical records. And if an individual's medical records lack complete information about the individual's health history, a subsequent health care provider may not be able to conduct an appropriate health assessment to reach a sound diagnosis and recommend the best course of action for the individual. Alternatively, a health care provider may even withhold from an individual full and complete information about their treatment options because of liability fears stemming from concerns about the level of privacy afforded to PHI.[17] Heightened confidentiality and privacy protections enable a health care provider to feel confident maintaining full and complete medical records. With complete medical records, an individual is more likely to receive appropriate ongoing or future health care, including correct diagnoses, and obtain appropriate guidance, empowering the individual in making informed treatment decisions. This further enables the individual to access lawful health care—and health care providers to practice medicine—in an environment that promotes social, environmental, mental, and physical wellness.

Furthermore, an individual's lack of trust in their health care provider to maintain the confidentiality of the individual's most sensitive medical information and a lack of trust in the medical system more generally may have significant repercussions for the public's health more generally. Individuals who are not candid with their health care providers about their reproductive health care may also withhold information about other matters that have public health implications, such as sexually transmitted infections or vaccinations.[18]

When proposing the initial Privacy Rule, the Department described its policy choices as being motivated to develop and maintain a relationship of trust between individuals and health care providers. ''A fundamental assumption of this regulation is that the greatest benefits of improved privacy protection will be realized in the future as patients gain increasing trust in health care practitioner's ability to

[12] *See* Fallon E. Chipidza, Rachel S. Wallwork, Theodore A. Stern, ''Impact of the Doctor-Patient Relationship,'' The Primary Care Companion for CNS Disorders (Oct. 2015), *https://www.psychiatrist.com/pcc/delivery/patient-physician-communication/impact-doctor-patient-relationship/.*

[13] *See, e.g.,* Kim Bellware, ''Doctor says she shouldn't have to turn over patients' abortion records,'' The Washington Post (Nov. 19, 2022), *https://www.washingtonpost.com/politics/2022/11/19/caitlin-bernard-rokita-lawsuit/* (citing the testimony of pediatric bioethics expert Kyle Brothers about the potential negative effects requests for this type of sensitive medical record could have on individuals: ''This kind of disclosure, especially for a minor, is just heartbreaking.''). *See also* Eric Boodman, ''In a doctor's suspicion after a miscarriage, a glimpse of expanding medical mistrust,'' STAT News (June 29, 2022), *https://www.statnews.com/2022/06/29/doctor-suspicion-after-miscarriage-glimpse-of-expanding-medical-mistrust/* (Sarah Prager, professor of obstetrics and gynecology at the University of Washington said that it's a bad precedent if clinical spaces become unsafe for patients because, ''[a health care provider's] ability to take care of patients relies on trust, and that will be impossible moving forward.'').

[14] *See* Letter from NCVHS Chair Simon P. Cohn to HHS Secretary Michael O. Leavitt (Feb. 20, 2008) (listing categories of health information that are commonly considered to contain sensitive information), p. 5, *https://ncvhs.hhs.gov/wp-content/uploads/2014/05/080220lt.pdf.*

[15] *See* Lisa P. Oakley, Marie Harvey, Daniel F. Lopez-Cevallos, ''Racial and Ethnic Discrimination, Medical Mistrust, and Satisfaction with Birth Control Services among Young Adult Latinas,'' Women's Health Issues (July–August 2018), p. 313, *https://www.sciencedirect.com/science/article/abs/pii/S1049386717305443;* and Cynthia Prather, Taleria R. Fuller, Khiya J. Marshall, et al., ''The Impact of Racism on the Sexual and Reproductive Health of African American Women,'' Journal of Women's Health (July 2016), p. 664, *https://www.liebertpub.com/doi/abs/10.1089/jwh.2015.5637.*

[16] *See* Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022, Texas Department of State Health Services (Dec. 2022), p. 41, *https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/Joint-Biennial-MMMRC-Report-2022.pdf.*

[17] *See* Brief for Zurawski at p. 10, *Zurawski* v. *State of Texas* (No. D–1–GN–23–000968) (W.D. Tex. 2023) (stating that ''[i]n every interaction with their medical team in Texas, Lauren M. and her husband felt confused and frustrated and could not get direct answers,'' and that ''[i]t was apparent that their doctors, nurses, and counselors were all fearful of speaking directly and openly about abortion for fear of liability under Texas's abortion bans.'').

[18] *See* Letter from NCVHS Chair Simon P. Cohn to HHS Secretary Michael O. Leavitt (June 22, 2006), p. 2 (with forwarded NCVHS recommendations, ''Individual trust in the privacy and confidentiality of their personal health information also promotes public health, because individuals with potentially contagious or communicable diseases are not inhibited from seeking treatment.''), *https://ncvhs.hhs.gov/rrp/june-22-2006-letter-to-the-secretary-recommendations-regarding-privacy-and-confidentiality-in-the-nationwide-health-information-network/.*

maintain the confidentiality of their health information.'' [19] The Department also described the benefits of increasing individuals' access to their own health care information in the development and maintenance of that trust. Providing individuals with ''[o]pen access to [their] health information can benefit both the individuals and the covered entities. [. . .] It can increase communication, thereby enhancing individuals' trust in their health care providers and increasing compliance with the providers' instructions.'' [20] The Department reiterated this need for trust between individuals and health care providers in the 2000 Privacy Rule, noting that ''[t]he provision of high-quality health care requires the exchange of personal, often-sensitive information between an individual and a skilled practitioner. Vital to that interaction is the patient's ability to trust that the information shared will be protected and kept confidential.'' [21] As the Department also stated, ''[h]ealth care professionals who lose the trust of their patients cannot deliver high-quality care.'' [22]

However, the Department also noted that the policy choices it made when issuing the 2000 Privacy Rule were a result of balancing the interests of the individual in the privacy of their PHI with the interests of society in disclosures of PHI for non-health care purposes. Thus, the 2000 Privacy Rule included permissions for regulated entities to disclose PHI under certain conditions for judicial and administrative proceedings and law enforcement purposes. As the Department explained at that time, ''Individuals' right to privacy in information about themselves is not absolute. It does not, for instance, prevent reporting of public health information on communicable diseases or stop law enforcement from getting information when due process has been observed.'' [23]

The proposed modifications to the Privacy Rule in this NPRM directly advance the purposes of HIPAA. From their inception, the Department's regulations implementing the statute have sought to ensure that individuals do not forgo lawful health care when needed—or withhold important information from their health care providers that may affect the quality of health care they receive—out of a fear that their sensitive information would be revealed outside of their relationships with their health care providers. In the past, the Department generally has applied the same privacy standards to nearly all PHI, regardless of the type of health care at issue. But the Department has also recognized that some forms of PHI may be particularly sensitive and thus may warrant heightened protections. For example, the Department has accorded ''special protections'' to psychotherapy notes under the Privacy Rule, owing in part to the ''particularly sensitive information'' those notes contain.[24]

Many individuals regard information about their reproductive health as highly private and personal. That information is likely to come up in a wide variety of encounters between individuals and their health care providers, including routine physicals, gynecological examinations, and a range of other encounters that do not involve an individual's effort to obtain health care, such as an abortion, that is illegal under some post-*Dobbs* state laws. However, if individuals do not trust that their health care providers will keep their sensitive information private, they may withhold important health information from their health care providers, leading to incomplete and inaccurate medical records and potentially substandard health care. Some individuals may refrain from or defer obtaining necessary health care, which could lead to worse health outcomes and exacerbate health disparities.[25] Others may withhold aspects of their medical history from their health care providers, which could impede the ability of health care professionals to make fully informed medical judgments and provide full and complete information about treatment options. Similarly, health care providers may omit information about an individual's medical history or condition, or leave gaps or include inaccuracies, when preparing medical records, out of fear that the individual's PHI is likely to be disclosed without the individual's or the health care provider's knowledge or consent for use in criminal or civil proceedings against the individual, their health care provider, or others. In so doing, they increase the risk that the individual will receive substandard ongoing or future health care. Regardless of how it occurs, the result is substandard health care and worse health outcomes.

Such deferrals or avoidance of lawful health care are not only problematic for individuals' health, but they are also problematic for public health. As discussed in greater detail below, the objective of public health is to protect and improve the health of people and their communities. Barriers that undermine the willingness of individuals to seek lawful health care in a timely manner or to provide complete and accurate health information to their health care providers undermine the overall objective of public health. Thus, based on the longstanding purposes of HIPAA, there is a compelling need to provide additional protections to this especially sensitive category of information.

Following the *Dobbs* decision in 2022, laws enacted or effective in a number of states [26] raised the prospect that highly sensitive PHI would be disclosed under circumstances that did not exist before the Supreme Court's decision, generating significant confusion for individuals, health care providers, family, friends, and caregivers regarding their ability to privately seek, obtain, provide, or facilitate health care. The Department has received questions from regulated entities, Members of Congress, and others about the state of privacy protections, particularly for information about an individual's reproductive health or about reproductive health care an individual may have received. While the Department has already taken steps to address some of the confusion,[27] we have received additional inquiries and reports that indicate further clarification is needed to resolve this confusion and strengthen privacy protections. In light of this confusion, the Department believes that there is a need to reaffirm and clarify that maintaining the privacy of an individual's PHI is important to providing high-quality health care. To do so, the Department believes it is

[19] *See* 64 FR 59918, 60006 (Nov. 3, 1999).

[20] *See* 64 FR 59980.

[21] *See* 65 FR 82462, 82463 (Dec. 28, 2000).

[22] *See* 65 FR 82468.

[23] 65 FR 82464.

[24] The special protections for psychotherapy notes and the Department's rationale for them are discussed at greater length in section III of this preamble.

[25] *See* Jessica Winter, ''The Dobbs Decision Has Unleashed Legal Chaos for Doctors and Patients,'' The New Yorker (July 2, 2022) (Chloe Akers, a criminal defense attorney in Tennessee, discussing agencies authorized to investigate offenses related to abortion ''[t]hat leads to a serious concern about privacy at ob-gyn offices and for other health-care providers.''), *https://www.newyorker.com/news/news-desk/the-dobbs-decision-has-unleashed-legal-chaos-for-doctors-and-patients.*

[26] *See* ''After Roe Fell: Abortion Laws by State,'' Center for Reproductive Rights (updated in real time) (describing actions taken by states, including that ''some states and territories never repealed their pre-Roe abortion bans'' that have now gone into effect.), *https://reproductiverights.org/maps/abortion-laws-by-state/.*

[27] *See* Press Release, ''HHS Issues Guidance to Protect Patient Privacy in Wake of Supreme Court Decision on *Roe,*'' U.S. Dep't of Health and Human Servs. (June 29, 2022), *https://www.hhs.gov/about/news/2022/06/29/hhs-issues-guidance-to-protect-patient-privacy-in-wake-of-supreme-court-decision-on-roe.html.*

necessary to provide heightened protections for another especially sensitive category of health information—PHI sought for the purposes of conducting a criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided. These proposed modifications would provide heightened protections for individuals' health information privacy under the defined circumstances; foster an open and honest exchange of information between the individual and health care provider, who—with that information—could employ evidence-based clinical practice guidelines; and increase access to high-quality, lawful health care.

The Department has determined, in accordance with other Federal agencies, that information about reproductive health care is particularly sensitive and requires heighted protections. For example, the Federal Trade Commission (FTC) has recognized that information related to personal reproductive matters is ''particularly sensitive.'' [28] In business guidance, FTC staff explained that ''[t]he exposure of health information and medical conditions, especially data related to sexual activity or reproductive health, may subject people to discrimination, stigma, mental anguish, or other serious harms.'' [29] As a result, the FTC has committed to using the full scope of its authorities to protect consumers' privacy, including the privacy of their health information and other sensitive data.[30]

The Department of Defense (DOD) has also recognized such privacy concerns. In a memorandum to DOD leaders, the Secretary of Defense directed the DOD to ''[e]stablish additional privacy protections for reproductive health care information'' for service members and ''[d]isseminate guidance that directs Department of Defense health care providers that they may *not* notify or disclose reproductive health information to commanders unless this presumption is overcome by specific exceptions set forth in policy.'' [31] The guidance repeatedly emphasizes not only the importance of privacy for such highly sensitive information but also the importance of privacy in making highly sensitive reproductive health care decisions.[32]

The Department recognizes that the need for heightened protections for highly sensitive PHI is now more acute than it was before, given the actions taken by states to regulate, and even criminalize, reproductive health care.[33] Before the Supreme Court's decision, the range of circumstances in which persons attempted to seek or use highly sensitive PHI in criminal, civil, and administrative investigations or proceedings in connection with the provision of reproductive health care was much narrower. The general HIPAA privacy protections provided the necessary trust to promote access to and receipt of high-quality and lawful health care in that environment. As states take steps to more broadly regulate reproductive health care, some individuals and their health care providers are at greater risk and have increased fear that especially sensitive PHI detailing the individual's need for, or receipt of, lawful reproductive health care will be used or disclosed without their knowledge or consent.[34]

The Department carefully analyzed state prohibitions or restrictions on an individual's ability to obtain health care and the effects on health information privacy, access to high-quality health care, and the relationships between individuals and their health care providers after *Dobbs;* and conducted a thorough review of the history and text of HIPAA and the Privacy Rule. The Department has also engaged in extensive discussions with HHS agencies and other Federal departments, including the Department of Justice; examined media reports on state activity affecting privacy protections for reproductive health information; held listening sessions with and reviewed correspondence from stakeholders, including covered entities, requesting technical assistance from the Department and urging the Department to clarify and strengthen privacy protections for PHI; and reviewed correspondence to HHS from Members of Congress who have urged the same. The proposals contained within this NPRM are the result of this work.

B. Applicability

The effective date of a final rule would be 60 days after publication.[35] Regulated entities would have until the ''compliance date'' to establish and implement policies and practices to achieve compliance with any new or modified standards. Except as otherwise provided, 45 CFR 160.105 provides that regulated entities must comply with the applicable new or modified standards or implementation specifications no later than 180 days from the effective date of any such change. The Department has previously noted that the 180-day general compliance period for new or modified standards would not apply where a different compliance period is provided in the regulation for one or more provisions.[36] However, the compliance period cannot be less than the statutory minimum of 180 days.[37]

The Department does not believe that the proposed rule would pose unique implementation challenges that would justify an extended compliance period (*i.e.,* a period longer than the standard 180 days provided in 45 CFR 160.105). Further, the Department believes that adherence to the standard compliance period is necessary to timely address the circumstances described in this NPRM. Thus, the Department proposes to apply the standard compliance date of 180 days after the effective date of a final rule.[38] The Department seeks comment on this time frame for compliance.

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or circumstance, the provision shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, and the invalidation of any specific application of a provision shall not affect the application of the provision to other persons or circumstances.

C. Table of Abbreviations/Commonly Used Acronyms in This Document

As used in this preamble, the following terms and abbreviations have the meanings noted below.

[28] Kristin Cohen, ''Location, health, and other sensitive information: FTC committed to fully enforcing the law against illegal use and sharing of highly sensitive data,'' Federal Trade Commission Business Blog (July 11, 2022), *https://www.ftc.gov/business-guidance/blog/2022/07/location-health-and-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal* (last accessed Nov. 15, 2022).

[29] *Id.*

[30] *Id.*

[31] Memorandum Re: Ensuring Access to Reproductive Health Care, Dep't of Defense (Oct. 20, 2022), p. 1, (emphasis in original), *https://media.defense.gov/2022/Oct/20/2003099747/-1/-1/1/MEMORANDUM-ENSURING-ACCESS-TO-REPRODUCTIVE-HEALTH-CARE.PDF.*

[32] *Id.*

[33] *See* ''Talk of prosecuting women for abortion pills roils antiabortion movement,'' *supra* note 11.

[34] *Id.*

[35] *See* Office of the Federal Register, A Guide to the Rulemaking Process (2011), p. 8, *https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.*

[36] *See* 78 FR 5566, 5569 (Jan. 25, 2013).

[37] *See* 42 U.S.C. 1320d–4(b)(2).

[38] *See* 45 CFR 160.104(c)(1), which requires the Secretary to provide at least a 180-day period for covered entities to comply with modifications to standards and implementation specifications in the HIPAA Rules.

Term	Meaning
AMA	American Medical Association.
BLS	Bureau of Labor Statistics.
CDC	Centers for Disease Control and Prevention.
DOD	Department of Defense.
HHS or Department.	U.S. Department of Health and Human Services.
EHR	Electronic Health Record.
E.O	Executive Order.
FTC	Federal Trade Commission.
GINA	Genetic Information Nondiscrimination Act of 2008.
Health IT	Health Information Technology.
HITECH Act	Health Information Technology for Economic and Clinical Health Act of 2009.
HIPAA	Health Insurance Portability and Accountability Act of 1996.
ICR	Information Collection Request.
IIHI	Individually Identifiable Health Information.
NCVHS or Committee.	National Committee on Vital and Health Statistics.
NPP	Notice of Privacy Practices.
NPRM	Notice of Proposed Rulemaking.
OCR	Office for Civil Rights.
OMB	Office of Management and Budget.
PDF	Portable Document Format.
PHI	Protected Health Information.
PRA	Paperwork Reduction Act of 1995.
PSAO	Pharmacy Services Administration Organization.
RFA	Regulatory Flexibility Act.
RIA	Regulatory Impact Analysis.
SBA	Small Business Administration.
SSA	Social Security Act of 1935.
UMRA	Unfunded Mandates Reform Act of 1995.
VA	Department of Veterans Affairs.

II. Statutory Authority and Regulatory History

A. Statutory Authority and History

1. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

In 1996, Congress enacted HIPAA [39] to reform the health care delivery system. In so doing, Congress intended to make health insurance more portable and accessible for consumers, to improve its quality, and to simplify its administration.[40] As noted by a leading proponent of the bill during final debate leading up to passage of the law, ''[o]ur objective, then, is to initiate fundamental reforms in access to health care without doing irreversible harm to quality, research and technology.'' [41]

At the time, the health care system was moving from paper-based to electronic medical records. Congress recognized the need to reduce the burden of the transition on health care providers, encourage health care provider adoption of technology by addressing concerns for potential liability for use of new systems, and ensure patient confidentiality of electronic data to foster trust in health care providers and support patient access to health care.[42] Congressional statements leading up to HIPAA's enactment demonstrate Congress' desire that the law enhance individuals' trust in health care providers: ''The bill would also establish strict security standards for health information because Americans clearly want to make sure that their health care records can only be used by the medical professionals that treat them. Often we assume that because doctors take an oath of confidentiality that in fact all who touch their records operate by the same standards. Clearly they do not.'' [43]

To address these needs, Congress enacted HIPAA's Administrative Simplification provisions [44] in subtitle F, sections 261 through 264, which contained requirements for standards to support the electronic exchange of health information. Section 261 states, in part, that ''[i]t is the purpose of this subtitle to improve [. . .] the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information [. . .].'' [45]

HIPAA protects individuals' health information in various ways. Congress prohibited, among other things, the disclosure of ''individually identifiable health information to another person'' [46] and provided for severe penalties for violations, including prison sentences of up to 10 years and monetary fines of up to $250,000.[47] Congress also put in place numerous protections for the privacy of individuals' health information and directed HHS to promulgate rules, recognizing the importance of standards for security and privacy in the developing electronic environment, when Congress did not enact detailed privacy requirements within a specified period.[48]

HIPAA's preemption provisions reflect Congress' intent to protect individuals' health care privacy. The statute provides a ''[g]eneral rule'' that, with certain exceptions, HIPAA's provisions ''supersede any contrary provision of State law.'' [49] One exception to HIPAA's preemption provisions is for ''state privacy laws that are contrary to and more stringent than the corresponding federal standard, requirement, or implementation specification.'' [50] ''The effect of these provisions is to let the law that is most protective of privacy control.'' [51] Thus, HIPAA created privacy standards that safeguard the health information of all Americans, while respecting the ability

[39] *See* HIPAA, *supra* note 1.

[40] *See* H. Rept. 104–736, 104th Cong. (1996) at 177. *See also* 142 Cong. Rec. H3038 (daily ed. Mar. 28, 1996), (statement of Rep. McDermott) (speaking about how privacy protection is essential to improving health care quality, one of the purposes of the H.R. 3103, Health Coverage Availability and Affordability Act of 1996, the precursor to HIPAA); 142 Cong. Rec. H9568 (daily ed. Aug. 1, 1996) (statement of Rep. Ganske).

[41] *See* 142 Cong. Rec. S9505 (daily ed. Aug. 2, 1996) (statement of Sen. Roth).

[42] *See* H.Rept. 104–736 at 177 and 264, *supra* note 40. *See also* 142 Cong. Rec. H9780 (daily ed., No. 116 Part II, Aug. 1, 1996) (statement of Rep. Sawyer); 142 Cong. Rec. H9792 (daily ed. Aug. 1, 1996) (statement of Rep. McDermott); and 142 Cong. Rec. S9515–16 (daily ed. Aug. 2, 1996) (statement of Sen. Simon).

[43] 142 Cong. Rec. H9780 (statement of Rep. Sawyer), *supra* note 42.

[44] *See* HIPAA, *supra* note 1.

[45] 42 U.S.C. 1320d note (Statutory Notes and Related Subsidiaries: Purpose). Subtitle F also amended related provisions of the SSA.

[46] 42 U.S.C. 1320d–6(a).

[47] 42 U.S.C. 1320d–6(b).

[48] *See, e.g.,* 42 U.S.C. 1320a–7c(a)(3)(B)(ii) (creating a fraud and abuse control program with measures to protect, among other things, the confidentiality of the information and the privacy of individuals receiving health care services and items.); H.Rept. 104–736 at 242, *supra* note 40 (explaining that such program ''would ensure the confidentiality of information [. . .] as well as the privacy of individuals receiving health care services''); 42 U.S.C. 1320a–7e(b)(3) (creating a health care fraud and abuse data collection program with procedures to assure the protection of the privacy of individuals receiving health care services.); H.Rept. 104–736 at 252, *supra* note 40 (explaining that such program would ''protect the privacy of individuals receiving health care services''); section 264(a) of Public Law 104–191, (codified at 42 U.S.C. 1320d–2 note) (requiring the Secretary of HHS to submit recommendations on privacy standards for individually identifiable health information); section 264(c) of Public Law 104–191, (codified at 42 U.S.C. 1320d–2 note) (requiring the Secretary to issue regulations containing such privacy standards if Congress does not); H.Rept. 104–736 at 265, *supra* note 40 (recognizing that ''certain uses of individually identifiable information are appropriate, and do not compromise the privacy of an individual[,]'' such as ''the transfer of information when making referrals from primary care to specialty care'').

[49] 42 U.S.C. 1320d–7(a)(1) (providing the general rule that, with limited exceptions, a provision or requirement under HIPAA supersedes any contrary provision of state law.) *See also* section 264(c)(2) of Public Law 104–191 (codified at 42 U.S.C. 1320d–2 note).

[50] 65 FR 82580 (the exception applies under section 1178(a)(2)(B) of the SSA and section 264(c)(2) of HIPAA).

[51] *Id.*

of states to provide individuals with additional privacy protection.

The Conference Report resolving differences in House and Senate bill language provides further evidence that Congress gave great weight to the need for privacy standards that adequately protect individual health information privacy at a Federal level but allow for greater health information privacy protection by states. Congressional references to ''rapidly'' progressing technological innovation [52] and the need to balance the privacy interests of individuals and the benefits of sharing data in certain circumstances (*e.g.,* sharing IIHI for treatment or aggregated data for research [53]) demonstrate that Congress considered that health care reform would require a carefully calibrated and appropriate method for exchanging data. Similarly, congressional deliberations demonstrate that Congress viewed individual privacy, confidentiality, and data security as critical for orderly administrative simplification.[54] As noted by one Member of Congress, privacy standards would add an additional layer of protection beyond the oath pledged by health care providers to keep information secure and, as described by another Member, would further protect information from being used in a ''malicious or discriminatory manner.'' [55]

Congress applied the Administrative Simplification provisions directly to three types of entities known as ''covered entities''—health plans, health care clearinghouses, and health care providers who transmit information electronically in connection with a transaction for which HHS has adopted a standard.[56] Congress also required the Secretary, no later than 12 months from the date of enactment, to identify ''detailed'' recommendations for Federal standards to protect the privacy and security of IIHI nationwide addressing, at least, (1) the rights that an individual who is a subject of IIHI should have; (2) the procedures that should be established for the exercise of such rights; and (3) the uses and disclosures of such information that should be authorized or required. Congress further directed the Secretary to promulgate standards to govern the privacy of information no later than 42 months after HIPAA's enactment if Congress itself had not done so via additional legislation.[57]

HIPAA section 264(d) required the Secretary to consult with the Department's National Committee on Vital and Health Statistics (NCVHS) [58] in carrying out the requirements of section 264.[59] Like Congress, NCVHS considered the appropriateness of permitting identifiable health information to be used for certain purposes and not others and requiring ''substantive and procedural barriers'' for still others. For example, NCVHS recommended that ''strong substantive and procedural protections'' be imposed if health information were to be disclosed to law enforcement, and, where identifiable health information would be made available for non-health purposes, individuals should be afforded assurances that their data would not be used against them.[60] Ultimately, NCVHS ''unanimously'' believed, ''[. . .] the Secretary and the Administration [should] assign the highest priority to the development of a strong position on health privacy that provides the highest possible level of protection for the privacy rights of patients.'' [61] NCVHS further noted that failure to do so would ''undermine public confidence in the health care system, expose patients to continuing invasions of privacy, subject record keepers to potentially significant legal liability, and interfere with the ability of health care providers and others to operate the health care delivery and payment system in an effective and efficient manner,'' which would undermine what Congress intended when it enacted HIPAA.[62]

The NCVHS explicitly stated that:

> The Committee strongly supports limiting use and disclosure of identifiable information to the minimum amount necessary to accomplish the purpose. The Committee also strongly believes that when identifiable health information is made available for non-health uses, patients deserve a strong assurance that the data will not be used to harm them.[63]

NCVHS acknowledged that secondary uses of individuals' health information could provide benefits to society but recognized that these uses posed the potential for harm to individuals in certain circumstances. As NCVHS described it, ''[a] restriction prohibiting secondary use against the record subject is an essential part of the 'bargain' that allows use of the data for socially beneficial purposes while protecting individual patients.'' [64] Thus, NCVHS strongly recommended restrictions of the ability of third parties to use information against the individual for purposes unrelated to health, particularly for law enforcement and other governmental purposes.

In its recommendations, NCVHS acknowledged that there might be difficulty in distinguishing between categories of users, but it also recognized the importance of doing so.[65] NCVHS recommended that ''any rules

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[52] *See* H.Rept. 104–736 at 270, *supra* note 40. *See also South Carolina Med. Ass'n* v. *Thompson,* 327 F.3d 346, 354 (4th Cir. 2003) (''Recognizing the importance of protecting the privacy of health information in the midst of the rapid evolution of health information systems, Congress passed HIPAA in August 1996.''), *cert. denied,* 540 U.S. 981 (2003).

[53] *See* H.Rept. 104–736 at 265, *supra* note 40.

[54] On a resolution waiving points of order against the Conference Report to H.R. 3103, members debated an ''erosion of privacy'' balanced against the administrative simplification provisions. *See* 142 Cong. Rec. H9777 and H9780, *supra* note 42.

[55] *See* comment from Rep. Sawyer, *supra* note 42. *See also* statement of Sen. Simon, *supra* note 42.

[56] *See* section 262 of Public Law 104–191, adding section 1172 to the SSA (codified at 42 U.S.C. 1320d–1). *See also* section 13404 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (Feb. 17, 2009) (codified at 42 U.S.C. 17934) (applying privacy provisions and penalties to business associates of covered entities).

[57] *See* section 264 of Public Law 104–191 (codified at 42 U.S.C. 1320d–2 note). Although the original regulations were enacted in 2001, more than 42 months from HIPAA's enactment, ''HHS's delay in promulgating the final Privacy Rule did not deprive the agency of the power to act.'' *Ass'n of Am. Physicians & Surgeons, Inc.* v. *HHS,* 224 F. Supp. 2d 1115, 1127 (S.D. Tex. 2002), aff'd, 67 F. App'x 253 (5th Cir. 2003) (noting that HHS's delay, ''particularly in the face of huge administrative burdens . . . do[es] not result in the invalidation of HHS's authority to promulgate the Privacy Rule'') (citing *Regions Hospital* v. *Shalala,* 522 U.S. 448, 459 n.2 (1998); *Brock* v. *Pierce Cnty.,* 476 U.S. 253, 260 (1986)).

[58] *See* section 264(a) and (d) of Public Law 104–191 (codified at 42 U.S.C. 1320d–2 note). The law also required the Secretary to consult with the U.S. Attorney General.

[59] 42 U.S.C. 242k(k) established the NCVHS as an 18-member committee within the Office of the Secretary. The statute requires the committee to include persons with expertise in the following fields: health statistics, electronic interchange of health care information, privacy and security of electronic information, population-based public health, purchasing or financing health care services, integrated computerized health information systems, health services research, consumer interests in health information, health data standards, epidemiology, and the provision of health services. NCVHS committee members are appointed to serve four-year terms. NCVHS serves as the statutory public advisory body to the Secretary ''for health data, statistics, privacy, and national health information policy and the Health Insurance Portability and Accountability Act.'' In addition, the Committee advises the Secretary, ''reports regularly to Congress on HIPAA implementation, and serves as a forum for interaction between HHS and interested private sector groups on a range of health data issues.'' National Comm. on Vital and Health Statistics, About NCVHS, *https://ncvhs.hhs.gov/.*

[60] Letter from NCVHS Chair Don E. Detmer to HHS Secretary Donna E. Shalala (June 27, 1997) (forwarding NCVHS recommendations), *https://ncvhs.hhs.gov/rrp/june-27-1997-letter-to-the-secretary-with-recommendations-on-health-privacy-and-confidentiality/.*

[61] *Id.* at Principal Findings and Recommendations.

[62] *Id.*

[63] *Id.* at Executive Summary.

[64] *Id.* at E.

[65] *Id.* at F.

regulating disclosures of identifiable health information be as clear and as narrow as possible. Each group of users must be required to justify their need for health information and must accept reasonable substantive and procedural limitations on access.''[66] This would allow for the disclosures that society deemed necessary and appropriate while providing individuals with clear expectations regarding their health information privacy.

2. The Health Information Technology for Economic and Clinical Health (HITECH) Act

On February 17, 2009, Congress enacted the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act)[67] to promote the widespread adoption and standardization of health information technology (health IT). In passing the law, Congress instructed that any new health IT standards take into account the privacy and security requirements of the HIPAA Rules.[68]

Within the HITECH Act, Congress enacted new HIPAA privacy and security requirements for covered entities and business associates and expanded certain rights of individuals with respect to their PHI. The HITECH Act affirmed that ''[t]he standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264'' of HIPAA ''shall remain in effect to the extent that they are consistent with this subtitle'' and directed the Secretary to ''amend such Federal regulations as required to make such regulations consistent with this subtitle.''[69] The HITECH Act further provided that ''[t]his title may not be construed as having any effect on the authorities of the Secretary under HIPAA privacy and security law,'' defined to include ''section 264 of the [HIPAA]'' and ''regulations under [that] provision[ ].''[70]

Congress understood the relationship between a connected health IT landscape, a necessary and vital component of health care reform,[71] and privacy and security standards when it enacted the HITECH Act. The Purpose statement of an accompanying House of Representatives report[72] on the Energy and Commerce Recovery and Reinvestment Act[73] recognizes that ''[i]n addition to costs, concerns about the security and privacy of health information have also been regarded as an obstacle to the adoption of [health IT].'' The Senate Report for S. 336[74] similarly acknowledges that ''[i]nformation technology systems linked securely and with strong privacy protections can improve the quality and efficiency of health care while producing significant cost savings.''[75] As the Department explained in the 2013 regulation referred to as the ''Omnibus Rule''[76] and discussed in greater detail below, the HITECH Act's new HIPAA privacy and security requirements[77] supported Congress' goal to promote widespread adoption and interoperability of health IT by ''strengthen[ing] the privacy and security protections for health information established by HIPAA.''[78]

B. Rulemaking Authority and Regulatory History

1. The Department's Rulemaking Authority Under HIPAA

In passing HIPAA, Congress recognized the importance of privacy for IIHI by requiring the Secretary to issue regulations on privacy in the event that Congress itself did not enact specific privacy legislation.[79] That statutory directive complemented the Secretary's general rulemaking authority to ''make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.''[80]

Congress further contemplated that related rulemaking authorities would not be static. Indeed, in a closely analogous section of the HIPAA Administrative Simplification provisions—related to enabling the electronic exchange of health information—Congress built in a mechanism to adapt such regulations as technology and health care evolve, directing that the Secretary review and modify the Administrative Simplification standards as determined appropriate, but not more frequently than once every 12 months.[81] The Department recognized how intertwined these particular Administrative Simplification standards would be with the standards for the privacy of individually identifiable health information, and thus promulgated a regulatory standard that limits modifications to all of the rules promulgated under the Administrative Simplification provisions to no more frequently than once every 12 months.[82]

The Secretary exercised each of these rulemaking authorities in 2000 to adopt 45 CFR 160.104(a), which reserves the Secretary's power to modify any ''standard or implementation specification adopted under this subchapter'' of these regulations, including the Administrative Simplification provisions. The Secretary invoked this modification authority to amend the Privacy Rule in 2002.[83]

Subsequently, as discussed above, Congress affirmed that the HIPAA Rules—including 45 CFR 160.104(a)—are to remain in effect to the extent that they are consistent with the HITECH Act and directed the Secretary to revise the HIPAA Rules as necessary for consistency with the HITECH Act.[84] At the same time, Congress also confirmed that the new law was not intended to have any effect on authorities already granted under HIPAA to the Department, including section 264 of that statute and the regulations issued under that provision. Congress' affirmation of the Secretary's rulemaking power, including the

[66] *Id.*

[67] Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (Feb. 17, 2009) (codified at 42 U.S.C. 201 note).

[68] Section 3009(a)(1)(B) of the HITECH Act (codified at 42 U.S.C. 300jj–19(a)(1)) requires that the health IT standards and implementation specifications adopted under section 3004 take into account the requirements of HIPAA privacy and security law.

[69] Section 13421(b) of the HITECH Act (codified at 42 U.S.C. 17951).

[70] Section 3009(a) of the HITECH Act (codified at 42 U.S.C. 300jj–19(a)), which, as stated above, preserves the Secretary's authority to modify the privacy regulations under 45 CFR 160.104(a).

[71] C. Stephen Redhead, ''The Health Information Technology for Economic and Clinical Health (HITECH) Act,'' Congressional Research Service (updated Apr. 27, 2009), *https://crsreports.congress.gov/product/pdf/R/R40161/9* (''[Health IT], which generally refers to the use of computer applications in medical practice, is widely viewed as a necessary and vital component of health care reform.'').

[72] H.Rept. 111–7, accompanying H.R. 629, 111th Cong., at 74 (2009).

[73] H.R. 629, Energy and Commerce Recovery and Reinvestment Act of 2009, introduced in the House on January 22, 2009, contained nearly identical provisions to subtitle D of the HITECH Act.

[74] Congress enacted the American Recovery and Reinvestment Act of 2009, which included the HITECH Act, on February 17, 2009. While it was the House version of the bill, H.R. 1, that was enacted, the Senate version, S. 336, contained nearly identical provisions to subtitle D of the HITECH Act.

[75] S.Rept. 111–3, 111th Cong. accompanying S. 336, 111th Cong., at 59 (2009).

[76] 78 FR 5566.

[77] Subtitle D of title XIII of the HITECH Act (codified at 42 U.S.C. 17921, 42 U.S.C. 17931–17941, and 42 U.S.C. 17951–17953).

[78] 78 FR 5568.

[79] *See* Section 264(c)(1) of Public Law 104–191 (codified at 42 U.S.C. 1320d–2 note).

[80] Section 1102 of the SSA (codified at 42 U.S.C. 1302).

[81] *See* Section 1174(b)(1) of Public Law 104–191 (codified at 42 U.S.C. 1320d–3).

[82] 45 CFR 160.104.

[83] *See* 67 FR 53182 (Aug. 14, 2002).

[84] Section 13421(b) of the HITECH Act (codified at 42 U.S.C. 17951).

authority to modify the Secretary's own regulations, thus confirms that the Secretary retains the authority to modify the Privacy Rule as often as every 12 months when appropriate, including to strengthen privacy and security protections for IIHI. In fact, after the enactment of the HITECH Act, the Secretary exercised this authority to modify the Privacy Rule again in 2013.[85]

To properly execute the HIPAA statutory mandate, and in accordance with the regulatory authority granted to it by Congress, the Department regularly evaluates the interaction of the Privacy Rule and state statutes and regulations governing the privacy of health information. In keeping with the Department's practice, this NPRM attempts to accommodate state autonomy to the extent consistent with the need to maintain rules for health information privacy that serve HIPAA's objectives. The proposed regulation, if finalized, would thus preempt state law only to the extent necessary to achieve the national objectives of HIPAA.

The Secretary has delegated authority to administer the HIPAA Rules and to make decisions regarding their implementation, interpretation, and enforcement to the HHS Office for Civil Rights (OCR).[86]

2. Regulatory History

The 2000 Privacy Rule

As directed by HIPAA, the Department provided a series of recommendations to Congress for a potential new law that would address the confidentiality of individually identifiable health information.[87] Congress did not act within its three-year self-imposed deadline. As a result, the Department published a proposed rule setting forth the required standards on November 3, 1999,[88] and issued the first final rule establishing ''Standards for Privacy of Individually Identifiable Health Information'' (''2000 Privacy Rule'') on December 28, 2000.[89]

The final rule announced ''standards to protect the privacy of individually identifiable health information'' to ''begin to address growing public concerns that advances in electronic technology and evolution in the health care industry are resulting, or may result, in a substantial erosion of the privacy surrounding'' health information.[90] On the eve of that rule's issuance, the President issued an Executive order recognizing the importance of protecting patient privacy, explaining that ''[p]rotecting the privacy of patients' protected health information promotes trust in the health care system. It improves the quality of health care by fostering an environment in which patients can feel more comfortable in providing health care professionals with accurate and detailed information about their personal health.'' [91] Thus, the primary goal of the Privacy Rule was to provide greater protections to individuals' privacy and to engender a trusting relationship between individuals and health care providers.[92]

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Since promulgation, the Privacy Rule has protected PHI [94] by limiting the circumstances under which covered entities and their business associates (collectively, ''regulated entities'') are permitted or required to use or disclose PHI and by requiring covered entities to have safeguards in place to protect the privacy of PHI. In adopting these regulations, the Department acknowledged the need to balance several competing factors, including existing legal expectations, individuals' privacy expectations, and societal expectations.[95] The Department noted ''the large number of comments from individuals and groups representing individuals demonstrate the deep public concern about the need to protect the privacy of individually identifiable health information'' and ''evidence about the importance of protecting privacy and the potential adverse consequences to individuals and their health if such protections are not extended.'' [96] The Department struck a balance between the ''competing interests—the necessity of protecting privacy and the public interest in using identifiable health information for vital public and private purposes—in a way that is also workable for the varied stakeholders[.]'' [97]

The Department established ''general rules'' for uses and disclosures of PHI, codified at 45 CFR 164.502, in the 2000 Privacy Rule.[98] The 2000 Privacy Rule also specified the circumstances in which a covered entity was required to obtain an individual's consent,[99] authorization,[100] or the opportunity for the individual to agree or object.[101] Additionally, it established rules for when a covered entity is permitted to use or disclose PHI without an individual's consent, authorization, or opportunity to agree or object.[102] In particular, the Privacy Rule permits certain uses and disclosures of PHI, without the individual's authorization, for identified activities that benefit the community, such as public health activities, law enforcement purposes, judicial and administrative proceedings, and research.

The Privacy Rule also established the rights of individuals with respect to their PHI, including the right to receive adequate notice of a covered entity's privacy practices, the right to request restrictions of uses and disclosures, the right to access (*i.e.,* to inspect and obtain a copy of) their PHI, the right to request an amendment of their PHI, and the right to receive an accounting of disclosures.[103]

As part of the final rule, the Department provided that covered entities were to comply with the 2000 Privacy Rule no later than 24 months following its effective date.[104]

The 2002 Privacy Rule

After publication of the 2000 Privacy Rule, the Department received many

[85] *See* 78 FR 5566.

[86] *See* U.S. Dep't of Health and Human Servs., Office of the Secretary, Office for Civil Rights; Statement of Delegation of Authority, 65 FR 82381 (Dec. 28, 2000); U.S. Dep't of Health and Human Servs., Office of the Secretary, Office for Civil Rights; Delegation of Authority, 74 FR 38630 (Aug. 4, 2009); U.S. Dep't of Health and Human Servs., Office of the Secretary, Statement of Organization, Functions and Delegations of Authority, 81 FR 95622 (Dec. 28, 2016).

[87] *See* Confidentiality of Individually Identifiable Health Information, U.S. Dep't of Health and Human Servs., Section I.A. (Sept. 1997), *https://aspe.hhs.gov/reports/confidentiality-individually-identifiable-health-information.*

[88] 64 FR 59918.

[89] 65 FR 82462.

[90] 65 FR 82462.

[91] Executive Order 13181 (Dec. 20, 2000), 65 FR 81321.

[92] *Id.*

[93] 65 FR 82462.

[94] PHI includes individuals' IIHI transmitted by or maintained in electronic media or any other form or medium, with certain exceptions. *See* 45 CFR 160.103 (definition of ''Protected health information'').

[95] *See* 65 FR 82471.

[96] 65 FR 82472.

[97] *Id.*

[98] 65 FR 82462.

[99] 45 CFR 164.506 was originally titled ''Consent for uses or disclosures to carry out treatment, payment, or health care operations.''

[100] 45 CFR 164.508.

[101] 45 CFR 164.510.

[102] 45 CFR 164.512.

[103] *See* 45 CFR 164.520, 164.522, 164.524, 164.526, and 164.528.

[104] The effective date of the Privacy Rule was updated to April 14, 2001. A covered entity meeting the definition of a small health plan was given 36 months to comply with the Privacy Rule. The compliance date for most covered entities was April 14, 2003. *See* 66 FR 12434 (Feb. 26, 2001).

inquiries and unsolicited comments about the Rule's impact and operation. As a result, the Department opened the 2000 Privacy Rule for further comment in March 2001, less than one month before the effective date and 25 months before the compliance date, for most covered entities and issued clarifying guidance on the Rule's implementation.[105] NCVHS' Subcommittee on Privacy, Confidentiality and Security held public hearings about the 2000 Privacy Rule. From those hearings, the Department learned more about concerns related to key provisions and their potential unintended consequences on health care quality and access.[106] In March 2002, the Department proposed modifications to the 2000 Privacy Rule to clarify the requirements and correct potential problems that could threaten access to, or quality of, health care.[107]

In response to the comments on the proposed rule, the Department finalized modifications on August 14, 2002 (''2002 Privacy Rule'').[108] This final rule clarified HIPAA's requirements while ''maintain[ing] strong protections for the privacy of individually identifiable health information.'' [109] These modifications addressed certain workability issues, including but not limited to clarifying distinctions between health care operations and marketing; modifying the minimum necessary standard to exclude disclosures authorized by individuals and clarify its operation; clarifying that consent is not required for treatment, payment, or health care operations, and to otherwise clarify the role of consent in the Privacy Rule; and making other modifications and conforming amendments consistent with the proposed rule. The Department also included modifications to the provisions permitting the use or disclosure of PHI for public health activities and for research activities without consent, authorization, or an opportunity to agree or object.

2013 Omnibus Final Rule

Following the enactment of the HITECH Act, the Department issued an NPRM, entitled ''Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health [HITECH] Act'' (''2010 NPRM''),[110] to propose implementation of certain HITECH Act requirements. In 2013, the Department issued the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health [HITECH] Act and the Genetic Information Nondiscrimination Act, and Other Modifications to the HIPAA Rules—Final Rule (''2013 Omnibus Rule''),[111] which implemented many of the new HITECH Act requirements, including strengthening individuals' privacy rights as related to their PHI.

The Department also finalized regulatory provisions not required by the HITECH Act, but necessary to address the ''workability and effectiveness'' of the HIPAA Rules and ''to increase flexibility for and decrease burden on regulated entities.'' [112] In the 2010 NPRM, the Department noted that it had not amended the HIPAA Privacy and Security Rules since 2002 and 2003, respectively, other than to amend the Enforcement Rule through a 2009 interim final rule.[113] It further explained that information gleaned from contact with the public since that time, enforcement experience, and technical corrections required to eliminate ambiguity provided the impetus for the Department's actions to make certain regulatory changes.[114]

For example, the Department modified its prior interpretation of the Privacy Rule requirement at 45 CFR 164.508(c)(1)(iv) that a description of a research purpose must be ''study specific.'' The Department explained that, under its new interpretation, the research purposes need only be described adequately so that it would be ''reasonable for the individual to expect that his or her protected health information could be used or disclosed for such future research.'' [115] The Department attributed its changed interpretation to the expressed concerns from covered entities, researchers, and other commenters to the 2010 NPRM that the former requirement did not represent current research practices. The Department expressed a similar rationale for the Privacy Rule modifications permitting certain disclosures of student immunization records to schools without an authorization,[116] and another provision redefining the definition of PHI to exclude information regarding an individual who has been deceased for more than 50 years.[117] For the latter, the Department noted that it was balancing the privacy interests of decedents' living relatives and other affected individuals against the legitimate needs of public archivists to obtain records.

None of the above-described changes were expressly required by the HITECH Act. Rather, the Department determined them to be necessary pursuant to its ongoing general rulemaking authority.[118]

III. Justification for This Proposed Rulemaking

HIPAA and the HIPAA Rules promote access to health care by establishing standards for the privacy of PHI in order to protect the confidentiality of individuals' health information. These protections promote the development and maintenance of confidence and trust between individuals and their health care providers and health plans, and help improve the completeness and accuracy of patient records.[119] The Privacy Rule, as it has been amended over time, carefully balances the interests of individuals and society in identifiable health information by establishing conditions for when and how such information may be used and

[105] 66 FR 12738 (Feb. 28, 2001).

[106] 67 FR 53183.

[107] 67 FR 14775 (Mar. 27, 2002).

[108] 67 FR 53182. See the final rule for changes in the entirety. The 2002 Privacy Rule was issued before the compliance date for the 2000 Privacy Rule. Thus, covered entities never implemented the 2000 Privacy Rule. Instead, they implemented the 2000 Privacy Rule as modified by the 2002 Privacy Rule.

[109] 67 FR 53182.

[110] 75 FR 40867 (July 14, 2010).

[111] 78 FR 5565. In addition to finalizing requirements of the HITECH Act that were proposed in the NPRM, the Department adopted modifications to the Enforcement Rule not previously adopted in an earlier interim final rule, 74 FR 56123 (Oct. 30, 2009), and to the Breach Notification Rule not previously adopted in an interim final rule, 74 FR 42739 (Aug. 24, 2009). The Department also finalized previously proposed Privacy Rule modifications as required by GINA, 74 FR 51698 (Oct. 7, 2009).

[112] 78 FR 5566. The Department's general rulemaking authority is codified in HIPAA section 264(c), and OCR conducts rulemaking under HIPAA based on authority granted by the Secretary.

[113] *See* 75 FR 40871. *See also* 74 FR 56123. The Department issued an interim final rule on October 30, 2009, to implement HITECH Act statutory changes to the HIPAA Enforcement Rule.

[114] 75 FR 40871.

[115] 78 FR 5612.

[116] *Id.* at 5616–17. *See also* 45 CFR 164.512(b)(1).

[117] 78 FR 5614. *See also* 45 CFR 164.502(f) and the definition of ''Protected health information'' at 45 CFR 160.103, excluding IIHI regarding a person who has been deceased for more than 50 years.

[118] In addition to the rulemakings discussed here, the Department has modified the HIPAA Privacy Rule for workability purposes and in response to changes in circumstances on two other occasions, and it issued another notice of proposed rulemaking in 2021 for the same reasons. *See* 79 FR 7289 (Feb. 6, 2014), 81 FR 382 (Jan. 6, 2016), and 86 FR 6446 (Jan. 21, 2021).

[119] *See* 65 FR 82463. *See also* H. Rept. 104–736 at 177 and 264, *supra* note 40. *See also* 142 Cong. Rec. H9780 (statement of Rep. Sawyer), *supra* note 42; 142 Cong. Rec. H9792 (statement of Rep. McDermott), *supra* note 42; and 142 Cong. Rec. S9515–16 (statement of Sen. Simon), *supra* note 42.

disclosed—with and without the individual's permission.

The Privacy Rule is balanced to protect an individual's privacy while allowing the use or disclosure of PHI for certain non-health care purposes, including in certain criminal, civil, and administrative investigations and proceedings. The Privacy Rule permits, but does not require, covered entities to disclose PHI to law enforcement officials, without the individual's written authorization, under specific circumstances.[120] For example, a covered entity is permitted to disclose PHI to law enforcement in compliance with, and as limited by, the relevant requirements of a court order. A covered entity is also permitted to disclose certain limited types of PHI in response to a law enforcement official's request for such information for the limited purpose of identifying or locating a suspect, fugitive, material witness, or missing person. Such disclosures are also currently permitted, under certain circumstances, for health oversight purposes,[121] judicial and administrative proceedings,[122] or to coroners and medical examiners.[123] Except when required by law, the disclosures summarized above are subject to a minimum necessary determination by the covered entity.[124] When reasonable to do so, the covered entity may rely upon the representations of the public health authority, law enforcement official, or other public official as to what information is the minimum necessary for their lawful purpose.[125] Moreover, if the law enforcement official making the request for information is not known to the covered entity, the covered entity must verify the identity and authority of such person prior to disclosing the information.[126]

However, the Department believes that developments in the legal environment have disrupted the balance. On one hand, there is the individual's interest in the privacy of their health information and that of society in fostering trust between individuals and health care providers to promote public health. On the other hand, there is the interest of others in using or disclosing that information to achieve certain public policy goals, in this case, for purposes of criminal, civil, and administrative investigations or proceedings. Those developments have made information related to reproductive health care, which has long been considered highly sensitive,[127] more likely to be of interest for punitive non-health care purposes, and thus more likely to be disclosed if sought for a purpose permitted under the Privacy Rule today. The interest in this sensitive health information is likely to remain high, even where the reproductive health care has been provided under circumstances in which it was lawful to do so. The Department believes PHI will be increasingly targeted by those seeking evidence for criminal, civil, or administrative investigations into or proceedings against persons in connection with seeking, obtaining, providing, or facilitating reproductive health care—or identifying persons for such purposes, thereby jeopardizing the relationships between individuals and their health care providers, even when such health care is lawfully obtained.

To address these developments, the Department is proposing to protect this sensitive PHI and preserve that balance by establishing a new purpose for which disclosures are prohibited in certain circumstances—that is, the use or disclosure of PHI for the criminal, civil, or administrative investigation of or proceeding against an individual, regulated entity, or other person for seeking, obtaining, providing, or facilitating reproductive health care, as well as the identification of any person for the purpose of initiating such an investigation or proceeding. Such disclosures of PHI would be prohibited when the reproductive health care: (1) is provided outside of the state where the investigation or proceeding is authorized and where such health care is lawfully provided; (2) is protected, required, or authorized by Federal law, regardless of the state in which such health care is provided; or (3) is provided in the state in which the investigation or proceeding is authorized and that is permitted by the law of that state. In these circumstances, the state lacks any substantial interest in seeking the disclosure. Protecting against disclosures of PHI in these circumstances thus directly advances the long-understood purpose of the HIPAA privacy protections without unduly interfering with legitimate state prerogatives.

To assist in effectuating this prohibition, the Department proposes to require covered entities in certain circumstances to obtain an attestation from the person requesting the use or disclosure that the use or disclosure is not for a prohibited purpose. Additionally, the Department proposes to clarify the definition of ''person'' and certain other terms that distinguish between state laws that are contrary to the Privacy Rule and are therefore preempted by it and those that are excepted from preemption. The Department also discusses its view of ''child abuse'' for the purposes of the Privacy Rule and which persons a covered entity may decline to recognize as an individual's personal representative under particular circumstances. This NPRM contains proposals for minor technical corrections that reflect the Department's long-standing interpretation of the Privacy Rule. Lastly, the Department proposes to require modifications to the Notice of Privacy Practices (NPP) to ensure that individuals are aware of and understand the proposed prohibition.

A. HIPAA Encourages Trust by Carefully Balancing Individuals' Privacy Interests With Others' Interests in Using or Disclosing PHI

It is well established that a functioning health care system depends in part on patients trusting their health care providers and health care systems.[128] According to the American Medical Association (AMA), a key element of patient trust is privacy protection, ''a crucial element for honest health discussions.'' [129] Privacy is the core foundation of the relationship between individuals and their health care providers.[130] The original Hippocratic Oath required physicians to pledge to maintain the confidentiality of information they learn about their patients.[131] Individuals' health privacy concerns affect their trust in health care providers, and thus, their willingness to provide complete and accurate information to health care providers.[132]

[120] *See* 45 CFR 164.152(f).

[121] 45 CFR 164.512(d).

[122] 45 CFR 164.512(e).

[123] 45 CFR 164.512(g)(1).

[124] 45 CFR 164.502(b) and 164.514(d).

[125] 45 CFR 164.514(d)(3)(iii)(A).

[126] 45 CFR 164.514(h).

[127] *See* Letter from NCVHS, *supra* note 14.

[128] *See* Jennifer Richmond, Marcella H. Boynton, Sachiko Ozawa, et al., ''Development and Validation of the Trust in My Doctor, Trust in Doctors in General, and Trust in the Health Care Team Scales,'' Social Science & Medicine (Apr. 2022), *https://www.sciencedirect.com/science/article/abs/pii/S0277953622001332?via%3Dihub.*

[129] *See* ''Patient Perspectives Around Data Privacy,'' American Medical Association (2022), *https://www.ama-assn.org/system/files/ama-patient-data-privacy-survey-results.pdf.*

[130] *Id.*

[131] Warren T. Reich, editor. Vol. 5. Macmillan; New York, NY: 1995. Oath of Hippocrates; p. 2632. (Encyclopedia of Bioethics).

[132] *See* ''Development and Validation of the Trust in My Doctor, Trust in Doctors in General, and Trust in the Health Care Team Scales,'' *supra* note 128; Bradley E. Iott, Celeste Campos-Castillo, Denise L. Anthony, ''Trust and Privacy: How Patient Trust in Providers is Related to Privacy Behaviors and Attitudes,'' AMIA Annual Symposium Proceedings (Mar. 2020), *https://*

Individuals must disclose sensitive information to their health care providers to obtain appropriate health care.[133] If individuals do not trust that the sensitive information they disclose to their health care providers will be kept private, they may be deterred from seeking or obtaining needed health care or withhold information from their health care providers, compromising the quality of the health care they receive.[134] Similarly, if a health care provider does not trust that the information they include in an individual's medical records will not be kept private, the health care provider might leave gaps or include inaccuracies when preparing medical records, creating a risk that ongoing or future health care would be compromised. Thus, the Privacy Rule promotes access to higher quality health care by protecting the privacy of individuals' health information in order to engender trust between individuals and health care providers and to help improve the completeness and accuracy of individuals' medical records. The Federal Government has a strong interest in ensuring that individuals have access to high-quality health care,[135] and from its inception, the Privacy Rule has recognized the importance of trust to health care quality.

Of course, health information—and PHI in particular—can be useful for purposes other than an individual's own health care. Indeed, society also benefits when individuals trust their health care providers to keep highly sensitive information private for the same reasons that individuals benefit. After all, it is to society's benefit that individuals seek out necessary medical care, and that when they do, they receive high-quality health care based on information that is more likely to be complete and accurate when individuals trust their health care providers. Individuals' lack of trust in health care providers and the health care system can have serious consequences for society.[136]

There is also significant interest in using PHI to address non-health care concerns, such as for research, law enforcement purposes, judicial and administrative proceedings, health oversight activities, and others. As the Department explained in the 1999 Privacy Rule NPRM, ''The information may be sought well before a trial or hearing, to permit the party to discover the existence or nature of testimony or physical evidence, or in conjunction with the trial or hearing, in order to obtain the presentation of testimony or other evidence. These uses of health information are clearly necessary to allow the smooth functioning of the legal system.'' [137] For example, in the absence of a permission to use or disclose PHI for judicial and administrative proceedings, a regulated entity would be dependent upon an individual's authorization to use or disclose PHI to defend itself against a medical malpractice claim brought by the individual, rendering the regulated entity dependent upon the very person bringing the claim against them. The Department believes that there is societal benefit to permitting such uses and disclosures where such uses and disclosures do not undermine the public policy goals set by Congress when it passed HIPAA—that is, where they do not undermine the trust of individuals in the health care system and the ability of individuals to receive high-quality health care.[138] The Department has long permitted uses and disclosures of PHI for non-health care purposes in such circumstances, subject to certain limitations because of the potential harm they could cause to individuals.

As discussed in section II of this preamble, the Privacy Rule represents the Department's careful balancing of individuals' interests and the interests of others in a way that engenders individuals' trust and enables high-quality health care, while also allowing others to use individuals' PHI for certain public policy purposes. The Department recognized the need for trust between patients and health care providers in the 2000 Privacy Rule, noting that ''[t]he provision of high-quality health care requires the exchange of personal, often-sensitive information between an individual and a skilled practitioner. Vital to that interaction is the patient's ability to trust that the information shared will be protected and kept confidential.'' [139] Further, if individuals do not trust that the sensitive information they give their health care providers will be kept private, they may be deterred from seeking needed health care.[140] And when individuals do seek health care, they may be reluctant to be completely forthcoming with their health care providers, thus compromising the quality of the health care they receive. As the Department also stated, ''[h]ealth care professionals who lose the trust of their patients cannot deliver high-quality care.'' [141] And when the trust of individuals is lost, the public's health as a whole is jeopardized.

Throughout the preamble to the 2000 Privacy Rule and the preambles to the rules revising the Privacy Rule, the Department described and explained its efforts to balance those interests. In the 2002 Privacy Rule, the Department discussed its re-evaluation of the balance established by the 2000 Privacy Rule and revised certain provisions because of concerns that arose as regulated entities prepared to implement its requirements. The Department made certain revisions to protect the privacy interests of individuals by strengthening the requirements for covered entities to inform individuals of their privacy practices through an NPP. These revisions afforded individuals the opportunity to engage in discussions

www.ncbi.nlm.nih.gov/pmc/articles/PMC7153104/; Pamela Sankar, Susan Mora, Jon F. Merz, et al., ''Patient perspectives of medical confidentiality: a review of the literature,'' Journal of General Internal Medicine (Aug. 2003), p. 659–69, *https://pubmed.ncbi.nlm.nih.gov/12911650/.*

[133] *See* ''Recommendations on Privacy and Confidentiality, 2006–2008,'' Nat'l Comm. on Vital and Health Stats. (May 2009), p. 4, *https://ncvhs.hhs.gov/wp-content/uploads/2014/05/privacyreport0608.pdf; See also* Letter from NCVHS (forwarding NCVHS recommendations) (''As a practical matter, it is often essential for individuals to disclose sensitive, even potentially embarrassing, information to a health care provider to obtain appropriate care''), *supra* note 18.

[134] *See* 64 FR 60019 (In the 1999 Privacy Rule NPRM, the Department discussed confidentiality as an important component of trust between individuals and health care providers and cited a 1994 consumer privacy survey that indicated that a lack of privacy may deter patients from obtaining preventive care and treatment.); ''Trust and Privacy: How Patient Trust in Providers is Related to Privacy Behaviors and Attitudes,'' *supra* note 132.

[135] *See* Testimony (transcribed) of Peter R. Orszag, Director, Congressional Budget Office, Hearing on Comparative Clinical Effectiveness before House of Representatives Committee on Ways and Means, Subcommittee on Health, 2007 WL 1686358 (June 12, 2007) (''because federal health insurance programs play a large role in financing medical care and represent a significant expenditure, the federal government itself has an interest in evaluations of the effectiveness of different health care approaches''); Statement of Sen. Durenberger introducing S.1836, American Health Quality Act of 1991 and reading bill text, 137 Cong. Rec. S26720 (Oct. 17, 1991) (''[T]he Federal Government has a demonstrated interest in assessing the quality of care, access to care, and the costs of care through the evaluative activities of several Federal agencies.'').

[136] *See* Letter from NCVHS, *supra* note 18.

[137] 64 FR 59959.

[138] *See* Letter from NCVHS, at Executive Summary, *supra* note 60 (with forwarded NCVHS recommendations, ''The importance of trust in the provider-patient relationship must be preserved. Health records are used to improve the quality of health care [. . .] protect the public health, and assure public accountability of the health care system.'').

[139] 65 FR 82463.

[140] *See* 64 FR 60019 (In the 1999 Privacy Rule NPRM, the Department discussed confidentiality as an important component of trust between individuals and health care providers and cited a 1994 consumer privacy survey that indicated that a lack of privacy may deter patients from obtaining preventive care and treatment.).

[141] 65 FR 82468.

regarding the use and disclosure of their PHI, while protecting the interests of covered entities by allowing activities that are essential to the provision of high-quality health care to occur unimpeded, reducing the burden on such entities.[142] The Department made other revisions to ''balance an individual's privacy expectations with a covered entity's need for information for reimbursement and quality purposes.'' [143] In that same rulemaking, in addressing comments on still other revisions, the Department clearly stated, ''Patient privacy must be balanced against other public goods, such as research and the risk of compromising such research projects if researchers could not continue to use such data.'' [144]

In more recent rulemakings, the Department has continued its efforts to build and maintain individuals' trust in the health care system by balancing the interests of individuals with those of others as it further revised the Privacy Rule. For example, in explaining revisions made as part of the 2013 Omnibus Rule, the Department stated, ''The Privacy Rule, at § 164.512(b), recognizes that covered entities must balance protecting the privacy of health information with sharing health information with those responsible for ensuring public health and safety.'' [145] As another example from that same rule, the Department revised the requirements for the distribution of the NPP because ''[w]e believe these distribution requirements best balance the right of individuals to be informed of their privacy rights with the burden on health plans to provide the revised [Notice of Privacy Practices].'' [146] In the 2014 CLIA Program and HIPAA Privacy Rule; Patients' Access to Test Reports Final Rule, the Department further balanced the interests of individuals and those of others by providing individuals (or their personal representatives) with the right to access test reports directly from laboratories subject to HIPAA.[147] This rulemaking afforded the Department with the opportunity to demonstrate the supremacy of the individual's right of access over the potential burden imposed on others, in this case, the laboratory. And still more recently, the primary focus of the 2016 HIPAA Privacy Rule and the National Instant Criminal Background Check System (NICS) Final Rule was to issue a narrowly tailored rule that appropriately balanced public safety goals with individuals' privacy interests to ensure that individuals are not discouraged from seeking voluntary treatment for mental health needs.[148]

As part of balancing individuals' interests with those of society, the Department has recognized that it may be necessary to provide certain types of health information with special protection because they are particularly sensitive. For example, while the Department usually applies the same privacy standards to all PHI regardless of the type of health care at issue, it affords ''special protections'' to psychotherapy notes. These protections are afforded in part because of the ''particularly sensitive information'' those notes contain and in part because of the unique function of these records, which are by definition maintained separately from an individual's medical record.[149] As the Department explained when it proposed these protections, ''[p]sychotherapy notes are of primary value to the specific provider and the promise of strict confidentiality helps to ensure that the patient will feel comfortable freely and completely disclosing very personal information essential to successful treatment.'' [150] The Department elaborated that, ''[b]ecause of the sensitive nature of the problems for which individuals consult psychotherapists,'' and the ''embarrassment or disgrace'' engendered by ''disclosure of confidential communications made during counseling sessions,'' even ''the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment.'' [151] To support the development and maintenance of an individual's trust and protect the relationship between an individual and their therapist, psychotherapy notes may be disclosed without an individual's authorization only in limited circumstances, such as to avert a serious and imminent threat to health or safety. Those limited circumstances do not include judicial and administrative proceedings or law enforcement purposes unless the disclosure is ''necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.'' [152]

Information related to an individual's reproductive health and associated health care is also especially sensitive and has long been recognized as such. As stated in the AMA's Principles of Medical Ethics, the ''decision to terminate a pregnancy should be made privately within the relationship of trust between patient and physician in keeping with the patient's unique values and needs and the physician's best professional judgment.[153] NCVHS first noted it as an example of a category of health information commonly considered to contain sensitive information in 2008.[154] From 2005–2010, NCVHS held nine hearings that addressed questions about sensitive information in medical records and identified additional categories of sensitive information beyond those addressed in Federal and state law, including ''sexuality and reproductive health information,'' which NCVHS elaborated on in a 2010 letter to the Secretary:

> Some reproductive issues may expose people to political controversy [. . .], and public knowledge of an individual's reproductive history may place [them] at risk of stigmatization. Additionally, individuals may wish to have their reproductive history segmented so that it is not viewed by family members who otherwise have access to their records. Parents may wish to delay telling their offspring about adoption, gamete donation, or the use of other forms of assisted reproduction technology in their conception, and, thus, it may be important to have the capacity to segment these records.[155]

At that time, the general privacy standards promulgated under HIPAA adequately protected information related to reproductive health care. Based on settled Federal constitutional law in 2000, the Department did not see a need to treat uses or disclosures of PHI related to reproductive health care, such as information about a pregnancy termination, differently from other uses or disclosures of PHI related to other categories of health care when establishing the Federal standards for privacy as mandated by HIPAA.[156] HHS knew that individuals generally could legally access reproductive health care nationwide. And because such health care generally was legal and constitutionally protected, HHS was confident that law enforcement or other

[142] 67 FR 53209.

[143] 67 FR 53216.

[144] 67 FR 53226.

[145] 78 FR 5616.

[146] 78 FR 5625.

[147] 79 FR 7290 (Feb. 6, 2014).

[148] 81 FR 382, 386 (Jan. 6, 2016).

[149] *See* 45 CFR 164.501 (definition of ''Psychotherapy notes'') (explicitly providing that psychotherapy notes are separated from the individual's medical record).

[150] 64 FR 59941.

[151] *Id.*

[152] 45 CFR 164.508(a)(2).

[153] Amendment to Opinion 4.2.7, Abortion H–140.823, American Medical Association (2022), *https://policysearch.amaassn.org/policyfinder/detail/%224.2.7%20Abortion%22?uri=%2FAMADoc%2FHOD.xml-H-140.823.xml.*

[154] *See* Letter from NCVHS, *supra* note 14.

[155] *See* Letter from NCVHS Chair Justine M. Carr to HHS Secretary Kathleen Sebelius (Nov. 10, 2010) (forwarding NCVHS recommendations).

[156] *See* 65 FR 82464–70.

third parties typically would not seek individuals' health information for purposes of investigating violations of criminal or civil laws related to highly sensitive types of health care, such as the provision of or access to reproductive health care, except in certain limited circumstances aimed at ensuring the quality and safety of such health care. Therefore, until states' recent efforts to regulate and criminalize the provision of or access to reproductive health care, effectuating the purposes of HIPAA did not require regulatory provisions that restricted uses and disclosures of PHI related to those activities.

B. Developments in the Legal Environment Are Eroding Individuals' Trust in the Health Care System

The Supreme Court's decision in *Dobbs* on June 24, 2022, created new concerns about the privacy of PHI related to reproductive health care. In that decision, the Court overruled *Roe* v. *Wade* [157] and *Planned Parenthood of Southeastern Pennsylvania* v. *Casey* [158] and held that constitutional challenges to state abortion regulations are subject to rational-basis review.[159] But the Court's decision did not disturb other longstanding constitutional principles, such as those protecting the right of interstate travel or the right to use contraception.[160] Nor did it displace Federal statutes, such as Emergency Medical Treatment and Active Labor Act [161] (EMTALA), that protect access to reproductive health care in particular circumstances.

Following the Supreme Court's decision, states have taken actions, some tacitly and some explicitly, that could interfere with individuals' longstanding expectations created by HIPAA and the Privacy Rule with respect to the privacy of their PHI.[162] The Department is aware of reports that persons or authorities have reached or intend to reach beyond their own states' borders to investigate reproductive health care that has been performed in other states where that health care is legal.[163] These actions present new concerns nationwide for the protection of health information privacy mandated by HIPAA. Because the Privacy Rule currently permits uses and disclosures of PHI for certain purposes,[164] including when another law requires a regulated entity to make the use or disclosure,[165] regulated entities after *Dobbs* might be compelled to use or disclose PHI to law enforcement or other persons who may use that health information against an individual, a regulated entity, or another person who has sought, obtained, provided, or facilitated reproductive health care, even when such health care is lawful in the circumstances in which the health care is obtained.[166]

One significant consequence of the developments in Federal and state law is the erosion of individuals' trust in health care providers to protect their health information privacy, creating barriers or disincentives for individuals to obtain health care, including legal reproductive health care, and increasing the potential for health care providers to possess incomplete or inaccurate medical records. A 2023 qualitative study of individuals who obtained abortions after the passage of a law significantly restricting abortion access in Texas highlighted the concerns of such individuals with respect to the privacy of PHI related to reproductive health care they received.[167] In fact, a recently filed complaint details the decision made by the plaintiff's out-of-state health care provider to describe the plaintiff's condition as something other than an abortion, even though the abortion was lawful in the state in which it was provided because the health care provider was concerned about the ramifications of documenting the health care provided as an abortion.[168] Another significant consequence is the risk that individual medical records will not be maintained with completeness and accuracy, including as they relate to legal reproductive health care. The developments discussed above have increased uncertainty nationwide for individuals, regulated entities, and other persons about the privacy of an individual's PHI. Recent state actions now place individuals and health care providers in potential civil or criminal jeopardy when PHI related to an individual's reproductive health is used and disclosed, regardless of whether the health care services are obtained or performed legally.

In the past, some law enforcement officials exercised their authority under general criminal statutes to obtain PHI for use against pregnant individuals on the basis of their pregnancy status or pregnancy outcomes.[169] But more recent developments in law have created an environment in which law enforcement and others are increasingly likely to request PHI from regulated entities for use against individuals,[170] health care

[157] 410 U.S. 113 (1973).

[158] 505 U.S. 833 (1992).

[159] *Dobbs,* 142 S. Ct. at 2283–2284.

[160] *See id.* at 2309 (Kavanaugh, J., concurring).

[161] Public Law 99–272, 100 Stat. 164 (Apr. 7, 1986) (codified at 42 U.S.C. 1395dd). For further discussion of a health care provider's obligations under the EMTALA statute, *see https://www.hhs.gov/sites/default/files/emergency-medical-care-letter-to-health-care-providers.pdf.*

[162] *See, e.g.,* Kayte Spector-Bagdady, Michelle M. Mello, ''Protecting the Privacy of Reproductive Health Information After the Fall of *Roe* v *Wade,*'' JAMA Network (June 30, 2022), *https://jamanetwork.com/journals/jama-health-forum/fullarticle/2794032;* Lisa G. Gill, ''What does the overturn of *Roe* v. *Wade* mean for you?,'' Consumer Reports (June 24, 2022), *https://www.consumerreports.org/health-privacy/what-does-the-overturn-of-roe-v-wade-mean-for-you-a1957506408/.*

[163] *See, e.g.,* Giulia Carbonaro, ''Texas bill targeting internet abortion access 'attacks individual liberty','' Newsweek (Mar. 3, 2023), *https://www.newsweek.com/texas-bill-targeting-internet-abortion-access-attacks-individual-liberty-1785254;* Alice Miranda Ollstein and Megan Messerly, ''Missouri wants to stop out-of-state abortions. Other states could follow,'' Politico (Mar. 19, 2022), *https://www.politico.com/news/2022/03/19/travel-abortion-law-missouri-00018539.* For pending bills that would impose limitations on the ability of individuals to travel to obtain reproductive health care, *see, e.g.,* H.B. 2012, Missouri 101st General Assembly (2022) (would have permitted a private citizen to sue a person who provides or facilitates an abortion for a Missouri resident, including an out-of-state physician or person who transports an individual across state lines to a health care provider); H.B. No. 787, Texas State Legislature (2023) (prohibiting the receipt of tax incentives by a business entity that assists an employee in obtaining an abortion, including through funding out-of-state travel for the procedure); and H.B. 90 and S.B. 600, Tennessee General Assembly (2023) (prohibiting local governments from spending money to assist ''a person in obtaining an abortion,'' including through funding out-of-state travel for the procedure).

[164] 45 CFR 164.502(a)(1).

[165] 45 CFR 164.512(a).

[166] *See* Eleanor Klibanoff, ''Lawyers preparing for abortion prosecutions warn about health care, data privacy,'' The Texas Tribune (July 25, 2022), *https://www.texastribune.org/2022/07/25/abortion-prosecution-data-health-care/*(discussing the fact that the most common way PHI is obtained by law enforcement is through health care provider disclosures).

[167] Courtney C. Baker, Emma Smith, Mitchell D. Creinin, et al., ''Texas Senate Bill 8 and Abortion Experiences in Patients with Fetal Diagnoses: A Qualitative Analysis,'' Obstetrics & Gynecology (Mar. 2023), *https://pubmed.ncbi.nlm.nih.gov/36735418* (citing a representative statement made by a study participant, '' 'I would joke around and say, well don't sue me, but halfway mean it.' '').

[168] *See* Brief for Zurawski at p. 2 (One plaintiff had to travel out of state for an abortion to save the life of one of her twins, and afterwards, fearful of documenting her abortion, her health care provider instead described her condition as ''vanishing twin syndrome.'').

[169] *See* ''Self-Care, Criminalized: August 2022 Preliminary Findings,*'' *supra* note 11; ''Confronting Pregnancy Criminalization: A Practical Guide for Healthcare Providers, Lawyers, Medical Examiners, Child Welfare Workers, and Policymakers,'' Pregnancy Justice (June 2022), *https://www.pregnancyjusticeus.org/confronting-pregnancy-criminalization/.*

[170] *See, e.g.,* S.C. Code Ann. sec. 44–41–80(b) and NRS 200.220. *See also* ''Self-Care, Criminalized: August 2022 Preliminary Findings,*'' *supra* note 11, p. 2–3 (From 2000 to 2020, out of 54 cases, 74% of the adult cases involved the criminalization of the person for self-managing their own abortion, and 39% of the cases reported to law enforcement were by health care providers.); ''Talk of prosecuting women for abortion pills roils antiabortion movement,'' *supra* note 11.

providers, and others, solely because such persons sought, obtained, provided, or facilitated lawful reproductive health care.[171] This environment of increased demand for PHI for these purposes is not limited to states in which those legal developments have occurred. Rather, these legal developments have nationwide implications because of the overall effects on the relationship between health care providers and individuals and the flow of health information across state lines. Examples of such cross-state health information flows include disclosures from health care providers to health plans with a multi-state presence or between health care providers in different states to treat individuals as they travel across the country.

This reality is in tension with many individuals' expectation that they have or should have the right to health information privacy, including the right to determine who has access to that information. In fact, in its most recent annual survey on patient privacy, the AMA found that, of 1,000 patients surveyed: (1) nearly 75% are concerned about protecting the privacy of their own health information; and (2) 59% of patients worry about health data being used by companies to discriminate against them or their loved ones.[172] In its report on the survey, the AMA opines that a lack of health information privacy raises many questions about circumstances that could put patients and physicians in legal peril, and that the ''primary purpose of increasing [health information] privacy is to build public trust, not inhibit data exchange.'' [173] The mismatch between privacy expectations and current legal protections for health information privacy undermines trust between individuals and health care providers nationwide, thereby decreasing access to, and effectiveness of, health care for individuals.

The present situation also has resulted in ambiguity and confusion for individuals and health care providers, many of whom are uncertain about when health information is protected under the HIPAA Rules given recent legal developments.[174] This confusion undermines access to health care and individual privacy—including for individuals seeking or obtaining health care that is lawful nationwide. For example, the Department is aware that some health care providers, both clinicians and pharmacies, are hesitant to prescribe or fill prescriptions for medications that can result in pregnancy loss, even when those prescriptions are intended to treat individuals for other health matters, because of fear of law enforcement action.[175] As a result, these health care providers are either denying access to prescriptions that affect an individual's quality of life or requiring additional PHI to justify an individual's need for such prescriptions for purposes that are permissible under state law.[176] Although most health care providers, including pharmacies, are subject to the HIPAA Rules, and thus, limited in the purposes for which they are permitted to use or disclose such PHI, an individual's privacy is necessarily reduced as an increasing number of persons have access to an increasing amount of their PHI. Additionally, individuals face an increasing risk to the security of their PHI as the number of information technology systems in which the PHI is stored increases. As the number of persons and information technology systems with access to this PHI increases, this expands the number and types of regulated entities from which law enforcement and others may try to seek disclosure of this highly sensitive information. Individual trust in regulated entities is eroded when individuals' access to health care is questioned and their PHI is subject to disclosures that previously were unnecessary.

Impingements on health information privacy related to reproductive health care are likely to have a disproportionately greater effect on women, individuals of reproductive age, and individuals from communities that have been historically underserved, marginalized, or subject to discrimination or systemic disadvantage by virtue of their race, disability, social or economic status, geographic location, or environment.[177] Historically underserved and marginalized individuals are also more likely to be the subjects of investigations and proceedings about any suspected interest in, or obtaining of, reproductive health care, even where such health care is lawful under the circumstances in which it is provided.[178] They are also less likely to have adequate access to legal counsel to defend themselves from

[171] The Department believes that those investigating or bringing proceedings against individuals, health care providers, or other persons for seeking, obtaining, providing, or facilitating reproductive health care will increasingly seek to access PHI as part of their investigation or proceeding. *See, e.g.,* Karen Brooks Harper, ''Texas abortion foes use legal threats and propose more laws to increase pressure on providers and their allies,'' The Texas Tribune (July 18, 2022), *https://www.texastribune.org/2022/07/18/texas-abortion-laws-pressure-campaign/;* Timothy Bella, ''Doctor in 10-year-old rape victim's abortion faces AG inquiry, threats,'' The Washington Post (July 27, 2022), *https://www.washingtonpost.com/politics/2022/07/27/abortion-doctor-girl-rape-caitlin-bernard-investigation/;* ''Doctor says she shouldn't have to turn over patients' abortion records,'' *supra* note 13.

[172] *See* ''Patient Perspectives Around Data Privacy,'' *supra* note 129.

[173] *Id.* at 2.

[174] *See* Press Release, American Medical Association, American Pharmacists Association, American Society of Health-System Pharmacists, and National Community Pharmacists Association, ''Statement on state laws impacting patient access to necessary medicine'' (Sept. 8, 2022), *https://www.ama-assn.org/press-center/press-releases/statement-state-laws-impacting-patient-access-necessary-medicine. See also* Abigail Higgins, ''Abortion rights advocates fear access to birth control could be curtailed,'' The Washington Post (June 24, 2022), *https://www.washingtonpost.com/nation/2022/06/24/birth-control-access-supreme-court-abortion-ruling/.*

[175] *See* Interview with Donald Miller, PharmD, ''Methotrexate access becomes challenging for some patients following Supreme Court decision on abortion,'' Pharmacy Times (July 20, 2022), *https://www.pharmacytimes.com/view/methotrexate-access-becomes-challenging-for-patients-following-supreme-court-decision-on-abortion;* Jamie Ducharme, ''Abortion restrictions may be making it harder for patients to get a cancer and arthritis drug,'' Time (July 6, 2022), *https://time.com/6194179/abortion-restrictions-methotrexate-cancer-arthritis/;* Katie Shepherd and Frances Stead Sellers, ''Abortion bans complicate access to drugs for cancer, arthritis, even ulcers,'' The Washington Post (Aug. 8, 2022), *https://www.washingtonpost.com/health/2022/08/08/abortion-bans-methotrexate-mifepristone-rheumatoid-arthritis/.*

[176] *See, e.g.,* Jen Christensen, ''Women with chronic conditions struggle to find medications after abortion laws limit access,'' CNN Health (July 22, 2022), *https://www.cnn.com/2022/07/22/health/abortion-law-medications-methotrexate/index.html;* Brittni Frederiksen, Matthew Rae, Tatyana Roberts, et al., ''Abortion Bans May Limit Essential Medications for Women with Chronic Conditions,'' Kaiser Family Foundation (Nov. 17, 2022), *https://www.kff.org/womens-health-policy/issue-brief/abortion-bans-may-limit-essential-medications-for-women-with-chronic-conditions/.*

[177] *See* Christine Dehlendorf, Lisa H. Harris, Tracy A. Weitz, ''Disparities in Abortion Rates: A Public Health Approach,'' American Journal of Public Health. (Oct. 2013), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780732/. See also* Kiara Alfonseca, ''Why Abortion Restrictions Disproportionately Impact People of Color, ABC News (June 24, 2022), *https://abcnews.go.com/Health/abortion-restrictions-disproportionately-impact-people-color/story?id=84467809;* Susan A. Cohen, ''Abortion and Women of Color: The Bigger Picture,'' Guttmacher Institute (Aug. 6, 2008), *https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture;* ''The Disproportionate Harm of Abortion Bans: Spotlight on *Dobbs* v. *Jackson Women's Health,*'' Center for Reproductive Rights (Nov. 29, 2021), *https://reproductiverights.org/supreme-court-case-mississippi-abortion-ban-disproportionate-harm/.*

[178] *See* Brief of Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice—Mississippi in Action, et al. at *59–60, *Dobbs,* 142 S. Ct. (discussing the likelihood that those who terminate their pregnancies and anyone who assists them may face criminal investigation or arrest, exacerbating the mass incarceration of marginalized people in Mississippi and Louisiana, particularly in light of the states' disproportionate rates of incarceration for people of color).

such actions.[179] Such individuals are thus especially likely to be concerned that information they give to their health care providers regarding their reproductive health care will not remain private. This is particularly true in light of the historic lack of trust that members of marginalized communities have for the health care system;[180] such individuals are more likely to be deterred from seeking or obtaining health care—or from giving their health care providers full information when they do obtain it.

The recent legal landscape that increases the potential for disclosures of PHI to impose liability for seeking, obtaining, providing, or facilitating reproductive health care risks eroding health information privacy and trust in health care providers that has long been supported and advanced by the Privacy Rule. The Department issued guidance in 2022 to clarify its longstanding interpretation of the Privacy Rule's law enforcement provisions.[181] In the guidance, the Department explained that disclosures for non-health care purposes, such as disclosures to law enforcement officials, are permitted only in narrow circumstances tailored to protect the individual's privacy and support their access to health care, including abortion care. The guidance specifically reminded regulated entities that they can use and disclose PHI, without an individual's signed authorization, only as expressly permitted or required by the Privacy Rule. Additionally, the guidance explained the Privacy Rule's restrictions on disclosures of PHI when required by law, for law enforcement purposes, and to avert a serious threat to health or safety. For example, where state law does not expressly require reporting of suspicions of self-managed reproductive health care, the Privacy Rule would not permit a disclosure by a hospital workforce member of such suspicions to law enforcement under the ''required by law'' permission.

However, many questions remain with respect to the potential for this sensitive PHI to be disclosed and the effects of such disclosure on the individual. Thus, it is incumbent upon the Department to consider whether it should revise the Privacy Rule to ensure the privacy of health information related to an individual's use of lawful reproductive health care, consistent with Congress' intent to create standards for the privacy of IIHI that promote trust and support access to high-quality health care.[182]

C. To Protect the Trust Between Individuals and Health Care Providers, the Department Proposes To Restrict Certain Uses and Disclosures of PHI for Non-Health Care Purposes

The Federal Government seeks to ensure that individuals have access to high-quality health care.[183] This proposed rule would further that goal by restricting the use and disclosure of certain PHI for non-health care purposes.

The Department acknowledges that the Privacy Rule has not previously conditioned uses and disclosures for certain purposes on the specific type of health care about which the disclosure relates, as it does herein with reproductive health care. However, the primary reasons behind this rulemaking are the risks to privacy, patient trust, and health care quality that occur when it is the very act of obtaining health care that subjects an individual to an investigation or proceeding, potentially disincentivizing the individual from obtaining medically necessary health care.

As discussed above, the Department has long provided special protections for psychotherapy notes when they are not included as part of the medical record because of the sensitivity around this information. Given the particularly sensitive nature of information related to an individual's reproductive health, the Department is proposing to create new, special safeguards for this information. However, unlike psychotherapy notes, which by their very nature are easily defined and segregated, reproductive health information is not easily defined or segregated. This is in part because many types of PHI may not initially appear to be related to an individual's reproductive health but may in fact reveal information about an individual's reproductive health or reproductive health care an individual has received. For example, in a pregnant individual, a high blood pressure reading may be a sign of preeclampsia, and glucose found in a urine test may indicate gestational diabetes. Additionally, it is the Department's understanding that today's clinical documentation and health IT do not provide regulated entities with the ability to segment certain PHI such that regulated entities could afford specific categories of PHI special protections, or at least do so in a manner that is not overly burdensome and cost prohibitive.[184] Instead, as is consistent

[179] *See* ''Equal access to justice: ensuring meaningful access to counsel in civil cases, including immigration proceedings,'' Columbia Law School Human Rights Institute and Northeastern University School of Law Program on Human Rights and the Global Economy (July 2014), *https://hri.law.columbia.edu/sites/default/files/publications/equal_access_to_justice_-_cerd_shadow_report.pdf. See also* ''Report: State Abortion Bans Will Harm Women and Families' Economic Security Across the U.S.'' (Aug. 25, 2022), *https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/.*

[180] *See* Leslie Read, Heather Nelson, Leslie Korenda, The Deloitte Ctr. for Health Solutions, ''Rebuilding Trust in Health Care: What Do Consumers Want—and Need—Organizations to Do?'' (Aug. 5, 2021), p. 3 (With focus groups of 525 individuals in the United States who identify as Black, Hispanic, Asian, or Native American, ''Fifty-five percent reported a negative experience where they lost trust in a health care provider.''), *https://www2.deloitte.com/us/en/insights/industry/health-care/trust-in-health-care-system.html;* Liz Hamel, Lunna Lopes, Cailey Muñana, et al., Kaiser Family Foundation, The Undefeated Survey on Race and Health (Oct. 2020), p. 23, (Percent who say they can trust the health care system to do what is right for them or their community almost all of the time or most of the time: Black adults: 44%; Hispanic adults: 50%; White adults: 55%), *https://files.kff.org/attachment/Report-Race-Health-and-COVID-19-The-Views-and-Experiences-of-Black-Americans.pdf;* ''Issue Brief: Health Insurance Coverage and Access to Care for LGBTQ+ Individuals: Current Trends and Key Challenges,'' U.S. Dep't of Health and Human Servs., Assistant Sec'y for Policy & Evaluation, Office of Health Policy (June 2021), p. 9 (''According to a recent survey, 18 percent of LGBTQ+ individuals reported avoiding going to a doctor or seeking healthcare out of concern that they would face discrimination or be treated poorly because of their sexual orientation or gender identity.''), *https://aspe.hhs.gov/sites/default/files/2021-07/lgbt-health-ib.pdf;* Abigail A. Sewell, ''Disaggregating Ethnoracial Disparities in Physician Trust,'' Social Science Research. (Nov. 2015), *https://pubmed.ncbi.nlm.nih.gov/26463531/;* Irena Stepanikova, Stefanie Mollborn, Karen S. Cook, et al., ''Patients' Race, Ethnicity, Language, and Trust in a Physician,'' Journal of Health and Social Behavior (Dec. 2006), *https://pubmed.ncbi.nlm.nih.gov/17240927/.*

[181] *See* ''HIPAA Privacy Rule and Disclosures of Information Relating to Reproductive Health Care,'' U.S. Dep't of Health and Human Servs. (June 29, 2022), *https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/phi-reproductive-health/index.html.*

[182] *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (holding ''[. . .] the agency must show that there are good reasons for the new policy. [. . .][I]t suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.'' (emphasis in original)).

[183] *See* Testimony (transcribed) of Peter R. Orszag and statement of Sen. Durenberger, *supra* note 135.

[184] *See, e.g.,* 87 FR 74216, 74221 (Dec. 2, 2022) (noting that 42 CFR part 2 previously resulted in the separation of substance use disorder (SUD) treatment records previous from other health records, which led to the creation of data ''silos'' that hampered the integration of SUD treatment records into covered entities' electronic record systems and billing processes. When considering amendments to the relevant statute, some lawmakers argued that the silos perpetuated negative stereotypes about persons with SUD and inhibited coordination of care during the opioid epidemic. *See also* ''Health Information Technology Advisory Committee (HITAC) Annual Report for Fiscal Year 2019,'' Health Information Technology Advisory Committee (Feb. 19, 2020), p. 37, *https://*

Continued

with the Privacy Rule's overall approach,[185] the Department proposes a purpose-based prohibition on certain uses and disclosures to protect individuals' privacy interests in their PHI. The Department believes that this proposed purpose-based prohibition, in concert with the proposed attestation, will restrict the use and disclosure of PHI that could harm HIPAA's overall goals of increasing trust in the health care system, improving health care quality, and protecting individual privacy, while continuing to allow PHI uses and disclosures that either provide support for those goals or do not interfere with their achievement.

Also, consistent with the Privacy Rule's approach, the Department proposes a Rule of Applicability for the purpose-based prohibition that recognizes the interests of the Federal Government and states in protecting the privacy of persons who seek, obtain, provide, or facilitate lawful reproductive health care. This Rule of Applicability would limit the new prohibition to certain categories of instances in which the state lacks any substantial interest in seeking the disclosure. The Department believes that the proposals described in greater detail later in this NPRM could benefit health care providers and individuals. Although many benefits are not quantifiable, the Department believes the proposals would increase the likelihood that individuals would seek lawful health care by improving their confidence in the confidentiality of their PHI; improve access to high quality and continuous health care by increasing the accuracy and completeness of individuals' medical records; improve population health by encouraging individuals to receive disease screenings; safeguard the mental health of pregnant individuals; prevent increases in maternal mortality and morbidity; enhance support for victims of rape, incest, and sex trafficking; and maintain family economic stability. Similarly, the proposals are expected to increase certainty for, and therefore reduce the burden on, regulated entities implementing the Privacy Rule.

The Department's proposed modifications are consistent with its existing authority to modify the Privacy Rule. As discussed above, Congress expressly authorized the Department to develop standards for the privacy of IIHI. The Department has consistently exercised its rulemaking authority to establish, implement, and modify the HIPAA Rules pursuant to this statutory authority, including when necessary to maintain their effectiveness, address workability issues for regulated entities including clarifying amendments, and respond to changed circumstances.[186] The proposed changes would effectuate HIPAA's goals of setting standards with respect to the privacy of IIHI, thereby increasing the quality of and access to health care by fostering trust in the health care system and buttressing continuity of health care.[187] Moreover, Congress expressly provided in HIPAA that the Department's regulations in this area ''shall supersede any contrary provision of State law,'' absent an explicit exception.[188] As discussed below, various state laws that might conflict with the rules proposed herein, such as those that require disclosure of PHI for purposes of criminal, civil, or administrative investigations or proceedings based on seeking, obtaining, providing, or facilitating lawful reproductive health care, are not excepted from this general rule of preemption.

In accordance with section 264(d) of HIPAA, the Department has consulted with the Attorney General in the formulation of this proposed rule and intends to continue to engage in these consultations before finalizing the rule. The Department invites NCVHS to review this proposed rule and to provide comments to the Department.

IV. Section-by-Section Description of Proposed Amendments to the Privacy Rule

The Department proposes to modify the Privacy Rule to strengthen privacy protections for individuals' PHI by adding a new category of prohibited uses and disclosures. This modification would prohibit a regulated entity from using or disclosing an individual's PHI for the purpose of conducting a criminal, civil, or administrative investigation into or proceeding against the individual, a health care provider, or other person in connection with seeking, obtaining, providing, or facilitating reproductive health care that: (1) is provided outside of the state where the investigation or proceeding is authorized and such health care is lawful in the state in which it is provided; (2) is protected, required, or authorized by Federal law, regardless of the state in which such health care is provided; or (3) is provided in the state in which the investigation or proceeding is authorized and that is permitted by the law of that state. In these three circumstances, the state lacks any substantial interest in seeking the disclosure. To operationalize this proposed modification, the Department also proposes to revise or clarify certain definitions and terms that apply to the Privacy Rule, as well as other HIPAA Rules. The NPRM would also prohibit a regulated entity from using or disclosing an individual's PHI for the purpose of identifying [189] an individual, health care provider, or other person for the purpose of initiating such an investigation or proceeding against the individual, a health care provider, or other person in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided.

To effectuate these proposals, the Department proposes conforming and clarifying changes to the HIPAA Rules. These proposed changes include, but are not limited to, clarifying the definition of ''person'' to reflect long-standing statutory language defining the term; adopting new definitions of ''public health'' surveillance, investigation, or intervention, and ''reproductive health care''; clarifying that a regulated entity may not decline to recognize a person as a personal representative for the purposes of the Privacy Rule solely because they provide or facilitate reproductive health care for an individual; a new requirement that, in certain

www.healthit.gov/sites/default/files/page/2020-03/HITAC%20Annual%20Report%20for%20FY19_508.pdf (''The new certification criteria that support the sharing of data via third-party apps will help advance the use of data segmentation, but adoption of this capability by the industry is not yet widespread.'').

[185] *See* 64 FR 59924, 59939, and 59955.

[186] *See, e.g.,* 67 FR 53182 (modifying the 2000 Privacy Rule in response to stakeholder implementation concerns and to clarify key provisions), 78 FR 5566 (modifying the HIPAA Rules to address HITECH requirements and improve workability and flexibility for covered entities), 79 FR 7289 (modifying the Privacy Rule to address requirements in the Clinical Laboratory Improvement Amendments of 1988 and to improve patient access), and 81 FR 382 (modifying the Privacy Rule to permit certain disclosures to the National Instant Criminal Background Check System).

[187] *See* section III of this rulemaking for a full discussion of HIPAA and congressional intent.

[188] 42 U.S.C. 1320d–7 and section 264(c)(2) of Public Law 104–191 (codified at 42 U.S.C. 1320d–2 note).

[189] Section 164.514(h) of 45 CFR requires a covered entity, in most cases, to take reasonable steps to verify the identify and authority of a person requesting PHI before disclosing the PHI, including in the case of public officials. The proposed restriction against using or disclosing PHI in connection with the proposals in this NPRM would not modify 45 CFR 164.514(h) but would address only those circumstances in which a regulated entity would use or disclose PHI to identify an individual for a purpose that would be restricted herein. Further, the Department believes the attestation requirement proposed in this NPRM would provide a regulated entity the assurance it needs to make disclosures for identity purposes that are consistent with the Privacy Rule.

circumstances, regulated entities must first obtain an attestation that a requested use or disclosure is not for a prohibited purpose; and modifications to the NPP for PHI to inform individuals that their PHI may not be used or disclosed for a prohibited purpose.

The Department's proposals are discussed in greater detail below.

A. Section 160.103—Definitions

1. Clarifying the Definition of ''Person''

Current Provision and Issues To Address

HIPAA does not define the term ''person.'' [190] By regulation, the Department has long defined ''person'' for purposes of the HIPAA Rules to mean ''a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.'' [191] This definition was based on the meaning of ''person'' that Congress adopted in the original Social Security Act of 1935 (SSA), defined as an ''individual, a trust or estate, a partnership, or a corporation.'' [192]

In 2002, Congress enacted 1 U.S.C. 8, which defines ''person,'' ''human being,'' ''child,'' and ''individual.'' [193] The statute specifies that this definition shall apply when ''determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States.'' [194] The Department understands 1 U.S.C. 8 to provide a definition of ''person'' and ''child'' that is consistent with the Department's understanding of that term, as it is used in the SSA, HIPAA, and the HIPAA Rules and does not include a fertilized egg, embryo, or fetus.

Proposal

Thus, the Department proposes to clarify the definition of ''natural person'' in a manner consistent with 1 U.S.C. 8. In so doing, the Department would make clear that all terms subsumed within the definition of ''natural person,'' such as ''individual,'' [195] which refers to a ''person'' who is the subject of PHI under the HIPAA Rules, is limited to the confines of the term ''person.'' [196] The Department would also make clear that ''natural person,'' as used in the definition of ''person'' under the HIPAA Rules, is limited to the definition at 1 U.S.C. 8.

The Department believes it would be beneficial to clarify the definition of ''person'' to ensure that there is an understanding among stakeholders as to its meaning for Privacy Rule purposes. As such, the Department believes the proposed clarification of the definition of person better explains to regulated entities and other stakeholders the parameters of who is an ''individual'' whose PHI is protected by the HIPAA Rules.

2. Interpreting Terms Used in Section 1178(b) of the Social Security Act [197]

HIPAA includes a rule of construction for certain laws generally concerning ''[p]ublic health.'' [198] Specifically, section 1178(b) of the SSA provides that nothing in HIPAA ''shall be construed to invalidate or limit'' laws ''providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.'' [199] Accordingly, the Privacy Rule permits a regulated entity to use and disclose PHI for certain public health purposes, treating the uses and disclosures covered by section 1178(b) as permitted uses and disclosures to public health authorities or other appropriate government authorities for the listed activities.[200]

A regulated entity may use or disclose PHI to public health authorities for the full range of activities described above, including reporting of diseases and injuries, reporting of birth and death to vital statistics agencies, and activities covered by the terms public health surveillance, public health investigation, and public health intervention. A ''public health authority'' means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from, or contract with, such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.[201]

HIPAA does not define the terms in section 1178(b) that govern the scope of the ''public health'' exceptions to preemption and the Department declines to do so here. The Department believes it necessary to define only ''public health'' surveillance, investigation, or intervention and to make clear the Department's interpretation of key terms used in section 1178(b) to clarify when HIPAA preempts contrary state laws. The Department believes that state laws that require the use or disclosure of highly sensitive PHI for non-public health purposes, such as criminal, civil, or administrative investigations or proceedings based on whether a person sought, obtained, provided, or facilitated reproductive health care, are not exempt from HIPAA's general rule of preemption.

Reporting of Disease or Injury, Birth, or Death

The Privacy Rule permits regulated entities to use or disclose PHI without authorization for the public health purposes of reporting ''disease or injury,'' ''birth,'' or ''death.'' [202] Similarly, section 1178(b) exempts state laws requiring such reporting from HIPAA's general preemption provision. The Department recognizes that such public health reporting activities are an important means of identifying threats to the health and safety of the public. The Department does not propose to define ''disease or injury,'' ''birth,'' or ''death,'' because the Department believes that these terms, when read with the definition of ''person'' as discussed above and in the broader context of HIPAA as discussed in greater detail below, exclude information about abortion or other reproductive health care. But the Department invites comment on whether it would be beneficial to clarify that these terms exclude information about reproductive health care.

[190] *See* 42 U.S.C. 1320d–1320d–8.

[191] 45 CFR 160.103.

[192] *See* section 1101(3) of Public Law 74–271, 49 Stat. 620 (Aug. 14, 1935) (codified at 42 U.S.C. 1301(3)).

[193] 1 U.S.C. 8(a). The Department is not opining on whether any state law confers a particular legal status upon a fetus. The Department instead cites to this statute to define the scope of the right of privacy that attaches pursuant to HIPAA.

[194] *Id.*

[195] 45 CFR 160.103 (definition of ''Individual'').

[196] *See* The Prenatal Record and the Initial Prenatal Visit, The Global Library of Women's Medicine (last updated Jan. 2008) (PHI about the fetus is included in the mother's PHI), *https://www.glowm.com/section-view/heading/The%20Prenatal%20Record%20and%20the%20Initial%20Prenatal%20Visit/item/107#.Y7WRKofMKUl.*

[197] 42 U.S.C. 1320d–7(b).

[198] *Id.*

[199] *Id.* The Department incorporated this limitation on Federal preemption of state laws in the HIPAA Rules at 45 CFR 160.203(c).

[200] 45 CFR 164.512(b). The Privacy Rule addresses its interactions with laws governing excepted public health activities in two sections: 45 CFR 164.512(a), *Standard: Uses and disclosures required by law,* and 45 CFR 164.512(b), *Standard: Uses and disclosures for public health activities.*

[201] *See* 45 CFR 164.501 (definition of ''Public health authority'').

[202] *See* U.S. Dep't of Health and Human Servs., Office for Civil Rights, Public Health (Dec. 18, 2020), *https://www.hhs.gov/hipaa/for-professionals/special-topics/public-health/index.html.*

At the time of HIPAA's enactment, state laws provided for the reporting of disease or injury, birth, or death by covered health care providers and other persons.[203] These state public health reporting systems were well established and involved close collaboration between the state, local, or territorial jurisdiction and the Federal Government.[204] Reports generally were made to public health authorities or, in some specific cases, law enforcement (*e.g.,* reporting of gunshot wounds).[205] Similar public health reporting systems continue to exist today.

Reporting of ''disease or injury'' commonly refers to diagnosable health conditions reported for limited purposes such as workers' compensation, tort claims, or health tracking efforts. All states, territories, and Tribal governments require covered health care providers (*e.g.,* physicians and laboratories) and others to report cases of certain diseases or conditions that affect public health, such as coronavirus disease 2019 (COVID–19), malaria, and foodborne illnesses.[206] Such reporting enables public health practitioners to study and explain diseases and their spread, along with determining appropriate actions to prevent and respond to outbreaks.[207] States also require health care providers to report incidents of certain types of injuries, such as those caused by gunshots, knives, or burns.[208] Various Federal statutes use the phrase ''disease or injury'' similarly to refer to events such as workplace injuries for purposes of compensation.[209]

The limited meaning given to the terms ''disease'' and ''injury'' is clear from HIPAA's broader context. For instance, interpreting ''injury'' to include reporting of any criminal abuse would render the specific exception for ''child abuse'' superfluous. And interpreting ''disease'' to include reporting of any disease for any purpose would eviscerate HIPAA's general provisions protecting PHI. ''[D]isease management activities'' constitute ''health care'' under the Privacy Rule, and a broad interpretation of ''disease or injury'' would make even information about cancer treatment disclosable.[210] Consequently, the Department has long understood ''disease or injury'' to narrowly refer to diagnosable health conditions reported for limited purposes such as workers' compensation, tort claims, or health tracking efforts.[211]

With respect to reporting of ''births'' and ''deaths,'' such vital statistics are reported by covered health care providers to the vital registration systems operated in various jurisdictions [212] legally responsible for the registration of vital events.[213] State laws require birth certificates to be completed for all births, and Federal law mandates the national collection and publication of births and other vital statistics data.[214] Tracking and reporting death is a complex and decentralized process with a variety of systems used by more than 6,000 local vital registrars.[215] When HIPAA was enacted, the Model State Vital Statistics Act and Regulations, which is followed by most states,[216] included distinct categories for ''live births,'' ''fetal deaths,'' and ''induced terminations of pregnancy,'' with instructions that abortions ''shall not be reported as fetal deaths.'' [217] In light of that common understanding at the time of HIPAA's enactment, it is clear that the reporting of abortions is not included in the category of reporting of deaths for the purposes of HIPAA and does not fall within the scope of state activities Congress specifically designated as excepted from preemption by HIPAA.

More generally, while Congress exempted certain ''[p]ublic health'' laws from preemption,[218] Congress chose not to create a general exception for criminal laws or other laws that address the disclosure of information about similar types of activities outside of the public health context. Thus, the Privacy Rule's exceptions for reporting of disease or injury, birth, or death do not allow the use or disclosure of PHI for investigating or punishing a person for seeking, obtaining, providing, or facilitating reproductive health care. Similarly, state laws requiring disclosure for such purposes are not exempt under section 1178(b) from HIPAA's general preemption provision.

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[203] The 1996–98 Report of the NCVHS to the Secretary describes various types of activities considered to be public health during the era in which HIPAA was enacted, such as the collection of public health surveillance data on health status and health outcomes and vital statistics information. *See* Report of ''The National Committee on Vital and Health Statistics, 1996–98,'' Nat'l Comm. on Vital and Health Stats. (Dec. 1999), *https://ncvhs.hhs.gov/wp-content/uploads/2018/03/90727nv-508.pdf.*

[204] *Id.*

[205] *Id.*

[206] *See* ''Reportable diseases,'' in National Institutes of Health, National Library of Medicine, MedlinePlus, *https://medlineplus.gov/ency/article/001929.htm* (accessed Oct. 19, 2022). *See also* ''What is Case Surveillance?'' Centers for Disease Control and Prevention, National Notifiable Diseases Surveillance Sys. (July 20, 2022), *https://www.cdc.gov/nndss/about/index.html.*

[207] *See* ''Reportable diseases,'' *supra* note 206. Such reporting is a type of public health surveillance activity.

[208] *See* Victims Rights Law Center, ''Mandatory Reporting of Non-Accidental Injuries: A State-by-State Guide'' (May 2014), *http://4e5ae7d17e.nxcli.net/wp-content/uploads/2021/01/Mandatory-Reporting-of-Non-Accidental-Injury-Statutes-by-State.pdf.*

[209] *See, e.g.,* 38 U.S.C. 1110 (referring to an ''injury suffered or disease contracted''); 10 U.S.C. 972 (discussing time lost as a result of ''disease or injury''); 38 U.S.C. 3500 (providing education for certain children whose parent suffered ''a disease or injury'' incurred or aggravated in the Armed Forces); *see also* 5 U.S.C. 8707 (insurance provision discussing compensation as a result of ''disease or injury''); 33 U.S.C. 765 (discussing retirement for disability as a result of ''disease or injury''); 15 U.S.C. 2607(c) (requiring chemical manufacturers to maintain records of ''occupational disease or injury'').

[210] *See* 65 FR 82571 (recognizing that ''disease management activities'' often constitute ''health care'' under HIPAA); 65 FR 82777 (discussing the importance of privacy for information about cancer, a ''disease'' that causes an ''indisputable'' ''societal burden''); 65 FR 82778 (discussing the importance of privacy for information about sexually transmitted diseases, including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS)); 65 FR 82463–64 (noting that numerous states adopted laws protecting health information relating to certain health conditions such as communicable diseases, cancer, HIV/AIDS, and other stigmatized conditions.); 65 FR 82731 (finding that there are no persuasive reasons to provide information contained within disease registries with special treatment as compared with other information that may be used to make decisions about an individual).

[211] *See, e.g.,* 65 FR 82517 (discussing tort litigation as information that could implicate IIHI); 65 FR 82542 (discussing workers' compensation); 65 FR 82527 (separately addressing disclosures about ''abuse, neglect or domestic violence'' and limiting such disclosures to only two circumstances, even if expressly authorized by state statute or regulation).

[212] *See* ''Health Department Governance,'' Centers for Disease Control and Prevention, Public Health Professionals Gateway (Nov. 25, 2022), *https://www.cdc.gov/publichealthgateway/sitesgovernance/index.html.*

[213] *See* the list of events included in vital events ''vital events—births, deaths, marriages, divorces, and fetal deaths,'' National Center for Health Statistics, Centers for Disease Control and Prevention, About the National Vital Statistics System (Jan. 4, 2016), *https://www.cdc.gov/nchs/nvss/about_nvss.htm.*

[214] *See* ''Birth Data,'' National Center for Health Statistics, Centers for Disease Control and Prevention, National Vital Statistics (Dec. 6, 2022), *https://www.cdc.gov/nchs/nvss/births.htm.*

[215] *See* ''How Tracking Deaths Protects Health,'' Centers for Disease Control and Prevention, Public Health and Surveillance Data (July 2018), *https://www.cdc.gov/surveillance/pdfs/Tracking-Deaths-protects-healthh.pdf.*

[216] *See* ''State Definitions and Reporting Requirements: For Live Births, Fetal Deaths, and Induced Terminations of Pregnancy,'' Centers for Disease Control and Prevention, National Center for Health Statistics (1997), p. 5, *https://www.cdc.gov/nchs/data/misc/itop97.pdf.*

[217] ''Model State Vital Statistics Act and Regulations,'' Centers for Disease Control and Prevention, National Center for Health Statistics (1992), p. 8, *https://www.cdc.gov/nchs/data/misc/mvsact92b.pdf.*

[218] 42 U.S.C. 1178(b) (codified in HIPAA at 42 U.S.C. 1320d–7).

Public Health Surveillance, Investigation, or Intervention

The Privacy Rule also permits a regulated entity to use or disclose PHI to conduct ''public health'' surveillance, investigation, or intervention.[219] Section 1178(b) similarly exempts state laws providing for ''public health'' surveillance, investigation, or intervention from HIPAA's general preemption rule. Neither HIPAA nor the Privacy Rule currently defines these terms. To clarify their meaning, the Department proposes to define public health [220] surveillance, investigation, or intervention to mean population-based activities to prevent disease and promote health of populations.[221] The Department also proposes to clarify that such public health activities do not include uses and disclosures for the criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care, or to identify any person for the purpose of initiating such an investigation or proceeding.[222]

Since the time of HIPAA's enactment, public health activities related to surveillance, investigation, or intervention have been widely understood to refer to activities aimed at improving the health of a population. For example, legal dictionaries define ''public health'' as ''[t]he health of the community at large,'' or ''[t]he healthful or sanitary condition of the general body of people or the community en masse; esp., the methods of maintaining the health of the community, as by preventive medicine or organized care for the sick.'' [223] Stedman's Medical Dictionary defines ''public health'' as ''the art and science of community health, concerned with statistics, epidemiology, hygiene, and the prevention and eradication of epidemic diseases; an effort organized by society to promote, protect, and restore the people's health; public health is a social institution, a service, and a practice.'' [224] The Centers for Disease Control and Prevention's (CDC) Agency for Toxic Substances and Disease Registry commonly defines ''public health surveillance'' as ''the ongoing systematic collection, analysis and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice.'' [225] And many states similarly define ''public health'' to mean population-level activities.[226] The Department likewise has used public health in this way since it first adopted the Privacy Rule.[227]

There is also a widely recognized distinction between public health activities, which primarily focus on improving the health of populations, and criminal investigations, which primarily focus on identifying and imposing liability on persons who have violated the law. States and other local governing authorities maintain criminal codes that are distinct and separate from public health reporting laws,[228] although some jurisdictions enforce required reporting through criminal statutes. Different governmental bodies are responsible for enforcing these separate codes, and public health officials do not typically investigate criminal activity.[229] When states intend for public health information to be shared with law enforcement for criminal investigation purposes, they typically pass specific laws to permit that sharing.[230] Other Federal laws also treat public health investigations as distinct from criminal investigations.[231] Maintaining a clear distinction between public health investigations and criminal investigations serves HIPAA's broader purposes, as well, by safeguarding privacy to ensure quality health care.[232]

[219] *See* 45 CFR 164.512(b)(1)(i); U.S. Dep't of Health and Human Servs., Office for Civil Rights, Disclosures for Public Health Activities, (accessed Oct. 19, 2022), *https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/disclosures-public-health-activities/index.html.*

[220] *See* ''Ten Essential Public Health Services,'' Centers for Disease Control and Prevention, Public Health Professionals Gateway (Dec. 1, 2022), *https://www.cdc.gov/publichealthgateway/publichealthservices/essentialhealthservices.html* and ''What is Public Health?'' in CDC Foundation, Public Health in Action (2023), *https://www.cdcfoundation.org/what-public-health?gclid=Cj0KCQjw_viWBhD8ARIsAH1mCd7ME0r94gapt8Qh48LjdQO3Sto101snekpI94auuahRs7LizEkh7OwaAiKxEALw_wcB. See also* ''HIPAA Privacy Rule and Public Health,'' Centers for Disease Control and Prevention, MMWR (Apr. 11, 2003), *https://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm.*

[221] *See* Report of ''The National Committee on Vital and Health Statistics, 1996–98,'' *supra* note 203. These activities are consistent with the definition proposed herein.

[222] *See* Report of ''The National Committee on Vital and Health Statistics, 1996–98,'' *supra* note 203, for descriptions of public health activities in 1996–98.

[223] ''Health,'' ''public health,'' Black's Law Dictionary (11th ed. 2019).

[224] ''Public health,'' Stedman's Medical Dictionary 394520.

[225] Jonathan Weinstein, ''In Re Miguel M.,'' 55 N.Y.L. Sch. L. Rev. 389, 390 (2010) (citing Stephen B. Thacker, ''Historical Development,'' in Principles and Practice of Public Health Surveillance 1 (Steven M. Teutsch & R. Elliott Churchill eds., 2d ed., 2000)), *https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1599&context=nyls_law_review.*

[226] *See, e.g.,* Richard A. Goodman, Judith W. Munson, Kim Dammers, et al., ''Forensic Epidemiology: Law at the Intersection of Public Health and Criminal Investigations,'' 31 The Journal of Law, Medicine & Ethics 684, 689–90 (2003); La. Rev. Stat. Ann. sec. 40:3.1 (2011) (defining threats to public health as nuisances ''including but not limited to communicable, contagious, and infectious diseases, as well as illnesses, diseases, and genetic disorders or abnormalities''); N.C. Gen. Stat. sec. 130A–141.1(a) (2010) (defining public health investigations as the ''surveillance of an illness, condition, or symptoms that may indicate the existence of a communicable disease or condition'').

[227] *See, e.g.,* 65 FR 82464 (noting that reporting of public health information on communicable diseases is not prevented by individuals' right to information privacy); *id.* at 82467 (discussing the importance of accurate medical records in recognizing troubling public health trends and in assessing the effectiveness of public health efforts); *id.* at 82473 (discussing disclosure to ''a department of public health''); *id.* at 82525 (recognizing that it may be necessary to disclose PHI about communicable diseases when conducting a public health intervention or investigation); *id.* at 82526 (recognizing that an entity acts as a ''public health authority'' when, in its role as a component of the public health department, it conducts infectious disease surveillance); ''HIPAA Privacy Rule and Public Health,'' *supra* note 220 (describing what traditionally are considered to be ''public health activities'' that require PHI).

[228] For example, traditional public health reporting laws grew from colonial requirements that physicians report disease. These requirements transitioned to state regulatory requirements imposed by public health departments on authority granted to them by states. *See* Public Health Law 101, Disease Reporting and Public Health Surveillance, Centers for Disease Control and Prevention, p. 12 and 14, *https://www.cdc.gov/phlp/docs/phl101/PHL101-Unit-5-16Jan09-Secure.pdf. See also, e.g.,* Code of Georgia 31–12–2 (2021), authority to require disease reporting.

[229] *See* ''Public Health,'' *supra* note 223 (''Many cities have a 'public health department' or other agency responsible for maintaining the public health; Federal laws dealing with health are administered by the Department of Health and Human Services.''); *See also* ''Forensic Epidemiology: Law at the Intersection of Public Health and Criminal Investigations,'' *supra* note 226, at 689.

[230] *See* ''Forensic Epidemiology: Law at the Intersection of Public Health and Criminal Investigations,'' *supra* note 226, at 687 (discussing South Dakota Statutes sec. 22–18–31, a law allowing HIV test results to be released to a prosecutor for criminal investigation purposes); *id.* at 693 (discussing North Carolina General Statute (N.C.G.S.) sec. 130A–476, a law allowing confidential medical information to be shared with law enforcement in certain circumstances related to communicable diseases or terrorism).

[231] *See Camara* v. *Municipal Ct. of City & Cty. of S.F.,* 387 U.S. 523, 535–37 (1967) (discussing administrative inspections under the Fourth Amendment, such as those aimed at addressing ''conditions which are hazardous to public health and safety,'' and not ''aimed at the discovery of evidence of crime''); 42 U.S.C. 241(d)(D) (prohibiting disclosure of private information from research subjects in ''criminal'' and other proceedings); 42 U.S.C. 290dd–2(c) (prohibiting substance abuse records from being used in criminal proceedings).

[232] *See* ''Forensic Epidemiology: Law at the Intersection of Public Health and Criminal Investigations,'' *supra* note 226, at 687 (discussing reasons why ''an association of public health with law enforcement'' may be ''to the detriment of routine public health practice''). *See also* 45 CFR

Continued

The Department concludes that the Privacy Rule's permissions to use and disclose PHI for the ''public health'' activities of surveillance, investigation, or intervention do not include criminal, civil, or administrative investigations into, or proceedings against, any person in connection with seeking, obtaining, providing, or facilitating reproductive health care, nor do they include identifying any person for the purpose of initiating such investigations or proceedings. Such actions are not public health activities. Public health surveillance, investigations, or interventions ensure the health of the community as a whole by addressing population-level issues such as the spread of communicable diseases, even where they involve individual-level interventions. Such surveillance systems provide data necessary to examine and potentially develop interventions to improve the public's health, such as providing education or resources to support individuals' access to health care and improve health outcomes.[233] U.S. states, territories, and Tribal governments participate in bilateral agreements with the Federal Government to share data on conditions that affect public health.[234] The CDC's Division of Reproductive Health presently collects reproductive health data in support of national and state-based population surveillance systems to assess maternal complications, mortality and pregnancy-related disparities, and the numbers and characteristics of individuals who obtain legal induced abortions.[235] Importantly, disclosures to public health authorities permitted by the Privacy Rule are limited to the ''minimum necessary'' to accomplish the public health purpose.[236] In many cases, regulated entities need disclose only de-identified data [237] to meet the public health purpose. By contrast, criminal, civil, and administrative investigations and proceedings generally target specific persons; they are not designed to address population-level health concerns and are not limited to information authorized to be collected by a public health or similar government authority for a public health activity. Thus, the exceptions in section 1178(b) for ''public health'' investigations, interventions, or surveillance do not limit the Department's ability to prohibit uses or disclosures of PHI for other purposes, such as judicial and administrative proceedings or law enforcement purposes. While the Department has chosen as a policy matter to permit uses or disclosures of PHI for law enforcement and other purposes in other contexts, it believes, as discussed above, that a different balance is appropriate in the context of highly sensitive information related to reproductive health care.

In light of the proposed definition of ''public health'' in this context, the Department does not propose to additionally define the terms ''investigation,'' ''intervention,'' or ''surveillance,'' because it believes these terms are commonly understood. Specifically, the Department believes public health investigation or intervention includes monitoring real-time health status and identifying patterns to develop strategies to address chronic diseases and injuries, as well as using real-time data to identify and respond to acute outbreaks, emergencies, and other health hazards.[238] The Department also believes public health surveillance refers to the ongoing, systematic collection, analysis, and interpretation of health-related data essential to planning, implementation, and evaluation of public health practice.[239] Nevertheless, the Department invites comment on whether it would be beneficial to specifically define these terms.

Child Abuse Reporting

In accordance with section 1178(b) of HIPAA, the Privacy Rule permits a regulated entity to use or disclose PHI to report known or suspected child abuse or neglect if the report is made to a public health authority or other appropriate government authority that is authorized by law to receive such reports,[240] which primarily are state or local child protective services agencies.[241] This Privacy Rule provision does not include permission for the covered entity to disclose PHI in response to a request for PHI for a criminal, civil, or administrative investigation into or proceeding against a person based on suspected child abuse. Rather, the Privacy Rule only permits the disclosure of information for the purpose of making a report. We also note that the permission limits such disclosures to the minimum necessary to make the report.[242] Any disclosure of PHI in response to a request from an investigator, whether in follow up to the report made by the covered entity (other than to clarify the PHI provided on the report) or as part of an investigation initiated based on an allegation or report made by a person other than the covered entity, would be required to meet the conditions of disclosures to law enforcement or for other investigations or legal proceedings.[243]

As discussed above, the Department understands the term ''person'' as it is used in the SSA, HIPAA, and the HIPAA Rules to be consistent with 1 U.S.C. 8. Congress also defined the term ''child'' in 1 U.S.C. 8, and the Department similarly understands the term ''child'' in the Privacy Rule to be consistent with that definition. Further, at the time HIPAA was enacted, ''most, if not all, states had laws that mandated reporting of child abuse or neglect to the appropriate authorities.'' [244] As such, the Department believes that to the extent its proposal would prohibit a regulated entity from disclosing PHI in order to report ''child abuse'' where the alleged victim does not meet the definition of ''person,'' the proposal is consistent with both 1 U.S.C. 8 and 1178(b).

At the time HIPAA was enacted, ''most, if not all, states had laws that mandated reporting of child abuse or neglect to the appropriate

164.512(b)(1)(i) (including ''public health investigations'' as an activity carried out by a public health authority that is authorized by law to carry out public health activities).

[233] *See* ''Improving the Role of Health Departments in Activities Related to Abortion,'' American Public Health Association (Oct. 26, 2021), *https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2022/01/07/Improving-Health-Department-Role-in-Activities-Related-to-Abortion.*

[234] *See* ''Reportable diseases,'' *supra* note 206. *See also* ''What is Case Surveillance?'' *supra* note 206.

[235] *See* ''Reproductive Health,'' Centers for Disease Control and Prevention (Apr. 20, 2022), *https://www.cdc.gov/reproductivehealth/drh/about-us/index.htm;* and ''Reproductive Health—CDCs Abortion Surveillance System FAQs,'' Centers for Disease Control and Prevention, Reproductive Health (Nov. 17, 2022), *https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm.*

[236] *See* 45 CFR 164.502(b).

[237] *See* 45 CFR 164.514(a).

[238] *See* ''Ten Essential Public Health Services,'' *supra* note 220.

[239] *See* ''Introduction to Public Health Surveillance,'' Centers for Disease Control and Prevention (Nov. 15, 2018), *https://www.cdc.gov/training/publichealth101/surveillance.html.*

[240] *See* 45 CFR 164.512(b)(1)(ii).

[241] State laws require certain persons, such as health care providers, to report known or suspected child abuse or neglect; such persons are often called ''mandatory reporters.'' *See* ''Mandatory Reporters of Child Abuse and Neglect,'' U.S. Dep't of Health and Human Servs., Administration for Children and Families, Children's Bureau, Child Welfare Information Gateway (Apr. 2019), *https://www.childwelfare.gov/pubPDFs/manda.pdf. See also* ''Factsheet: How the Child Welfare System Works,'' U.S. Dep't of Health and Human Servs., Administration for Children and Families, Children's Bureau, Child Welfare Information Gateway (Oct. 2020), *https://www.childwelfare.gov/pubPDFs/cpswork.pdf.*

[242] *See* 45 CFR 164.502(b) and 164.514(d).

[243] *See* 45 CFR 164.512(e) and (f).

[244] 65 FR 82527.

authorities.'' [245] Additionally, when Congress enacted HIPAA, it had already addressed child abuse reporting in other laws, such as the Victims of Child Abuse Act of 1990 [246] and the Child Abuse Prevention and Treatment Act.[247] For example, 34 U.S.C. 20341(a)(1), a provision of the original Victims of Child Abuse Act of 1990 still in place today, requires certain professionals to report suspected abuse when working on Federal land or in a federally operated (or contracted) facility.[248] As used in these statutes, the term ''child abuse'' does not include activities related to reproductive health care, such as abortion.

For the reasons just stated, the Department believes that ''child abuse'' as used in the Privacy Rule and section 1178(b) is best interpreted to exclude conduct based solely on seeking, obtaining, providing, or facilitating reproductive health care. This interpretation is consistent with the public health aims of improving access to health care, including reproductive health care, for individuals and with congressional intent when HIPAA was enacted. Additionally, as the Department has stated in previous rulemakings, we do not intend to disrupt longstanding state or Federal child abuse reporting requirements that apply to regulated entities.[249] Thus, the Department believes this interpretation of ''child abuse'' supports the protection of children while also serving HIPAA's objectives of protecting the privacy of PHI to promote individuals' trust in the health care system and preserving the relationship between individuals and their health care providers. The Department requests comment on its interpretation of ''child abuse'' as that term is used in the Privacy Rule.

3. Adding a Definition of ''Reproductive Health Care''

The HIPAA Rules define ''health care'' as ''care, services, or supplies related to the health of an individual.'' [250] The definition clarifies that the term specifically ''includes but is not limited'' to certain types of care, services, or supplies related to the health of the individual. These groupings are ''[p]reventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body'' [251] and ''[the s]ale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.'' [252] As indicated by ''includes, but is not limited to,'' this is not an exclusive list of the types of services or supplies that constitute health care for the purposes of the HIPAA Rules. Indeed, ''health care'' also includes supplies purchased over the counter or furnished to the individual by a person that does not meet the definition of a health care provider under the HIPAA Rules.[253]

The Department proposes to add and define a new term, ''reproductive health care,'' that is a subcategory of the existing term ''health care.'' Specifically, the Department proposes to define ''reproductive health care'' as ''care, services, or supplies related to the reproductive health of the individual.'' As with ''health care,'' ''reproductive health care'' applies broadly and includes not only reproductive health care and services furnished by a health care provider and supplies furnished in accordance with a prescription, but also care, services, or supplies furnished by other persons and non-prescription supplies purchased in connection with an individual's reproductive health. The Department proposes defining reproductive health care based on the underlying activities, consistent with its approach to defining ''health care'' in the 2000 Privacy Rule.[254] Under this proposal, such care, services, or supplies would be considered ''reproductive health care'' to the extent that they meet this functional definition.

Elsewhere, Congress and the Department have defined similar terms like ''reproductive health services'' and ''reproductive health care services'' to mean ''reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.'' [255] The Department proposes to use the term ''reproductive health care'' rather than ''reproductive health services'' to ensure that the term is interpreted broadly to capture all health care that could be furnished to address reproductive health, including the provision of supplies such as medications and devices, whether prescription or over-the-counter. The Department also proposes to define ''reproductive health care'' to include all specified services regardless of where they are provided, rather than only when provided in particular locations, and all types of reproductive health care services, rather than only certain types of services listed within the definition. The Department believes that services meeting the definition of these similar terms would generally be included within the proposed definition of ''reproductive health care.'' Additionally, the Department believes that basing the proposed term and definition of ''reproductive health care'' on the existing HIPAA term and definition of ''health care'' would be easier and less burdensome for regulated entities and other stakeholders to understand and implement.

In keeping with the Department's intention for ''reproductive health care'' to be interpreted broadly and inclusive of all types of health care related to an individual's reproductive system, the Department would interpret ''reproductive health care'' to include, but not be limited to: contraception, including emergency contraception; pregnancy-related health care; fertility or infertility-related health care; and other types of care, services, or supplies used for the diagnosis and treatment of conditions related to the reproductive system. Pregnancy-related health care includes, but is not limited to, miscarriage management, molar or ectopic pregnancy treatment, pregnancy termination, pregnancy screening, products related to pregnancy, prenatal care, and similar or related care. Other types of care, services, or supplies used for the diagnosis and treatment of conditions related to the reproductive system includes health care related to reproductive organs, regardless of whether the health care is related to an individual's pregnancy or whether the individual is of reproductive age. The Department would interpret fertility or infertility-related health care to include services such as assisted reproductive

[245] *Id.*

[246] Public Law 101–647, 104 Stat. 4789 (codified at 18 U.S.C. 3509).

[247] Public Law 93–247, 88 Stat. (codified at 42 U.S.C. 5101 note).

[248] *See* 34 U.S.C. 20341(a)(1), originally enacted as part of the Victims of Child Abuse Act of 1990 and codified at 42 U.S.C. 13031, which was editorially reclassified as 34 U.S.C. 20341, Crime Control and Law Enforcement. For the purposes of such mandated reporting, *see* 34 U.S.C. 20341(c)(1) for definition of ''child abuse.''

[249] 65 FR 82527.

[250] 45 CFR 160.103 (definition of ''Health care'').

[251] *Id.*

[252] *Id.*

[253] 45 CFR 164.103 (definition of ''Health care provider'').

[254] 65 FR 82571.

[255] 18 U.S.C. 248(e)(5) uses the term ''reproductive health services,'' while E.O. 14076, 87 FR 42053 (July 8, 2022), and 14079, 87 FR 49505 (Aug. 3, 2022), use the term ''reproductive healthcare services.'' The definitions are essentially the same, with the only difference being ''health'' as opposed to ''healthcare.''

technology and its components,[256] as well as other care, services, or supplies used for the diagnosis and treatment of infertility.

The Department is not proposing a specific definition of ''reproductive health'' at this time. Various definitions of the term have been included in literature. The Department recognizes that it may be helpful to stakeholders if ''reproductive health'' were to be defined in the final rule and invites comment on whether including a particular definition of ''reproductive health'' would be beneficial.

4. Request for Comment

The Department requests comment on the forgoing definitions and proposals, including any benefits, drawbacks, or unintended consequences. The Department also requests comment on the following considerations in particular:

a. Whether the definitions the Department proposes to adopt are appropriate. If not, please provide an alternative definition(s) and support for the definition(s).

b. Whether it is necessary for the Department to define ''reproductive health.'' If so, please provide a definition and support for the definition.

c. Whether the Department should provide examples of ''reproductive health care'' in regulatory text, or it is sufficient to provide extensive discussion of the examples in preamble?

d. Whether it would be helpful for the Department to define any additional terms. If so, please propose a definition and support for the definition and rationale.

B. Section 164.502—Uses and Disclosures of Protected Health Information: General Rules

1. Clarifying When PHI May Be Used or Disclosed by Regulated Entities

Section 164.502 of the Privacy Rule contains the general rules governing uses and disclosures of PHI, including that a covered entity or business associate may use or disclose PHI only as permitted or required by the Privacy Rule.[257] Section 164.502(a)(1) lists permitted uses and disclosures.

In this NPRM, the Department proposes several modifications to the Privacy Rule to prohibit regulated entities from using or disclosing an individual's PHI for use against any individual, regulated entity, or other person for the purpose of a criminal, civil, or administrative investigation into or proceeding against such person in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided. The Department also proposes to prohibit regulated entities from using or disclosing PHI for identifying an individual, a regulated entity, or other person for the purpose of initiating such an investigation or proceeding. These changes are proposed to continue safeguarding the privacy of PHI to ensure trust in the health care system and to enable individuals' access to high-quality health care. The proposed prohibition in 45 CFR 164.502 is three-fold: paragraph (a)(5)(iii) outlines the activity the Department proposes to prohibit; paragraph (a)(1)(iv) specifies that an authorization cannot be used to bypass the proposed prohibition in paragraph (a)(5)(iii); and paragraph (a)(1)(vi) clarifies that the permissions at 45 CFR 164.512 cannot be used to circumvent the proposed prohibition.

The Department proposes to modify the general rules in 45 CFR 164.502 by adding a clause to paragraph (a)(1)(iv) and adding a new requirement in paragraph (a)(1)(vi). Existing paragraph (a)(1)(iv) permits disclosures based on a valid authorization and, in a prefatory clause, provides an exception to that general permission such that a health plan cannot use or disclose PHI that is genetic information for underwriting purposes, even with an individual's authorization. Thus, an authorization that purports to allow a use or disclosure of PHI for that prohibited purpose is not valid under the Privacy Rule. Similarly, the Department proposes to add the new prohibition proposed in 45 CFR 164.502(a)(5)(iii) to the types of uses and disclosures that would not be permitted even with an authorization. By adding an exception to paragraph (a)(1)(iv) for uses and disclosures prohibited by paragraph (a)(5)(iii), the Department seeks to fully protect individuals' privacy by precluding any possibility that a third party, such as a law enforcement official, could obtain an individual's PHI for a prohibited purpose by coercing the individual to sign an authorization.

In addition, the new proposed requirement in paragraph (a)(5)(iii) would expressly permit certain uses and disclosures made under 45 CFR 164.512 only when an applicable attestation has been obtained pursuant to proposed 45 CFR 164.509, discussed below in section IV.D. For clarity, this proposal would also revise paragraph (a)(5)(vi) to replace the sentence containing the conditions for certain permitted uses and disclosures with a lettered list.

2. Adding a New Category of Prohibited Uses and Disclosures

Issues To Address

Generally, the Privacy Rule prohibits uses or disclosures of PHI except as permitted or required by the Rule. The Privacy Rule explicitly prohibits uses and disclosures of PHI in two circumstances: (1) a health plan generally is prohibited from using or disclosing PHI that is genetic health information for underwriting purposes;[258] and (2) a regulated entity is prohibited from selling PHI except when they have obtained a valid authorization from the individual who is the subject of the PHI.[259]

As discussed in section III of this preamble, the Department issued its prior iterations of the Privacy Rule at a time when individuals, as a practical matter, generally would not have expected their highly sensitive health care information to be used or disclosed for criminal, civil, or administrative investigations into or proceedings about that health care. The current regulatory and legal environment is in tension with that expectation and threatens to erode the trust that is essential to access to and quality of health care. The Department has received letters from the public, indicating confusion and concern as to the ability of regulated entities to use or disclose PHI for the purposes described above. These sentiments have been echoed by stakeholders in listening sessions and in media reports. Letters sent to the Department by Members of Congress further reinforce that confusion and concern exist about the privacy of individuals' PHI, in addition to supporting the Department's position that it has the ongoing authority under HIPAA and the HITECH Act to modify the Privacy Rule to ensure the privacy of PHI.[260] These developments and communications bolster the

[256] *See* ''What is Assisted Reproductive Technology?'' Centers for Disease Control and Prevention (Oct. 8, 2019), *https://www.cdc.gov/art/whatis.html#:~:text=According%20to%20this%20definition%2C%20ART,donating%20them%20to%20another%20woman.*

[257] 45 CFR 164.502(a)(1).

[258] 45 CFR 164.502(a)(5)(i).

[259] 45 CFR 164.502(a)(5)(ii).

[260] *See, e.g.,* Letter from United States Congress Senators Tammy Baldwin, Elizabeth Warren, and Ron Wyden, et al., to HHS Secretary Xavier Becerra (March 7, 2023); Letter from United States Congress Senators Patty Murray, Kirsten Gillibrand, and Martin Heinrich, et al., to HHS Secretary Xavier Becerra (Sept. 13, 2022); Letter from United States Congress House Representatives Earl Blumenauer, Diana DeGette, Barbara Lee, et al., to HHS Secretary Xavier Becerra (Aug. 30, 2022); and Letter from United States Congress Senators Michael F. Bennet and Catherine Cortez Masto to HHS Secretary Xavier Becerra (July 1, 2022).

Department's decision to propose certain regulatory changes and technical corrections that are necessary to eliminate ambiguity and promote trust in the health care system. Therefore, the Department proposes to modify 45 CFR 164.502 by adding a new paragraph (a)(5)(iii) that will protect the privacy of individuals who obtain reproductive health care that is lawful under the circumstances in which it is provided, as well as their health care providers, and others who assist them in obtaining such health care.

Proposed Prohibition

In keeping with the Privacy Rule's purpose-based approach to specifying uses or disclosures that are required, permitted, or prohibited, proposed 45 CFR 164.502(a)(5)(iii) would prohibit a regulated entity from using or disclosing PHI where the PHI would be used for a criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating lawful reproductive health care, or identifying any person for the purpose of initiating such an investigation or proceeding, subject to the Rule of Applicability and Rule of Construction set forth in 45 CFR 164.502(a)(5)(iii)(C) and (D). Furthermore, the Department proposes that ''seeking, obtaining, providing, or facilitating'' would include, but not be limited to, expressing interest in, inducing, using, performing, furnishing, paying for, disseminating information about, arranging, insuring, assisting, or otherwise taking action to engage in reproductive health care, as well as attempting to engage in any of the same.

This proposed prohibition addresses efforts to investigate or bring proceedings against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided, or to identify any person for the purpose of initiating such investigation or proceeding. As discussed above, it would be contrary to the Congressional intent of protecting the privacy of an individual's PHI and access to health care if the Privacy Rule were to permit a regulated entity to use or disclose PHI to investigate and bring proceedings against persons for seeking, obtaining, providing or facilitating reproductive health care, or to identify any person for such purposes, where such health care is lawful under state or Federal law. Permitting such uses and disclosures would also be inconsistent with longstanding individual privacy expectations and could especially chill access to lawful health care, including by high-risk individuals who may have already experienced a miscarriage, ectopic pregnancy, stillbirth, or infertility. If such uses and disclosures are permitted, individuals may delay obtaining lawful health care or withhold information about their condition or medical history because they may not trust their health care providers to use the information only to provide appropriate health care, rather than report them to law enforcement authorities or others.[261] Delaying health care may negatively affect an individual's health, including increasing the risk of death. In fact, a recent report from the Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services found that the most common contributing factors to a woman's pregnancy-related death in Texas were delay or failure to seek care, lack of knowledge regarding importance of treatment or follow-up, and lack of access and financial resources.[262] Similarly, if such uses and disclosures are permitted, a health care provider might leave gaps in or include inaccuracies in the individual's medical records, creating a risk that ongoing or future health care would be compromised, because they may not trust that the information would not be obtained by law enforcement authorities or others.[263]

Further, even where investigations cannot lawfully result in proceedings against a person, investigations themselves can reduce the health information privacy of the individual whose PHI is sought for the investigation, thereby harming that individual. For example, permitting a covered entity to disclose a sexual assault survivor's PHI to law enforcement or others to enable them to investigate that individual for obtaining lawful reproductive health care as a result of the assault compounds the harm experienced by the individual by violating their privacy. Additionally, allowing the disclosure makes that individual and others in similar circumstances less likely to obtain lawful reproductive health care if they believe their privacy will be violated in this manner. Thus, the Department proposes to prohibit the use or disclosure of PHI where the purpose of the use or disclosure is for a criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided, or identifying any person for the purpose of initiating such an investigation or proceeding.

Importantly, and as further discussed below, this proposal is narrowly tailored to address only uses and disclosures for specified prohibited purposes. It does not otherwise alter a regulated entity's responsibility to comply with the conditions imposed on the use or disclosure of PHI for other criminal, civil, or administrative investigations or proceedings. For example, the proposed rule would not broadly preempt state or other laws that would require the disclosure of information about an individual's reproductive health to support claims for criminal or civil liability unrelated to the prohibited purposes, assuming such laws meet the requirements of other provisions of the Privacy Rule, *e.g.,* the permission to use or disclose PHI where required by law.[264]

Purpose-Based Prohibition

As discussed above and consistent with the general approach and structure of the Privacy Rule, the proposed prohibition focuses on the purpose of the use or disclosure, rather than the type of PHI requested or the type of regulated entity that receives the use or disclosure request. The Department acknowledges that in most cases, information about an individual's reproductive health care includes the kind of highly sensitive information that could chill patients from obtaining lawful health care if they knew it could be disclosed. However, the Department is not proposing a rule that would provide a blanket protection for this category of information. Enforcing such

[261] *See* ''In a doctor's suspicion after a miscarriage, a glimpse of expanding medical mistrust,'' *supra* note 13. ''[A health care provider's] ability to take care of patients relies on trust, and that will be impossible moving forward [. . .] [abortion restrictions] are really going to put a damper on people seeking care, even in very normal, very legal situations.''; *See also* Lucy Ogbu-Nwobodo, Ruth S. Shim, Sarah Y. Vinson, et al., ''Mental Health Implications of Abortion Restrictions for Historically Marginalized Populations,'' The New England Journal of Medicine (Oct. 27, 2022), *https://www.nejm.org/doi/full/10.1056/NEJMms2211124* (''With the elimination of the right to privacy guaranteed by *Roe* v. *Wade* and the criminalization of abortion in many states, the risk of punitive involvement by the criminal legal system as a consequence of reproductive decisions, and potentially even in cases of miscarriage, is likely to be especially high for members of historically marginalized groups with mental illness—a population that is already overrepresented in the criminal legal system.'').

[262] *See* Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022, *supra* note 16, p. 41.

[263] *See, e.g.,* Brief for Zurawski.

[264] 45 CFR 164.512(a).

a blanket protection would require regulated entities to restrict the flow of this category of information, possibly disrupting existing health care delivery models. For example, implementing differing rules for a newly designated category of PHI would require costly updates to electronic record systems to allow for segmenting of certain data elements for extra protection and create barriers for care coordination. Providing routine treatments for conditions such as hormonal imbalances, miscarriage, pregnancy complications, or gynecological emergencies would be problematic for health care providers attempting to navigate a blanket prohibition against disclosure of the category of information related to reproductive health care. Thus, this proposal does not limit the prohibition to the use or disclosure of certain types of PHI or to PHI that is held or maintained by certain types of covered health care providers, such as a gynecologist or endocrinologist.

A purpose-based prohibition as proposed by the Department would also permit health plans and many other different types of health care providers to continue to disclose PHI for treatment or payment for reproductive health care or other health care conditions that are affected by or affect an individual's reproductive health. For example, pregnancy can place a significant strain on the heart of an individual with certain cardiovascular conditions. It is essential that the individual's cardiologist be informed of and able to monitor the individual's pregnancy for potential complications without barriers to access that information. As another example, pregnancy tests are routinely administered before a surgical procedure to ensure that surgeons, anesthesiologists, and individuals are aware of a pregnancy and have the opportunity to discuss the benefits and risks of proceeding or to identify alternative treatment options.[265] And an earlier example related to hormonal imbalances illustrates why endocrinologists may require access to reproductive health information. For similar reasons, it is important that a health care provider maintain complete and accurate patient medical records to ensure subsequent health care providers are adequately informed in making diagnoses or recommending courses of treatment.

Thus, to avoid the potential for disruption to health care and ensure the provision of appropriate health care, the Department proposes to limit the prohibition's application to uses and disclosures of PHI where the purpose is to use the information against any person for seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided, or to identify any person for doing so. The Department believes the narrowly crafted prohibition, as proposed, would avoid deterring individuals from obtaining lawful health care or providing full information to their health care providers out of fear that highly sensitive health information could be disclosed in connection with a criminal, civil, or administrative investigation or proceeding. At the same time, the proposal would facilitate the ability of health care providers to navigate the new medical-legal landscape in cooperation with their patients. The proposed prohibition also would serve as a disincentive to health care providers considering leaving gaps or including inaccuracies in medical records or taking other action to protect individuals or avoid liability under laws prosecuting provision of reproductive health care. Such disincentives, rooted in the ability to keep PHI private when sought for certain purposes, are properly within the Department's authority to regulate under HIPAA.

Preemption of State Laws

The Privacy Rule generally preempts contrary provisions of state laws.[266] Thus, if this NPRM were to be finalized, provisions of state law that are contrary to these proposals would be preempted. The Department recognizes that the proposal to prohibit uses and disclosures of PHI for a criminal, civil, or administrative investigation into or proceeding against any person, or to identify any person for the purpose of initiating such an investigation or proceeding, may create a conflict between the Privacy Rule and some state laws—though we have carefully crafted the proposed prohibition to apply only in circumstances in which the state lacks any substantial interest in seeking the disclosure. In such cases, regulated entities would be required to comply with the Privacy Rule, if modified as proposed. For example, the Privacy Rule, if modified as proposed, would prohibit the disclosure of PHI to law enforcement in furtherance of a law enforcement investigation of an individual for obtaining reproductive health care that is lawful under the circumstances in which it is provided. It would also prohibit the disclosure of PHI for a law enforcement investigation of a health clinic for providing reproductive health care that is lawful under the circumstances in which it is provided, even in response to a court order, such as a search warrant.[267] Such disclosure, despite the court order, would be a violation of the Privacy Rule and would subject the regulated entity to a potential OCR investigation and civil money penalty. Additionally, if a regulated entity chose to comply with the court order in the example above, there would be a presumption that a breach of unsecured PHI had occurred because there was a disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the privacy of the PHI. Thus, breach notification would be required unless the entity could demonstrate that there was a low probability that the PHI had been compromised.[268] Where an entity determines that a breach has occurred, the entity would need to provide notification to the affected individual(s), the Secretary, and, when applicable, the media.[269]

Application of Proposed Prohibition

The Department proposes a Rule of Applicability to apply the prohibition where the relevant criminal, civil, or administrative investigation or proceeding is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care that: (1) is provided outside of the state where the investigation or proceeding is authorized and that is lawful in the state in which such health care is provided; (2) is protected, required, or authorized by Federal law, regardless of the state in which such health care is provided; or (3) is provided in the state in which the investigation or proceeding is authorized and that is permitted by the law of that state. This proposed Rule of Applicability would limit the application of the prohibition to

[265] *See* Trisha Pasricha, ''Pregnancy tests are routine before many surgical procedures. But Dobbs has raised the stakes of a positive result,'' STAT News (Aug. 16, 2022), *https://www.statnews.com/2022/08/16/pregnancy-tests-are-routine-before-many-surgical-procedures-but-dobbs-has-raised-the-stakes-of-a-positive-result/#:~:text=The%20Supreme%20Court's%20h9568%20decision,making%20testing%20anything%20but%20routine.*

[266] 42 U.S.C. 1320d–7(a)(1) (providing the general rule that, with limited exceptions, a provision or requirement under HIPAA supersedes any contrary provision of state law).

[267] In contrast, the current Privacy Rule would permit such a disclosure based on a court order requiring the disclosure. *See* 45 CFR 164.512(a); *see also* 45 CFR 164.103 (definition of ''Required by law'').

[268] 45 CFR 164.402 (definition of ''Breach'').

[269] *See* 45 CFR 164.400 through 164.414. The HIPAA Breach Notification Rule requires covered entities and their business associates to provide certain notifications following a breach of unsecured PHI.

circumstances in which the care is lawful under the circumstances in which such health care is provided.

As described above, all three prongs of the proposed Rule of Applicability require the reproductive health care at issue to be provided under circumstances in which the provision of such health care is lawful. Thus, in order to determine whether the proposed rule would permit the use or disclosure of PHI, the regulated entity would need to determine whether the reproductive health care was provided under circumstances in which it was lawful to do so. Where the regulated entity determines that the reproductive health care was provided under circumstances where it was unlawful, the proposed prohibition would not apply, and the regulated entity would be permitted to use or disclose the PHI for a criminal, civil, or administrative investigation into or proceeding against a person in connection with seeking, obtaining, providing, or facilitating reproductive health care. For example, where the regulated entity determines that reproductive health care was provided in a state where it was unlawful to do so and under circumstances in which Federal law does not protect the provision of such health care, a regulated entity would be permitted to use or disclose PHI for a criminal, civil, or administrative investigation against a health care provider that provided the unlawful reproductive health care. However, the regulated entity would be prohibited from disclosing PHI for the same purpose where it determined that the reproductive health care was provided in a state where it was lawful to do so, subject to the proposed Rule of Construction, discussed below.

Under the Constitution, an individual cannot be barred from traveling from one state to another to obtain reproductive health care.[270] Accordingly, the Department proposes to prohibit uses and disclosures of PHI where it is sought for use in an investigation into or proceeding against a person for seeking, obtaining, providing or facilitating reproductive health care outside of the state in which investigation or proceeding is authorized and where such health care is lawful under the circumstances in which it was provided. The proposal is not limited to circumstances in which the health care has not yet been obtained, provided, or facilitated. It also includes situations where the health care is ongoing or has been completed. For example, under this proposal, a covered entity that provides lawful reproductive health care to an out-of-state resident generally would not be permitted to use or disclose PHI to law enforcement from the individual's home state for use in an investigation or proceeding in connection with the individual's receipt of or the covered entity's provision of that reproductive health care. In addition, a covered health care provider in the state of the individual's residence that may receive PHI concerning such reproductive health care provided out of state (*e.g.,* a hospital in the home state that receives records from an out-of-state clinic) would be subject to the same restriction. In these circumstances under the Constitution, administrative, civil, or criminal liability may not be imposed for the receipt or provision of the out-of-state care. The Department also notes that generally, states do not have the ability to permit or limit actors in another state from engaging in certain activities. For example, states determine the requirements for licensure of health care providers that furnish health care within their borders; they do not have the ability to set such requirements for health care providers that furnish health care elsewhere. Thus, it would be inconsistent to permit states to impose liability on health care providers who furnish health care in another state in accordance with the laws of that state.

The proposed prohibition would also apply where the use or disclosure of PHI is sought for use in an investigation into or proceeding against a person where the reproductive health care is protected, required, or authorized by Federal law, regardless of the state in which such care is provided. For example, the proposed prohibition would prohibit the use or disclosure of PHI for use in an investigation into or proceeding against a covered entity that provided reproductive health care in a situation where EMTALA requires offering such health care. Additionally, the Department's proposal would prohibit the use or disclosure of PHI for use in an investigation into or proceeding against employees of the Department of Veterans Affairs (VA) who provide or facilitate reproductive health care in a manner authorized by Federal law, including VA regulations.[271] And it would apply where the investigation or proceeding is against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care—such as contraception—that remains protected by the Constitution after *Dobbs.*[272] In these circumstances, Federal law bars the imposition of administrative, civil, or criminal liability on such care.

Finally, the prohibition would apply when the relevant criminal, civil, or administrative investigation or proceeding is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care that is provided in the state in which the investigation or proceeding is authorized and that is permitted by the law of that state. Under this proposal, a regulated entity would not be permitted to use or disclose PHI in response to an investigation or proceeding occurring in a state where the reproductive health care is lawful. The proposal would also prohibit the use or disclosure of PHI where the health care meets the requirements of an exception to a law limiting the provision of reproductive health care (*e.g.,* for pregnancy termination when the pregnancy is the result of rape or incest or because the life of the pregnant individual is endangered). It would also prohibit the use or disclosure of PHI where the health care occurred at a point in pregnancy at which such health care is permitted by state law. If a state has not made the relevant reproductive health care unlawful, it lacks a legitimate interest in conducting a criminal, civil, or administrative investigation or proceeding into such health care where the investigation is centered on the mere fact that reproductive health care was or is being provided.

Scope of Proposed Prohibition

The proposed prohibition would apply to any request for PHI to facilitate a criminal, civil, or administrative investigation or proceeding against any person, or to identify any person in order to initiate an investigation or proceeding, where the basis for the investigation, proceeding, or identification is that the person sought,

[270] *Dobbs,* 142 S. Ct. at 2309 (Kavanaugh, J., concurring) (addressing whether a state can ''bar a resident of that State from traveling to another State to obtain an abortion? [. . .] [T]he answer is not based on the constitutional right to interstate travel.''); *see also* ''Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions,'' Department of Justice, 46 Op. O.L.C. __, at *19 (Dec. 23, 2022), *https://www.justice.gov/olc/opinion/file/1560596/download.*

[271] *See* ''Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services,'' Department of Justice, 46 Op. O.L.C. __ (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf.*

[272] *See Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1972); *Dobbs,* 142 S. Ct. at 2309 (Kavanaugh, J., concurring) (*Dobbs* ''does not threaten or cast doubt on'' the precedents providing constitutional protection for contraception).

obtained, provided, or facilitated reproductive health care that is lawful under the circumstances in which such health care is provided. As discussed above, the proposal would preempt state or other law requiring a regulated entity to use or disclose PHI in response to a court order or other type of legal process for a purpose prohibited by this proposed rule where the prohibition applies. It would not preempt laws that require use or disclosure of PHI for other purposes, including public health purposes.[273] The proposal also would not prohibit a regulated entity from disclosing an individual's PHI to law enforcement where the purpose of the disclosure is to investigate a sexual assault committed against the individual, provided the attestation described later in this preamble is obtained, or where such health care is not lawfully obtained in the state in which it is provided.

The Department intends ''criminal, civil, or administrative investigation into or proceeding against'' to encompass any type of legal or administrative investigation or proceeding. This includes, but is not limited to, law enforcement investigations, third party investigations in furtherance of civil proceedings, state licensure proceedings, criminal prosecutions, and family law proceedings. Examples of criminal, civil, or administrative investigations or proceedings for which regulated entities would be prohibited from using or disclosing PHI would also include a civil suit brought by a person exercising a private right of action provided for under state law against an individual or health care provider who obtained, provided, or facilitated a lawful abortion, or a law enforcement investigation into a health care provider for lawfully providing or facilitating the disposal of an embryo at the direction of the individual.

The proposal would prohibit a regulated entity from using or disclosing PHI for a criminal, civil, or administrative investigation into or proceeding against ''any person'' in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided, or for identifying ''any person'' for the purpose of initiating such an investigation or proceeding. ''Against any person'' means, based on the HIPAA Rules' definition of ''person,'' [274] that the proposed prohibition would not be limited to use or disclosure of PHI for use against the individual; rather, the prohibition would apply to the use or disclosure of PHI against a regulated entity, or any other person, including an individual or entity, who may have obtained, provided, or facilitated lawful reproductive health care.[275]

Rule of Construction

The Department does not intend for this proposed prohibition to prevent a regulated entity from using or disclosing PHI for other permissible purposes under the Privacy Rule where the request is not made primarily for the purpose of investigating or imposing liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided, and proposes to clarify that through a Rule of Construction. In so doing, the Department clarifies that it does not intend for the prohibition to prevent certain uses or disclosures of PHI where they are permitted by other provisions of the Privacy Rule as discussed below.

For example, just as an individual would be able to obtain their own PHI to initiate a claim against a covered health care provider for professional misconduct or negligence under the Privacy Rule's right of access,[276] the proposed Rule of Construction would make clear that the proposed prohibition does not inhibit the ability of a covered health care provider to use or disclose that same PHI to defend themselves in an investigation or proceeding related to professional misconduct or negligence where the alleged professional misconduct or negligence involved reproductive health care. In such instance, there would be due process concerns that could ultimately prevent the covered health care provider from being held liable for the professional misconduct or negligence. Thus, the Department proposes to limit the Rule of Construction to applying only in circumstances in which the health care provider would not be using or disclosing such PHI for the purpose of ''investigating or conducting a legal proceeding against a person,'' but rather for the purpose of defending itself against such an investigation or a proceeding. In addition, such an investigation or proceeding would not be based on the mere act of seeking, obtaining, providing, or facilitating reproductive health care. Instead, the investigation or proceeding would be based on allegations of professional misconduct or negligence in providing reproductive health care. The use or disclosure of PHI would be permitted under such circumstances. The Federal government could similarly use PHI (obtained with an attestation) to defend itself against claims brought by individuals where professional misconduct based on a health care provider's failure to meet an applicable standard of care, as described herein, may not be the primary focus of the claim, but where the provision of such care is central to the claim.

As discussed above, under the Rule of Applicability, the proposed prohibition on the use or disclosure of PHI for the purposes of a criminal, civil, or administrative investigation or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care, or the identification of any person for such investigations or proceedings, would apply only when such reproductive health care is provided under circumstances in which it is lawful to do so. When read in isolation, this would seemingly prevent regulated entities from using or disclosing PHI for the purpose of defending themselves or others against allegations that they sought, obtained, provided, or facilitated unlawful care. To address this potential misreading, the proposed Rule of Construction limits the proposed prohibition to circumstances in which the PHI is sought for the purpose of investigating or imposing liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care. Thus, under the proposal, a regulated entity could not use or disclose PHI as part of an investigation into any person for allegedly seeking, obtaining, providing, or facilitating reproductive health care; in contrast, the regulated entity could use or disclose PHI to defend any person in a criminal, civil, or administrative proceeding where liability could be imposed on that person for providing such health care.

Additionally, the proposed Rule of Construction would clarify that the proposed prohibition does not prohibit uses or disclosures to a health oversight agency for health oversight activities, such as for the purpose of investigating

[273] While this proposal does not affect reporting to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect as permitted under 45 CFR 164.512(b)(1)(ii), the proposed definitions of ''person'' and ''child abuse'' would make clear that seeking, obtaining, providing, or facilitating the provision of an abortion, products related to pregnancy, or fertilized egg or embryo disposal would not constitute child abuse as addressed therein.

[274] 45 CFR 160.103 (definition of ''Person'').

[275] Note that in section IV.A.1., the Department proposes to modify the definition of ''person,'' although that proposed modification would not have an effect here.

[276] 45 CFR 164.524.

whether reproductive health care was actually provided or appropriately billed in connection with a claim for such services.[277] For example, the proposed Rule of Construction would not prohibit the use or disclosure of PHI where the PHI is sought to investigate or pursue proceedings against a person for knowingly submitting a claim for reproductive health care for payment to the government where the reproductive health care was not provided or improperly billed. In this case, the request would not be made primarily for the purpose of investigating or imposing liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care; instead, the request would be primarily for the purpose of investigating or imposing liability on a person for, in this particular scenario, an alleged violation of the Federal False Claims Act or a state equivalent.[278] As another example, the proposed Rule of Construction also would not prohibit the use or disclosure of PHI to an Inspector General where the PHI is sought to conduct an audit aimed at protecting the integrity of the Medicare or Medicaid program. The proposed Rule of Construction also would make clear that the proposed prohibition does not prevent uses or disclosures for the purpose of investigating alleged violations of Federal nondiscrimination laws or abusive conduct, such as sexual assault, that occur in connection with reproductive health care.

The proposed Rule of Construction would also clarify that the proposed prohibition would not prohibit a regulated entity from responding to a request for relevant records in a criminal or civil investigation or proceeding pursuant to 18 U.S.C. 248 regarding freedom of access to clinic entrances. Investigations under this provision are conducted for the purpose of determining whether a person physically obstructed, intimidated, or interfered with persons providing ''reproductive health services,'' [279] or attempted to do so. They therefore do not involve investigations or proceedings against a person in connection with the mere act of ''seeking, obtaining, providing, or facilitating of reproductive health care'' under circumstances in which it was lawful to do so.

Disclosures Required by the Privacy Rule

Regulated entities are expected to continue to comply with and disclose PHI in response to an individual's request for access to their own PHI,[280] or a request from the Secretary to disclose PHI as part of an investigation into a regulated entity's compliance with the HIPAA Rules. These requirements to disclose PHI at 45 CFR 164.502(a)(2) and (4) are unlikely to come into conflict with the proposed prohibition because neither an individual's request for their own PHI nor a HIPAA compliance investigation are disclosures sought primarily because a person sought, obtained, provided, or facilitated reproductive health care.

The Department also reaffirms that an individual's right of access to their own PHI cannot be denied based on their intended use of the PHI.[281] Thus, an individual would retain their current ability to obtain a copy of their own PHI in a designated record set from a covered entity, as well as to direct a covered entity to transmit to another person (which could be a law enforcement official if the individual so chooses) an electronic copy of their PHI in an electronic health record (EHR). The Department is concerned that a law enforcement official or other person could potentially coerce an individual into exercising their right of access for the purpose of circumventing the prohibition. However, the Department also views the right of access as paramount to an individual's ability to make decisions regarding their own health care and does not intend to impede an individual's ability to exercise this right. Therefore, the Department does not propose to modify the right of access to address this specific concern.

3. Clarifying Personal Representative Status in the Context of Reproductive Health Care

Current Provision and Issues To Address

Section 164.502(g) of the Privacy Rule contains the standard for personal representatives and generally requires a regulated entity to treat an individual's personal representative as the individual when consistent with state law.[282] For example, the Privacy Rule would treat a legal guardian of an individual who has been declared incompetent by a court as the personal representative of that individual, if consistent with applicable law (*e.g.,* state law).[283] In this and certain other provisions, the Department seeks to maintain the balance between the interest of a state or others to regulate health and safety and protect vulnerable individuals [284] with the goal of maintaining the privacy protections established in the Privacy Rule.[285]

The Department is concerned that some regulated entities may interpret the Privacy Rule as providing them with the ability to refuse to recognize as an individual's personal representative a person who makes reproductive health care decisions, on behalf of the individual, with which the regulated entity disagrees. Under these circumstances, current section 502(g)(5) of the Privacy Rule could be interpreted to permit a regulated entity to assert that, by virtue of the personal representative's involvement in the reproductive health care of the individual, the regulated entity believes that the personal representative is subjecting the individual to abuse. Further, in the absence of clarification as proposed in this NPRM, this regulated entity could exercise professional judgment to decide that it is in the best interest of the individual not to recognize the personal representative's authority to make medical decisions for that individual.

Proposal

To protect the balance of interests struck by the Privacy Rule, the Department proposes to modify 45 CFR 164.502 by adding a new paragraph (g)(5)(iii). Proposed 45 CFR 164.502(g)(5)(iii) would ensure that a

[277] *See* 45 CFR 164.512(d)(1)(i) through (iv) for health oversight activities for which the Privacy Rule permits uses and disclosures of PHI. The proposal would permit these uses and disclosures of PHI to effectuate Federal agencies' health oversight activities.

[278] 31 U.S.C. 3729–3733.

[279] 18 U.S.C. 248(e)(5) (definition of ''Reproductive health services'').

[280] Under 45 CFR 164.502(a)(2)(i), covered entities are primarily responsible for compliance with the Privacy Rule's individual right of access provisions. The Privacy Rule imposes narrow direct liability on business associates for compliance with the individual right of access at 45 CFR 164.502(a)(4)(ii). However, it is the Department's understanding that many covered entities engage business associates, such as release-of-information vendors, to accept and respond to such requests. For additional information on business associates and their obligations under the HIPAA Rules, visit *https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/factsheet/index.html.*

[281] As explained in the preamble to the 2000 Privacy Rule, covered entities may only deny access for the reasons specifically provided in the rule. 65 FR 82556.

[282] *See* 45 CFR 164.502(g)(1).

[283] *See* 45 CFR 164.502(g)(3)(i). *See also* ''Personal Representatives,'' U.S. Dep't of Health and Human Servs., Office for Civil Rights, *https://www.hhs.gov/hipaa/for-individuals/personal-representatives/index.html.*

[284] *See, e.g.,* 45 CFR 164.510(b)(3) and 164.512(j)(1)(i)(A).

[285] *See* 65 FR 82471.

regulated entity could not deny personal representative status to a person, where such status would otherwise be consistent with state and other applicable law, primarily because that person facilitates or facilitated or provided reproductive health care for an individual. The Department believes this proposal is narrowly tailored and respects the interests of states and the Department by not unduly interfering with the ability of states to define the nature of the relationship between an individual and another person, including between a minor and a parent, upon whom the state deems it appropriate to bestow personal representative status. This proposal would, however, maintain the existing HIPAA standard by ensuring personal representative status, when otherwise consistent with state law, is not affected by the type of underlying health care sought.

4. Request for Comment

The Department requests comment on the foregoing proposals, including any benefits, drawbacks, or unintended consequences. The Department also requests comment on the following considerations in particular:

e. Whether the proposed prohibition in section IV.B.2. is sufficiently narrow so as to limit harmful uses or disclosures (such as for investigating individuals who have obtained, or health care providers who have provided, lawful health care primarily because they obtained or provided the lawful health care) and to permit beneficial uses or disclosures (such as for conducting investigations into health care fraud or audits examining general compliance with claims billing requirements). If not, please explain and provide examples.

f. The effects of individuals' concerns about the potential disclosure of their PHI to law enforcement or others on their willingness to confide in their health care providers.

g. The effects of individuals' withholding information about their health from their health care providers.

h. The effects of health care providers' concerns about potential criminal, civil, or administrative investigations into or proceedings against them or their patients in connection with the provision of lawful reproductive health care on the completeness and accuracy of medical records and continuity of care.

i. Whether it would be beneficial to further clarify or provide additional examples of instances in which the use or disclosure of PHI would be permitted under the proposal, such as examples of type of investigations or proceedings that are focused on health care fraud and for which PHI is necessary.

j. Whether the Department should permit the use and disclosure of an individual's PHI for the purpose described in section IV.B.2. with a valid authorization from the individual.

i. If so, please provide recommendations for how the Department could ensure that individuals are adequately protected from coercive tactics to provide such authorization. For example, should the Department permit such use or disclosure based on an authorization only if a regulated entity also obtains some form of attestation or assurance from the recipient of the PHI?

ii. Whether third parties might circumvent the prohibition by coercing individuals to exercise their right to direct a covered entity to transmit to a third party an electronic copy of their PHI in an EHR. If so, please suggest ways the Department could address this problem without curtailing an individual's right of access or increasing the burden on regulated entities.

k. Whether the Department should apply the proposed prohibition broadly to any health care, rather than limiting it to reproductive health care. Please explain.

l. Whether the Department should prohibit or limit uses or disclosures of ''highly sensitive PHI'' for certain purposes. If so:

i. How should the Department define ''highly sensitive PHI''? Please explain and provide reference materials to support any suggested definition.

ii. What additional protections should ''highly sensitive PHI'' be accorded?

iii. Do regulated entities have the technical ability to differentiate between types of PHI in their electronic record systems and apply special protections to a new category of ''highly sensitive PHI''?

iv. What would be the estimated burden on regulated entities of providing additional protections for ''highly sensitive PHI''?

m. Whether in addition to, or instead of, the proposed prohibition, the Department should:

i. Require a regulated entity to obtain an individual's authorization for certain uses and disclosures of PHI that currently are permitted without an authorization.

ii. Require a regulated entity to obtain an individual's authorization for any uses and disclosures of a defined category of PHI (*e.g.,* ''highly sensitive PHI'').

iii. Require a regulated entity to accept and comply with an individual's request for restrictions of uses and disclosures of ''highly sensitive PHI.''

iv. Eliminate or narrow any existing permissions to use or disclose ''highly sensitive PHI'' (*e.g.,* permissions to report crime on the premises or report crime in emergencies).

n. What are the practices and procedures that a regulated entity currently uses to determine what actions they will take when faced with a conflict of state and Federal laws regarding uses and disclosures of PHI?

o. Whether the scope of the proposed rule of applicability will be sufficiently clear to individuals and covered entities, and whether the provision should be made more specific or otherwise modified to ensure individuals and covered entities know when disclosures of PHI will be permitted.

p. Whether the proposed Rule of Construction is sufficient, or whether the Rule of Construction should be expanded, narrowed, or otherwise modified. Please explain and provide support for this response.

q. Whether the proposed clarification to personal representative status in the context of reproductive health care is sufficient to clarify that personal representatives who provide or facilitate reproductive health care have not committed an act of ''child abuse.'' Please explain and provide support for this response.

C. Section 164.509—Uses and Disclosures for Which an Attestation Is Required (Proposed Heading)

1. Current Provision and Issues To Address

The Privacy Rule currently separates uses and disclosures into three categories: required, permitted, and prohibited. Permitted uses and disclosures are further subdivided into those to carry out treatment, payment, or health care operations; [286] those for which an individual's authorization is required; [287] those requiring an opportunity for the individual to agree or object; [288] and those for which an authorization or opportunity to agree or object is not required.[289] For an individual's authorization to be valid, the Privacy Rule requires that it contain certain specific information to ensure that an individual authorizing a regulated entity to use or disclose their PHI to another person knows and

[286] 45 CFR 164.506.

[287] 45 CFR 164.508.

[288] 45 CFR 164.510.

[289] 45 CFR 164.512.

understands to what it is they are agreeing.[290]

Pursuant to proposals in this NPRM, a regulated entity presented with a request for PHI that is potentially related to reproductive health care would need to discern whether using or disclosing PHI in response to the request would be prohibited by the proposed 45 CFR 164.502(a)(5)(iii). Without a mechanism for assisting regulated entities in determining the purpose of a use or disclosure request from certain persons, the Department believes it would be difficult for regulated entities to distinguish between use and disclosure requests for permitted and prohibited purposes, potentially leading regulated entities to deny use or disclosure requests for permitted purposes. Additionally, absent an enforcement mechanism, the Department believes requesters of PHI could seek to use existing Privacy Rule permissions for purposes that would be prohibited under 45 CFR 164.502(a)(5)(iii).

2. Proposal

To facilitate compliance with the proposed prohibition while also providing a pathway to disclose PHI for permitted purposes for which authorization is not required and an opportunity to agree or object is not required, the Department proposes to add a requirement to obtain an attestation from the person requesting the use and disclosure as a condition for certain permitted uses and disclosures.

Specifically, the Department proposes to add a new section 45 CFR 164.509: ''Uses and disclosures for which an attestation is required.'' This proposed condition would require a regulated entity to obtain assurances from the person requesting the PHI, in the form of a signed and dated written statement attesting that the use or disclosure would not be for a purpose prohibited under 45 CFR 164.502(a)(5)(iii), where the person is making the request under the Privacy Rule permissions at 45 CFR 164.512(d) (disclosures for health oversight activities), (e) (disclosures for judicial and administrative proceedings), (f) (disclosures for law enforcement purposes), or (g)(1) (disclosures about decedents to coroners and medical examiners). This proposed condition would apply when the request is for PHI that is potentially related to reproductive health care, as defined in proposed 45 CFR 160.103. Thus, an attestation would not be required when the person making the request does not seek PHI potentially related to reproductive health care. If, however, the request would require a regulated entity to disclose PHI potentially related to reproductive health care, a regulated entity would have to first obtain an attestation from the person making the request to ensure that the PHI would not be used or disclosed for a prohibited purpose.

Additionally, where one of these permissions applies, the attestation must include a statement that the use or disclosure is not prohibited as described at 45 CFR 164.502(a)(5)(iii). Thus, the Department proposes to limit the attestation requirement to the Privacy Rule provisions that have the greatest potential to result in use or disclosure of an individual's PHI for a criminal, civil, or administrative investigation into or proceeding against, any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for the purpose of initiating such an investigation or proceeding.

The attestation proposal is intended both to ensure that the existing Privacy Rule permissions could not be used to circumvent the new proposed prohibition at 45 CFR 164.502(a)(5)(iii) and to continue permitting essential disclosures. The proposed attestation requirement also would limit the additional burden on the regulated entity receiving requests for such uses and disclosures by providing a standard mechanism by which the regulated entity would ascertain whether a requested use or disclosure would be prohibited under the proposal.

The Department's attestation proposal is modeled after the authorization requirement at 45 CFR 164.508.[291] Modeling the proposed attestation provision after the authorization provision would ensure that a person requesting the PHI provides a regulated entity with the information needed to ascertain whether the request is for a prohibited purpose because the proposed attestation requirement would require the person requesting the disclosure to confirm the types of PHI that they are requesting; to clearly identify the name of the individual whose PHI is being requested, if practicable, or if not practicable, the class of individuals whose PHI is being requested, and to confirm, in writing, that the use or disclosure is not for a purpose prohibited under 45 CFR 164.502(a)(5)(iii). For purposes of the ''class of individuals'' described in 45 CFR 164.509(c)(1)(i)(B), the requesting entity may describe such a class in general terms—for example, as all individuals who were treated by a certain health care provider or for whom a certain health care provider submitted claims, all individuals who received a certain procedure, or all individuals with given health insurance coverage. Similar to the authorization provision, the proposed attestation provision would also include the general requirements for a valid attestation, and defects of an invalid attestation. The provision would also include the attestation's content requirements and would apply to both uses and disclosures for the specified purposes.[292] In addition, the attestation must be written in plain language.[293]

The proposed attestation provision would also include a prohibition on compound attestations. Specifically, the proposal would prohibit the attestation from being ''combined with'' any other document. The Department intends this prohibition to mean that an attestation must be clearly labeled and distinct from any surrounding text. For example, an attestation would not be impermissibly ''combined with'' a subpoena if it is attached to it, provided that the attestation is clearly labeled as such. As another example, an electronic attestation would not to be impermissibly ''combined with'' another document where the attestation is on the same screen as the other document, provided that the attestation is clearly and distinctly labeled as such.

Further, the attestation proposal would explicitly permit the attestation document to be in electronic format, as well as electronically signed by the person requesting the disclosure.[294] At this time, the Department declines to propose mandating a specific electronic format for the attestation. The attestation would be facially valid when the document meets the required elements of the attestation proposal and includes an electronic signature that is valid under applicable Federal and state law.[295]

[290] 45 CFR 164.508(b).

[291] Section 164.508 of title 45 CFR details the general rules for authorizations, such as the rules specific to types of PHI or purposes for disclosure, compound authorizations, the elements required for a valid authorization, and how authorizations may be revoked.

[292] Pursuant to 45 CFR 164.530(j), regulated entities would be required to maintain a written or electronic copy of the attestation.

[293] The Federal plain language guidelines under the Plain Writing Act of 2010 only applies to Federal agencies, but it serves as a helpful resource. *See* .

[294] Proposed 45 CFR 164.509(b)(1)(iv) and (c)(1)(v).

[295] While not explicitly stated in the Privacy Rule, the Department previously issued guidance clarifying that authorizations are permitted to be submitted and signed electronically. *See* HIPAA FAQ #475, and HIPAA FAQ #554, *https://*

Continued

Unlike the authorization provision, the proposed attestation would be limited to the specific use or disclosure. Generally, when a regulated entity receives a valid authorization, they may continue to use or disclose PHI to such requestor pursuant to that authorization after the initial disclosure, provided that such subsequent uses and disclosures are valid and related to that authorization. Under the proposal, the Department anticipates that each use or disclosure request would require a new attestation.

The Department is explicitly declining to propose a new exception to the minimum necessary standard for uses and disclosures made pursuant to an attestation under 45 CFR 164.509.[296] Thus, a regulated entity would have to limit a use or disclosure to the minimum necessary when provided in response to a request that would be subject to the proposed attestation requirement. Where the person requesting the PHI is also a regulated entity, that person would also need to make reasonable efforts to limit their request to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.[297]

The Department does not propose to require a regulated entity to investigate the validity of an attestation provided by a person requesting a use or disclosure of PHI; rather, a regulated entity would be able to rely on the attestation provided that it is objectively reasonable under the circumstances for the regulated entity to believe the statement required by 45 CFR 164.509(c)(1)(iv) that the requested disclosure of PHI is not for a purpose prohibited by 45 CFR 164.502(a)(5)(iii).[298] If such reliance is not objectively reasonable, then the regulated entity may not rely on the attestation. Under the proposal, it would not be objectively reasonable for a regulated entity to rely on a requester's representation as to whether the reproductive health care was provided under circumstances in which it was lawful to provide such care. This is because the regulated entity, and not the requester, has the information about the provision of such care that is necessary to make this determination. Therefore, this determination would need to be made by the regulated entity prior to using or disclosing PHI in response to a request for a use or disclosure of PHI that would require an attestation under the proposal.

The proposed attestation also would require a regulated entity to cease use or disclosure of PHI if the regulated entity developed reason to believe, during the course of the use or disclosure, that the representations contained within the attestation were materially false, leading to uses or disclosures for a prohibited purpose.[299] The Department notes that pursuant to HIPAA, a person who knowingly and in violation of the Administrative Simplification provisions obtains or discloses IIHI relating to another individual or discloses IIHI to another person would be subject to criminal liability.[300] Thus, a requester who knowingly falsifies an attestation (*e.g.,* makes material misrepresentations as to the intended uses of the PHI requested) to obtain (or cause to be disclosed) an individual's IIHI would be in violation of HIPAA and could be subject to criminal penalties as outlined in the statute.[301] Additionally, the Department notes that a disclosure made based on an attestation that contains material misrepresentations after the regulated entity becomes aware of such misrepresentations would constitute an impermissible disclosure, which may require notifications of a breach to the individual, the Secretary, and in some cases, the media.[302]

The proposed attestation does not replace the requirements of the Privacy Rule's permissions for a regulated entity to disclose PHI in response to a subpoena, discovery request, or other lawful process [303] or administrative request; [304] instead, it is designed to work with these permissions and their requirements. Under this proposal, for PHI to be disclosed pursuant to 45 CFR 164.512(e)(1)(ii) and (f)(1)(ii)(C), a regulated entity would need to verify that the requirements of each provision are met and also satisfy the requirements of the new attestation provision under the proposed 45 CFR 164.509. In addition, the requirements of 45 CFR 164.528, the right to an accounting of disclosures of PHI made by a covered entity, would not be affected by the proposed attestation. Therefore, disclosures made pursuant to a permission under 45 CFR 164.512(d), (e), (f), or (g) must be included in the accounting, including when they are made pursuant to an attestation.[305]

To reduce the burden on regulated entities implementing this proposed attestation, the Department is considering developing a model attestation that a regulated entity may use when developing its own attestation templates. The Department does not anticipate requiring regulated entities to use the model attestation at this time, thereby leaving a regulated entity free to draft an attestation that meets the specific needs of their organization. However, we do note that under the proposal, an attestation would be defective if it contained anything beyond the elements and statements required by paragraphs (c)(1) of § 164.509.

3. Request for Comment

The Department requests comment on the foregoing proposals, including any benefits, drawbacks, or unintended consequences. The Department also requests comment on the following considerations in particular:

r. Whether the proposed attestation requirement in section IV.C. would address all relevant types of permitted uses and disclosures under the Privacy Rule. That is, should the proposed requirement apply as a condition of any additional permitted uses and disclosures that could be used to request uses and disclosures of PHI for a prohibited purpose?

i. Conversely, would the proposed requirement be overinclusive, placing unreasonable barriers to disclosures for beneficial purposes such that the Department should narrow the scope of the proposed requirement?

ii. The Department requests comment on specific examples of unreasonable barriers and recommended alternatives.

s. Whether requesters of PHI should be required to name the individuals whose PHI they are requesting, or if describing a class of individuals whose PHI is requested is sufficient. Please explain how the Department can further protect the privacy of individuals from requests for large amounts of PHI ostensibly sought for a non-prohibited

www.hhs.gov/hipaa/for-professionals/faq/554/how-do-hipaa-authorizations-apply-to-electronic-health-information/index.html.

[296] *See* 45 CFR 164.502(b). The minimum necessary standard of the Privacy Rule applies to all uses and disclosures where a request does not meet one of the specified exceptions in paragraph (b)(2).

[297] 45 CFR 164.502(b)(1).

[298] This approach is consistent with 45 CFR 164.514(h)(2)(iii), which permits a covered entity to rely on certain statements or requests to meet the requirement to verify the legal authority of a public official or a person acting on behalf of the public official if such reliance is reasonable under the circumstances.

[299] Proposed 45 CFR 164.509(d).

[300] *See* 42 U.S.C. 1320d–6(a).

[301] *See* 42 U.S.C. 1320d–6(b).

[302] 45 CFR 164.400 *et seq.* The HIPAA Breach Notification Rule, 45 CFR 164.400–414, requires HIPAA covered entities and their business associates to provide notification following a breach of unsecured PHI.

[303] 45 CFR 165.512(e)(1)(ii).

[304] 45 CFR 164.512(f)(1)(ii)(C).

[305] *See also* 45 CFR 164.528(a)(2) regarding when the covered entity must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official.

purpose if requesters of PHI are permitted to describe a class of individuals whose PHI is requested.

t. How the Department should interpret the terms ''practicable'' and ''class of individuals.''

u. Whether a model attestation would be useful for regulated entities.

i. If so, what other information should be included within such model attestation to improve regulated entities' understanding of the proposed attestation requirements, if adopted?

ii. What should be the format of a model attestation?

v. Whether the Department should require a particular attestation format, rather than providing a model attestation.

w. How the Department should interpret ''combined with'' at proposed 45 CFR 164.509(b)(3) with respect to both paper and electronic attestations to minimize the burden on regulated entities of understanding and responding to requests that require an attestation.

x. Whether the Department should consider permitting the attestation to be combined with other types of documents.

i. If so, which types of documents should regulated entities be permitted to combine with the attestation?

ii. What potential negative impacts could this have on the clarity of the attestation?

y. Whether the Department should require the attestation to include a signed declaration made under penalty of perjury that the requester is not making the request for a purpose prohibited by this proposal and any ramifications, positive or negative, of such a requirement.

z. Whether there are any other elements that should be included within the proposed attestation that are not currently listed.

aa. Whether the Department should consider it a material misrepresentation if a person who signs an attestation does not have an objectively reasonable basis to suspect that the reproductive health care was provided under circumstances in which it was unlawful. If so, what should the Department consider a reasonable basis for suspicion?

bb. How the proposed attestation requirement would affect a regulated entity's process for responding to regular or routine requests from certain requestors, such as government agencies that request PHI for purposes of health oversight activities. For such requests, what information should such requestors provide to reduce regulated entities' compliance burden associated with the proposed attestation requirements?

cc. Whether there is alternative documentation that a requestor could provide, instead of an attestation, to assist a regulated entity in complying with 45 CFR 164.502(a)(5)(iii). For example, would a notice from a health oversight agency that identifies the objective of an audit, information sought, and the requesting agency provide sufficient information to assure the regulated entity that the audit is not subject to the prohibition at proposed 45 CFR 164.502(a)(5)(iii)? Please provide examples of documentation that may be helpful.

D. Section 164.512—Uses and Disclosures for Which an Authorization or Opportunity To Agree or Object Is Not Required

1. Applying the Proposed Prohibition and Attestation Requirement to Certain Permitted Uses and Disclosures

Current Provision and Issues To Address

Section 164.512 of the Privacy Rule contains the standards for uses and disclosures for which an authorization or opportunity to agree or object is not required. Many of the uses and disclosures addressed by 45 CFR 164.512 relate to government or administrative functions,[306] or as described in the 2000 Privacy Rule preamble, ''national priority purposes.'' [307] These permissions for uses and disclosures were not required by HIPAA but instead represented the Secretary's previous balancing of the privacy interests and expectations of individuals and the interests of communities in making certain information available for community purposes, such as for certain public health, health care oversight, and research purposes.[308] As discussed previously, the regulations implementing HIPAA have sought to ensure that individuals do not forgo health care when needed—or withhold important information from their health care providers that may affect the quality of health care they receive—out of a fear that their sensitive information would be revealed outside of their relationships with their health care providers.

The changes proposed in this NPRM attempt to address the need to ensure that PHI continues to be used and disclosed only in a manner consistent with the standard established in the Privacy Rule, given recent developments in Federal and state law that may undermine the privacy protections for PHI.

As discussed above, the proposed 45 CFR 164.502(a)(5)(iii) may prohibit uses and disclosures of PHI in some circumstances that are currently permitted. To clarify that this proposal is inclusive of purposes currently permitted under 45 CFR 164.512, the Department believes it is necessary to modify the general rule for such permitted uses and disclosures. In addition, the Department believes it is necessary to modify the general rule to reflect the new condition that would be imposed upon certain uses and disclosures permitted under 45 CFR 164.512 through the proposed attestation requirement at 45 CFR 164.509.

Proposal

The Department proposes to modify the introductory text of 45 CFR 164.512 by citing the proposed prohibition at the beginning of the first sentence and conditioning certain disclosures on the receipt of the attestation proposed at 45 CFR 164.509. The proposed modification would add the clause ''Except as provided by 45 CFR 164.502(a)(5)(iii), [. . .]'' and ''and 45 CFR 164.509'' to ''subject to the applicable requirements of this section.''

As discussed above, the proposed change would create a new requirement to obtain an attestation from the person requesting the use and disclosure of PHI potentially related to reproductive health care as a condition for certain types of permitted uses and disclosures of PHI. For example, the Privacy Rule currently permits uses and disclosures for health care oversight,[309] judicial and administrative proceedings,[310] law enforcement purposes,[311] and coroners and medical examiners,[312] provided specified conditions are met. If paragraph (a)(5)(iii) of 45 CFR 164.502

[306] *See, e.g.,* 45 CFR 164.512(a), Uses and disclosures required by law; 45 CFR 164.512(b), Uses and disclosures for public health activities; 45 CFR 164.512(c), Disclosures about victims of abuse, neglect or domestic violence; 45 CFR 164.512(d) Uses and disclosures for health oversight activities; 45 CFR 164.512(e), Disclosures for judicial and administrative proceedings; 45 CFR 164.512(f), Disclosures for law enforcement purposes; 45 CFR 164.512(g) Uses and disclosures about decedents; 45 CFR 164.512(h), Uses and disclosures for cadaveric organ, eye or tissue donation purposes; 45 CFR 164.512(i), Uses and disclosures for research purposes; 45 CFR 164.512(j), Uses and disclosures to avert a serious threat to health or safety; 45 CFR 164.512(k), Uses and disclosures for specialized government functions; and 45 CFR 164.512(l), Disclosures for workers' compensation.

[307] 65 FR 82524.

[308] *See* 65 FR 82471.

[309] 45 CFR 164.512(d).

[310] 45 CFR 164.512(e).

[311] 45 CFR 164.512(f).

[312] 45 CFR 164.512(g)(1).

is finalized, uses and disclosures of PHI for these purposes would be subject to an additional condition; that is, such uses and disclosures would be prohibited unless a regulated entity first obtained an attestation from the person requesting the use and disclosure under proposed 45 CFR 164.509.

The Department assumes that there would be instances in which a state or other law requires a regulated entity to use or disclose PHI for health care oversight, judicial and administrative proceedings, law enforcement purposes, or coroners and medical examiners for a purpose not related to one of the prohibited purposes in proposed 45 CFR 164.502(a)(5)(iii). The Department believes that a regulated entity would be able to comply with such laws, as well as the proposed attestation requirement if the PHI is potentially related to reproductive health care. For example, a regulated entity may continue to disclose PHI without an authorization to a state medical board, a prosecutor, or a coroner, in accordance with the Privacy Rule, when the request is for PHI that is not potentially related to reproductive health care or accompanied by the required attestation. As a result, a regulated entity may continue to assist the state in carrying out its health care oversight, judicial and administrative functions, law enforcement, and coroner duties with the use or disclosure of PHI that is potentially related to reproductive health care once a facially valid attestation has been provided to the regulated entity from whom PHI is sought, except in matters involving restrictions on seeking, obtaining, providing, or facilitating reproductive health care. In such cases, the state would need to obtain information about an individual's reproductive health or reproductive health care received by the individual from an entity not regulated under the Privacy Rule. As a reminder, the Privacy Rule only applies to PHI, which is IIHI that is maintained or transmitted by, for, or on behalf of a covered entity. Thus, it does not apply to individuals' health information when it is in the possession of a person that is not a covered entity or business associate, such as a friend, family member, or is stored on a personal cellular telephone or tablet.[313]

Additionally, for clarity, the Department proposes to change the word ''orally'' at the end of the introductory paragraph to ''verbally.'' No substantive change is intended.

2. Making a Technical Correction to the Heading of 45 CFR 164.512(c) and Clarifying That Providing or Facilitating Reproductive Health Care Is Not Abuse, Neglect, or Domestic Violence

Current Provisions and Issues to Address

Paragraph (c) of 45 CFR 164.512 permits disclosures of PHI about victims of abuse, neglect, or domestic violence under specified conditions. While the regulatory text includes the serial comma, clearly indicating that the provision addresses victims of three different types of crimes, the standard heading is less clear.

This section permits a regulated entity to disclose an individual's PHI under certain conditions to an authorized government agency where the regulated entity reasonably believes the individual to be a victim of abuse, neglect, or domestic violence. The Department is concerned that recent state actions may lead regulated entities to think that they are permitted to make such disclosures of PHI when they believe that persons who provide or facilitate access to reproductive health care are perpetrators of such crimes. Thus, the Department believes it is necessary to clarify that providing or facilitating access to appropriate reproductive health care is not abuse, neglect, or domestic violence.

Proposals

For grammatical clarity, the Department proposes to add the serial comma after the word ''neglect'' in the heading of the standard contained at 45 CFR 164.512(c), so it would read ''Standard: Disclosures about victims of abuse, neglect, or domestic violence.''

The Department also proposes to add a new paragraph (c)(3) to 45 CFR 164.512(c), with the heading ''Rules of construction,'' that would read, ''Nothing in this section shall be construed to permit uses or disclosures prohibited by § 164.502(a)(5)(iii).'' This new paragraph would clarify that the permission to use or disclose PHI in reports of abuse, neglect, or domestic violence does not permit uses or disclosures based primarily on the provision or facilitation of reproductive health care to the individual. The proposed provision is intended to safeguard the privacy of individuals' PHI against claims that uses and disclosures of that PHI are warranted because the provision or facilitation of reproductive health care, in and of itself, may constitute abuse, neglect, or domestic violence. Similar to the discussion above in section IV.D.1, the Department also does not intend for this proposal to obstruct oversight related to professional conduct or similar legal proceedings for which PHI related to reproductive health care is needed.

3. Clarifying the Permission for Disclosures Based on Administrative Processes

Current Provision and Issues To Address

Under 45 CFR 164.512(f)(1), a regulated entity may disclose PHI pursuant to an administrative request, provided that: (1) the information sought is relevant and material to a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) de-identified information could not reasonably be used.[314] Examples of administrative requests include administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law.[315] The examples of administrative requests provided in the existing regulatory text include only those requests that are enforceable in a court of law, and the catchall ''or similar process authorized by law'' similarly is intended to include only requests that, by law, require a response. This interpretation is consistent with the Privacy Rule's definition of ''required by law,'' which enumerates these and other examples of administrative requests that constitute ''a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law.'' [316] However, the Department has become aware that some regulated entities may be interpreting this provision in a manner that is inconsistent with the Department's intent. Therefore, the Department is taking this opportunity to clarify the types of administrative processes that this provision was intended to address.

Proposal

Specifically, the Department proposes to insert language to clarify that the administrative processes that give rise to a permitted disclosure include only those that, by law, require a regulated

[313] *See* Guidance on ''Protecting the Privacy and Security of Your Health Information When Using Your Personal Cell Phone or Tablet,'' U.S. Dep't of Health and Human Servs. (June 29, 2022), *https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/cell-phone-hipaa/index.html.*

[314] 45 CFR 164.512(f)(1)(ii)(C).

[315] *Id.*

[316] *See* 45 CFR 164.103. The Privacy Rule's definition of ''Required by law'' includes administrative requests and lists the examples of processes that are enumerated under 45 CFR 164.512(f)(1)(ii)(C).

entity to respond. Accordingly, the proposal would specify that PHI may be disclosed pursuant to an administrative request ''for which a response is required by law.'' This is not intended to be a substantive change, as the proposal is consistent with preamble discussion on this topic in the 2000 Privacy Rule.[317]

4. Request for Comment

The Department requests comment on the forgoing proposals, including any benefits, drawbacks, or unintended consequences. The Department also requests comment on the following considerations in particular:

dd. The way in which regulated entities currently receive and address requests for PHI when requested pursuant to the Privacy Rule permissions at 45 CFR 164.512(d) (uses and disclosures for health oversight activities), (e) (disclosures for judicial and administrative proceedings), (f) (disclosures for law enforcement purposes), or (g)(1) (uses and disclosures about decedents to coroners and medical examiners). Specifically:

i. How are such requests currently submitted (*e.g.,* hard copy letter, electronically via email, an online form)?

ii. For requests under 45 CFR 164.512(e)(1)(ii) and (f)(1)(ii)(C):

i. When using or disclosing information after receiving the required assurances,[318] does the entity choose to obtain assurances for every subsequent related request, or does the entity continue to disclose PHI to such entity after receiving the initial assurance, provided that subsequent requests are related to the initial request in which the initial assurance was received?

ii. How do regulated entities accept assurances (*e.g.,* hard copy letter, electronically via email, uploading to an online portal)?

ee. Examples, if any, of uses or disclosures of PHI that are required by law and are not for prohibited purposes but may no longer be permitted under this proposal.

ff. The effect expanding the scope of the proposed prohibition to include any health care would have on the proposed attestation requirement and the ability of regulated entities to implement it.

gg. Whether the phrase ''based primarily'' is sufficient to clarify that the proposed rule of construction is only intended to address situations where the purpose is to investigate or impose liability because reproductive health care was provided, rather than, for example, the quality of the health care provided or whether claims submitted for that health care were appropriate.

hh. Whether there are disclosures currently made under Federal agencies' interpretations of the Privacy Act that would not be permitted under the proposal. If so, what would they be, and should the Department permit them?

E. Section 164.520—Notice of Privacy Practices for Protected Health Information

1. Current Provision and Issues To Address

The Privacy Rule generally requires that a covered entity provide individuals with an NPP to ensure that they understand how a covered entity may use and disclose their PHI, as well as their rights and the covered entity's legal duties with respect to PHI.[319] Section 164.520(b)(1)(ii) of the Privacy Rule describes the required contents of the NPP, including descriptions of the types of permitted uses and disclosures of their PHI. It does not, however, currently require a covered entity to provide information about prohibited uses and disclosures of PHI. The Department is concerned that the current NPP requirements might not provide individuals with adequate assurances that a revised Privacy Rule would prohibit the use or disclosure of their PHI in certain circumstances. Without such assurances, the Department is concerned that individuals may avoid accessing crucial health care.

2. Proposal

The Department proposes to modify 45 CFR 164.520(b)(1)(ii) to require that a covered entity add two types of uses and disclosures to those already described in the NPP, putting individuals on notice about how their PHI may or may not be used. Specifically, the Department proposes at 45 CFR 164.520(b)(1)(ii)(F) to add to the NPP's list of required elements two that address the proposed use and disclosure prohibition at 45 CFR 164.502(a)(5)(iii). Under this proposal, a covered entity must separately describe each type of use or disclosure prohibited by 45 CFR 164.502(a)(5)(iii) and must do so in sufficient detail for an individual to understand this prohibition and the proposed attestation requirement.

By modifying the NPP, a covered entity would continue to provide an individual with information the individual needs to make decisions about their health care, as well as information about how the covered entity will treat PHI the individual chooses to disclose to the covered entity, and about how to exercise their rights of access [320] and to request restrictions.[321] The modification would also enable the covered entity to provide the individual with reassurance about their privacy rights and their ability to discuss their reproductive health and related care with any health care provider without fear of harm because it would inform an individual that their PHI may not be used or disclosed for the purposes the Department proposes to prohibit.

3. Request for Comment

The Department requests comment on the foregoing proposals, including any benefits, drawbacks, or unintended consequences. The Department also requests comment on the following considerations in particular:

ii. Whether it would benefit individuals for the Department to require that covered entities include a statement in the NPP explaining that when PHI is disclosed for a permitted purpose to an entity other than a covered entity (*e.g.,* disclosed to a non-covered health care provider for treatment purposes), the recipient of the PHI would not be bound by the proposed prohibition because the Privacy Rule would no longer apply.

V. Executive Order 12866 and Related Executive Orders on Regulatory Review

A. Regulatory Impact Analysis

The Department of Health and Human Services (HHS or Department) has examined the effects of the proposed rule under Executive Order (E.O.) 12866, Regulatory Planning and Review,[322] E.O. 13563, Improving Regulation and Regulatory Review,[323]

[317] *See* 65 FR 82531.

[318] *See* 45 CFR 164.512(e)(1)(iii) and (f)(1)(ii)(C).

[319] 45 CFR 164.520. Unlike many provisions of the Privacy Rule, 45 CFR 164.520 applies only to covered entities, as opposed to both covered entities and their business associates.

[320] With certain exceptions, an individual has a right of access to inspect and obtain a copy of PHI about the individual in a designated record set for as long as the PHI is maintained in the designated record set. *See* 45 CFR 164.524.

[321] A covered entity must permit an individual to request that the covered entity restrict uses or disclosures of PHI for certain purposes. While the covered entity is not required to agree to the restriction, they may not use or disclose PHI if they agree to do so, except in limited circumstances. Additionally, a covered health care provider must permit an individual to request and must accommodate a reasonable request by an individual to receive communications of PHI from the covered entity by alternative means or at alternative locations. A health plan must do the same in certain circumstances. *See* 45 CFR 164.522.

[322] 58 FR 51735 (Oct. 4, 1993).

[323] 76 FR 3821 (Jan. 21, 2011).

the Regulatory Flexibility Act [324] (RFA), and the Unfunded Mandates Reform Act of 1995 [325] (UMRA). E.O.s 12866 and 13563 direct the Department to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive effects; and equity). This proposed rule is significant under section 3(f)(1) of E.O. 12866.

The RFA requires us to analyze regulatory options that would minimize any significant effect of a rule on small entities. As discussed in greater detail below, this analysis concludes, and the Secretary proposes to certify, that the proposed rule, if finalized, would not result in a significant economic effect on a substantial number of small entities.

The UMRA (section 202(a)) generally requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly Federal mandate costs resulting from imposing enforceable duties on state, local, or Tribal governments, or on the private sector; or increasing the stringency of conditions in, or decreasing the funding of, state, local, or Tribal governments under entitlement programs. This proposed rule would impose mandates that would result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of more than $165 million in any one year. The impact analysis in this proposed rule addresses those impacts both qualitatively and quantitatively. In general, each regulated entity, including government entities such as state Medicaid agencies that meet the definition of covered entity, would be required to ensure it adopts new policies and procedures for handling requests for PHI for which an attestation is required and train its workforce members on the new requirements. Additionally, although the Department has not quantified the costs, state, local, and Tribal investigative agencies would need to analyze requests that they initiate for PHI and provide regulated entities with an attestation that the request is not for a prohibited purpose where the request is for PHI that is potentially related to reproductive health care. One-time costs for all regulated entities to make these policy changes would result in costs over the UMRA threshold in one year. The Department has initially estimated that ongoing expenses for the new attestation requirement would not rise significantly; however, it seeks additional data to inform its estimates. Although Medicaid has funds available for states for certain administrative costs, these are limited to costs specific to operating the Medicaid program. There are no Federal funds directed at HIPAA compliance activities.

The Summary of Major Proposals and Need for Rulemaking sections at the beginning of this preamble contain a summary of this proposed rule and describe the reasons it is needed. The Department presents a detailed analysis below.

1. Summary of Costs and Benefits

The Department has identified six general categories of quantifiable costs arising from these proposals: (1) creating an attestation form and handling requests for disclosures for which an attestation is required; (2) revising business associate agreements; (3) updating the Notice of Privacy Practices (NPP) and posting it online; (4) developing new or modified policies and procedures; (5) revising training programs for workforce members; and (6) requesting an exception from preemption of state law. The first five categories apply primarily to covered entities such as health care providers and health plans, while the sixth category applies to states and other interested persons.

The Department estimates that the first-year costs attributable to the proposed rule would total approximately $612 million. These costs are associated with covered entities creating an attestation form and responding to requests for protected health information (PHI) that may require an attestation; revising business associate agreements; revising policies and procedures; updating, posting, and mailing the NPP; and revising training programs for workforce members, and with states or other persons requesting exceptions from preemption. These costs also include increased estimates for wages, postage, and the number of NPPs distributed by health plans. For years two through five, estimated annual costs of approximately $68 million are attributable to ongoing costs related to the proposed attestation requirement. Table 1 reports the present value and annualized estimates of the costs of the proposed rule covering a 5-year time horizon. Using a 7% discount rate, the Department estimates the proposed rule would result in annualized costs of $192 million; and using a 3% discount rate, these annualized costs are $183 million.

TABLE 1—ACCOUNTING TABLE, COSTS OF THE PROPOSED RULE, $ MILLIONS

Costs	Primary estimate	Year dollars	Discount rate	Period covered
Present Value	$883.4	2021	Undiscounted	2023–2027
Present Value	786.8	2021	7%	2023–2027
Present Value	839.1	2021	3%	2023–2027
Annualized	191.9	2021	7%	2023–2027
Annualized	183.2	2021	3%	2023–2027

The proposed changes to the Privacy Rule would likely result in important benefits that the Department is unable to fully quantify at this time. As explained further below, unquantified benefits include improved trust between individuals and health care providers; enhanced privacy and improved access to reproductive health care and information, which may prevent increases in maternal mortality and morbidity; increased accuracy and

[324] Public Law 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601–612).

[325] Pubic Law 104–4, 109 Stat. 48 (codified at 2 U.S.C. 1501).

completeness in patient medical records, which may prevent poor health outcomes; enhanced support for victims of rape, incest, and sex trafficking; and maintenance of family economic stability. Additionally, the Department believes that allowing regulated entities to accept an attestation from a requester of PHI that is potentially related to reproductive health care will reduce potential liability for regulated entities by providing some assurance that the requested disclosure is not prohibited.

TABLE 2—POTENTIAL NON-QUANTIFIED BENEFITS FOR COVERED ENTITIES AND INDIVIDUALS

Benefits
Improve access to complete information about lawful reproductive health care options for individuals who are pregnant or considering a pregnancy (*i.e.,* health literacy).
Maintain or reduce levels of maternal mortality and morbidity by ensuring that individuals and their clinicians can freely communicate and have access to complete information needed for quality health care, including coordination of care.
Decrease barriers to accessing prenatal health care by maintaining privacy for individuals who seek a complete range of reproductive health care options.
Enhance mental health and emotional well-being of pregnant individuals by reducing fear of prosecution based on potential disclosures of their PHI.
Improve or maintain trust between individuals and health care providers by reducing the potential for health care providers reporting PHI in a manner that could harm the individuals' interests.
Prevent or reduce re-victimization of pregnant individuals who have survived rape or incest by protecting their PHI from undue scrutiny.
Improve or maintain families' economic well-being by not exposing individuals to costly criminal, civil, or administrative investigations or proceedings for engaging in lawful activities if their PHI or a family member's PHI is disclosed.
Maintain the economic well-being of regulated entities by not exposing regulated entities or workforce members to costly civil litigation, investigation, or prosecution for engaging in lawful activities.
Ensure individuals' ability to obtain full and complete information and make lawful decisions concerning fertility- or infertility-related health care that may include selection or disposal of embryos without risk of criminal, civil, or administrative investigation or proceedings based on the disclosure of their PHI.

2. Baseline Conditions

The Privacy Rule, in conjunction with the Security and Breach Notification Rules, protects the privacy and security of individuals' PHI, that is, individually identifiable health information (IIHI) transmitted by or maintained in electronic media or any other form or medium, with certain exceptions. It limits the circumstances under which regulated entities are permitted or required to use or disclose PHI and requires covered entities to have safeguards in place to protect the privacy of PHI. The Privacy Rule also establishes certain rights for individuals with respect to their PHI. The Rule requires appropriate safeguards to protect the privacy of PHI and sets limits and conditions on the uses and disclosures that may be made of such information without an individual's authorization.

As explained in the preamble, the Department has the authority under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to modify the Privacy Rule to prohibit the use or disclosure of PHI for a criminal, civil, or administrative investigation into or proceeding against any person in connection with obtaining, providing, or facilitating reproductive health care, as well as to identify any person for the purpose of initiating such an investigation or proceeding. The Privacy Rule has been modified several times since it was first issued in 2000 to address statutory requirements, changed circumstances, and concerns and issues raised by stakeholders regarding the effects of the Privacy Rule on regulated entities, individuals, and others. Recently, as the preamble discusses, changed circumstances resulting from new inconsistencies in the regulation of reproductive health care nationwide and the negative effects on individuals' expectations for privacy and their relationships with their health care providers, as well as the additional burdens imposed on regulated entities, necessitate consideration of additional modifications.

For purposes of this Regulatory Impact Analysis (RIA), the proposed rule adopts the list of covered entities and cost assumptions identified in the Department's 2019 Information Collection Request (ICR).[326] The Department also relies on certain estimates and assumptions from the 1999 Privacy Rule NPRM [327] that remain relevant, and the 2013 Omnibus Rule,[328] as referenced in the analysis that follows.

The Department quantitatively analyzes and monetizes the effect that this proposed rule may have on regulated entities' actions to: revise business associate agreements between covered entities and their business associates, including release-of-information contractors; create new forms; respond to certain types of requests for PHI that is potentially related to reproductive health care; update their NPP; adopt policies and procedures to implement the legal requirements of this proposed rule, and train their employees on the updated policies and procedures. The Department analyzes the remaining benefits and burdens qualitatively because of the uncertainty inherent in predicting other concrete actions that such a diverse scope of regulated entities might take in response to this proposed rule.

Analytic Assumptions

The Department bases its assumptions for calculating estimated costs and benefits on a number of publicly available datasets, including data from the U.S. Census, the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Centers for Medicare & Medicaid Services, and the Agency for Healthcare Research and Quality.

Implementing the proposed regulatory changes likely would require covered entities to engage workforce members or consultants for certain activities. The Department assumes that an attorney would draft or review the new attestation form, revisions to business associate agreements, revisions to the NPP, and required changes to HIPAA policies and procedures. The Department expects that a training specialist would revise the necessary HIPAA training and a web designer would post the updated NPP. The Department further anticipates that a workforce member at the pay level of general health care practitioner would

[326] 84 FR 34905 (July 19, 2019).
[327] 64 FR 59918 (Nov. 3, 1999).
[328] 78 FR 5566 (Jan. 25, 2013).

confirm receipt of required attestations. To the extent that these assumptions would affect the Department's estimate of costs, the Department welcomes comment on its assumptions, particularly those in which the Department identifies the level of workforce member (*i.e.,* clerical staff, professional) that would be engaged in activities, and the amount of time that particular types of workforce members spend conducting activities related to this NPRM as further described below. Table 3 also lists pay rates for occupations referenced in the explanation of estimated information collection burdens in section F of this RIA and related tables.

For changes in time use for on-the-job activities considered in this analysis, the Department adopts an hourly value of time based on the cost of labor, including wages and benefits, and also indirect costs, which ''reflect resources necessary for the administrative oversight of employees and generally include time spent on administrative personnel issues (*e.g.,* human resources activities such as hiring, performance reviews, personnel transfers, affirmative action programs), writing administrative guidance documents, office expenses (*e.g.,* space rental, utilities, equipment costs), and outreach and general training (*e.g.,* employee development).'' [329] For each occupation performing activities as a result of the proposed rule, the Department identifies a pre-tax hourly wage using a database maintained by the BLS.[330] For the purposes of this analysis, the Department assumes that benefits plus indirect costs equal approximately 100 percent of pre-tax wages, and adjusts the hourly wage rates by multiplying by two, for a fully loaded hourly wage rate. The Department adopts this as the estimate of the hourly value of time for changes in time use for on-the-job activities.

TABLE 3—OCCUPATIONAL PAY RATES

Occupation code and title	Mean hourly wage	Fully loaded hourly wage
00–0000 All Occupations	$28.01	$56.02
43–3021 Billing and Posting Clerks	20.55	41.10
29–0000 Healthcare Practitioners and Technical Occupations	43.80	87.60
29–9021 Health Information Technologists and Medical Registrars	29.53	59.06
29–9099 Healthcare Practitioners and Technical Workers, All Other	31.19	62.38
15–1212 Information Security Analysts	54.46	108.92
23–1011 Lawyers	71.17	142.34
13–1111 Management Analysts	48.33	96.66
11–9111 Medical and Health Services Manager	57.61	115.22
29–2072 Medical Records Specialist	23.23	46.46
43–0000 Office and Administrative Support Occupations	20.88	41.76
11–2030 Public Relations and Fundraising Managers	63.85	127.70
13–1151 Training and Development Specialist	32.51	65.02
43–4171 Receptionists and Information Clerks	15.82	31.64
15–1255 Web and Digital Interface Designers	45.90	91.80
Composite Wage for Breach Notice	38.33	76.66

The Department assumes that the vast majority of covered entities would be able to incorporate changes to their workforce training into existing HIPAA training programs because the total time frame for compliance from date of finalization would be 240 days.[331]

Covered Entities Affected

This proposed rule would apply to HIPAA covered entities, including health care providers [332] that conduct covered electronic transactions, health plans, and in certain circumstances, health care clearinghouses.[333] The Department estimates that there are 774,331 business establishments that meet the definition of a covered entity (see Table 4). By calculating costs for establishments, rather than firms (which may be an umbrella organization over multiple establishments), there is a tendency toward overestimating some burdens, because certain costs would be borne by a parent organization rather than each separate facility. However, the level of an organization that is financially responsible for covering costs to implement Privacy Rule requirements may vary across the health care industry. The Department requests data on the extent to which certain burdens of the proposed rule would be borne by each facility versus an umbrella organization. Unless otherwise indicated, the Department relies on data about the number of firms and establishments from the U.S. Census.[334]

The Department expects that the proposed rule will have varying effects on different covered entities and would have the most direct effect on covered health care providers and health plans. However, all affected covered entities would at least need to adopt or change some policies and procedures and re-train some employees. Affected covered entities would include many Federal, state, local, Tribal, and private sector health care providers.

[329] *See* ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices,'' U.S. Dep't of Health and Human Servs., Office of the Assistant Secretary for Planning and Evaluation (2017), p. v, *https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework.*

[330] *See* ''Occupational Employment and Wages,'' Bureau of Labor Statistics, U.S. Dep't of Labor (May 2021), *https://www.bls.gov/oes/current/oes_nat.htm.*

[331] This includes 60 days from publication of a final rule to the effective date and an additional 180 days until the compliance date.

[332] The Department notes that pharmacies, discussed later in the preamble, are a type of health care provider under HIPAA. HIPAA defines the term health care provider for the purposes of the Administrative Simplification provisions at section 262: ''The term 'health care provider' includes a provider of services (as defined in section 1861(u)), a provider of medical or other health services (as defined in section 1861(s)), and any other person furnishing health care services or supplies.''

[333] Only certain provisions of the Privacy Rule apply to clearinghouses as covered entities. In addition, certain provisions apply to clearinghouses in their role as business associates of other covered entities. *See* 45 CFR 164.500(b) and (c). Because the provisions addressed in this proposed rule generally do not apply directly to clearinghouses, the Department does not anticipate that these entities would experience costs associated with this proposed rule.

[334] *See* ''2015 Statistics of U.S. Businesses (SUSB) Annual Data Tables by Establishment Industry'' (Jan. 2018), *https://www.census.gov/data/tables/2015/econ/susb/2015-susb-annual.html.*

Census data for businesses in the category of Third Party Administration of Insurance and Pension Funds does not separately enumerate those that service health and medical insurance. However, the Department is able to extrapolate from data about insurance carriers the percentage of businesses that service health and medical insurance. According to Census data, there are 880 Direct Health and Medical Insurance Carrier firms compared to 5,350 Insurance Carrier firms, such that health and medical insurance firms make up 16.4% of insurance firms. Thus, the Department assumes for purposes of this analysis that 16.4% of Third Party Administration of Insurance and Pension Funds firms and establishments service health and medical insurance. Applying this percentage to the 2,773 firms and 4,772 establishments in the category Third Party Administration of Insurance and Pension Funds, the Department estimates that 455 of these firms and 783 establishments are affected by this proposed rule.[335] See Table 4 below.

Covered pharmacies would also be affected by the proposed rule. There were 67,753 community pharmacies (including 19,500 pharmacy and drug store firms and 44,130 establishments identified in U.S. Census data) operating in the U.S. in 2015.[336] Small pharmacies largely use pharmacy services administration organizations (PSAOs) to provide administrative services, such as negotiations, on their behalf.[337] A 2013 study identified 22 PSAOs and notes there may be more in operation.[338] Based on information received from industry, the Department adjusts this number upward and estimates that the proposed rule would affect 40 PSAOs. The Department assumes that costs affecting pharmacies are incurred at each pharmacy and drug store establishment and each PSAO.

The Department has not separately calculated the effect of the proposed rule on business associates because the primary effect is on the covered entities for which they provide services. To the extent that covered entities engage business associates to perform activities under the proposed rule, the Department assumes that any additional costs will be borne by the covered entities through their contractual agreements with business associates. The Department's estimate that each revised business associate agreement would require no more than 1 hour of a lawyer's labor assumes that the hourly burden could be split between the covered entity and the business associate. Thus, the Department has calculated estimated costs based on the potential number of business associate agreements that are revised rather than the number of covered entities or business associates with revised agreements. The Department requests data on the number of business associates (which may include health care clearinghouses acting in their role as business associates of other covered entities) that would be affected by the proposed rule and the extent to which they may experience costs or other burdens not already accounted for in the estimates of burdens for revising business associate agreements. The Department also requests comment on the number of business associate agreements that would need to be revised, if any.

The Department requests public comment on these estimates, including those for third party administrators and pharmacies where the Department has provided additional explanation. The Department additionally requests detailed comment on any situations in which covered entities other than those identified here would be affected by this rulemaking.

TABLE 4—ESTIMATED NUMBER AND TYPE OF COVERED ENTITIES

Covered Entities			
NAICS code	Type of entity	Firms	Establishments
524114	Health and Medical Insurance Carriers	880	5,379
524292	Third Party Administrators	456	783
622	Hospitals	3,293	7,012
44611	Pharmacies	19,540	[a] 67,753
6211–6213	Office of Drs. & Other Professionals	433,267	505,863
6215	Medical Diagnostic & Imaging	7,863	17,265
6214	Outpatient Care	16,896	39,387
6219	Other Ambulatory Care	6,623	10,059
623	Skilled Nursing & Residential Facilities	38,455	86,653
6216	Home Health Agencies	21,829	30,980
532291	Home Health Equipment Rental	611	3,197
Total		549,713	774,331

[a] Number of pharmacy establishments is taken from industry statistics.

Individuals Affected

The Department believes that the population of individuals potentially affected by the proposed rule is approximately 74 million overall,[339] representing nearly one-fourth of the U.S. population, including approximately 6 million pregnant women and girls annually and an unknown number of individuals facing a potential pregnancy or pregnancy risk due to sexual activity, contraceptive avoidance or failure, rape (including statutory rape), and incest. According to Federal data, 78 percent of sexually active females received reproductive health care in 2015–2017.[340]

[335] [2,773 × .164 = 454.7; 4,772 × .164 = 782.6].

[336] *See* Dima Mazen Qato, Shannon Zenk, Jocelyn Wilder, et al., ''The availability of pharmacies in the United States: 2007–2015,'' PLOS ONE (Aug. 2017), *https://doi.org/10.1371/journal.pone.0183172.*

[337] Discussing generally that small and independent pharmacies often lack internal resources to support these services. *See* ''Prescription Drugs: The Number, Role, and Ownership of Pharmacy Services Administrative Organizations,'' U.S. Government Accountability Office, GAO–13–176 (Jan. 29, 2013), *https://www.gao.gov/products/GAO-13-176.*

[338] *Id.*

[339] *See* females aged 10–44, American Community Survey S0101 AGE AND SEX 2020: ACS 5-Year Estimates Subject Tables, *https://data.census.gov/cedsci/table?q=United%20States%20females&t=Populations%20and%20People&g=0100000US&tid=ACSST5Y2020.S0101.*

[340] See Sexually active females who received reproductive health services (FP–7.1), Healthypeople.gov, *https://wayback.archive-it.org/5774/20220415172039/https:/www.healthypeople.gov/2020/leading-health-indicators/2020-lhi-topics/Reproductive-and-Sexual-Health/data.*

TABLE 5—ESTIMATED NUMBER OF INDIVIDUALS AFFECTED

Females of potentially childbearing age	Population estimate	Number of 2017 Pregnancies [341]
Females Aged 10—14 [342]	10,310,162	4,460
Females 15—44 [343]	64,130,037	5,575,150
Total	74,440,199	5,579,610

3. Costs of the Proposed Rule

Below, the Department provides the basis for its estimated quantifiable costs resulting from the proposed changes to specific provisions of the Privacy Rule and invites comments on the Department's assumptions, data, and calculations, as well as any additional considerations that the Department has not identified here. Many of the estimates are based on assumptions formed through the Office for Civil Rights' (OCR's) experience in its compliance and enforcement program and accounts from stakeholders received at outreach events. The Department has not quantified recurring burdens for the proposed rule beyond that of obtaining a required attestation from the requester for health oversight, legal proceedings, law enforcement, and coroners or medical examiners.

The Department welcomes information or data points from commenters to further refine its estimates and assumptions.

a. Costs Associated With Requests for Exception From Preemption

The Department anticipates that states that restrict access to reproductive health care are likely to seek an exception to the proposed requirements of this rule that would preempt state law. Given the fast-developing status of state laws governing access to reproductive health care, the Department estimates a potential increase of 26 states[344] incurring costs to develop an exception request to submit to the Secretary. Based on existing burden estimates for this activity,[345] the Department estimates that each exception request would require approximately 16 hours of labor at the rate of a general health care practitioner and that approximately 26 states would make such requests. Thus, the Department estimates that states will spend a total of 416 hours requesting exception from preemption and monetize this as a one-time cost of $36,442 [= $16 \times 26 \times \$87.60$].

b. Estimated Costs From Adding a Requirement for an Attestation for Disclosures for Certain Purposes

The Department analyzed the costs of the proposed attestation requirement in comparison to the estimated costs of complying with the existing authorization requirement because both activities involve reviewing requests for disclosures and required documentation. The Department estimates that the annual costs of implementing a requirement to obtain an attestation that certain types of requests for PHI that is potentially related to reproductive health care are not for a prohibited purpose would be similar to the costs associated with uses and disclosures for which an authorization is required because the number of attestation-based requests likely would be lower even if the handling of such requests were more burdensome. For purposes of this analysis, the Department adopts the cost estimates already approved for documenting disclosures based on an authorization because those estimates provide an established baseline. The Department draws this estimate from its approved ICR for 45 CFR 164.508, which allows for one burden hour per covered entity based on the hourly wage of a general health care practitioner.[346] For 774,331 covered entities, this would amount to a total annual cost of $67,831,396 [= $774,331 \times 1 \times \$87.60$]. The quantified burden is associated with the requirement to keep records of attestations received. The Department anticipates an increase in time needed by regulated entities to process each request for PHI under 45 CFR 164.512(d), (e), (f), or (g)(1) that is not accompanied by an attestation. The Department believes that the regulated entity would likely need to determine whether the requested PHI includes PHI potentially related to reproductive health care. However, the Department lacks sufficient information to estimate the amount such a burden would vary from the burden of processing requests for PHI with an authorization. Additionally, the Department believes that regulated entities may need to evaluate whether the reproductive health care encompassed within the scope of a request under 45 CFR 164.512(d) through (f) and (g)(1) was lawful under the circumstances in which it was provided, and solicits comments on data about the associated costs of such reviews.

In addition to the recurring costs of responding to requests for PHI under the proposed revisions, the Department estimates that covered entities would incur a one-time cost for creating a new attestation form for a total of $55,109,137 [= $774,331 \times (30/60) \times \$142.34$]. This would be based on 30 minutes of labor by a lawyer using the Department's sample form.

c. Costs Arising From Revised Business Associate Agreements

The Department anticipates that a certain percentage of business associate agreements would likely need to be updated to reflect a determination made by covered entities and business associates that, where the business associate receives requests for disclosures of PHI under proposed 45 CFR 164.512(d), (e), (f), or (g)(1), the covered entity will bear the burden of determining whether a requested disclosure would include PHI that is potentially related to reproductive health care. Based on estimates in previous HIPAA rulemaking, the

[341] *See* Isaac Maddow-Zimet and Kathryn Kost, ''Pregnancies, Births and Abortions in the United States, 1973–2017: National and State Trends by Age Appendix Tables,'' Guttmacher Institute, *https://www.guttmacher.org/sites/default/files/report_downloads/pregnancies-births-abortions-us-1973-2017-appendix-tables.pdf.*

[342] *See* American Community Survey S0101 AGE AND SEX 2020: ACS 5-Year Estimates Subject Tables, *https://data.census.gov/cedsci/table?q=United%20States%20females&t=Populations%20and%20People&g=0100000US&tid=ACSST5Y2020.S0101.*

[343] *Id.*

[344] *See* Elizabeth Nash, Lauren Cross, ''26 States Are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why,'' Guttmacher Institute (published Oct. 28, 2021; updated Apr. 19, 2022; an updated analysis was published on Jan. 10, 2023), *https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why.* The number of states identified dropped to 24 in 2023; however, due to the pace of change in this area the Department relies on the higher number as a basis for its cost estimates.

[345] Information Collection, Process for Requesting Exception Determinations (states or persons), *https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201909-0945-001&icID=10428.*

[346] *See* Section F. of this RIA, Paperwork Reduction Act of 1995.

Department estimates that each new or significantly modified contract between a business associate and its subcontractors would require, at most, one hour of labor by a lawyer at the wage reported in Table 3. We believe that approximately 35 percent of 1 million business associates, or 350,000 entities, would decide to create or significantly modify subcontracts, resulting in total costs of $49,819,000 [= 350,000 × $142.34]. The Department invites comments on these assumptions and the number of business associate agreements likely to be revised due to the proposed regulatory changes.

d. Costs Arising From Changes to the Notice of Privacy Practices

The Department proposes to modify the NPP to notify individuals that covered entities cannot use or disclose PHI for certain purposes and that in certain circumstances, covered entities must obtain an attestation from the person requesting the use or disclosure affirming that the request is not for a prohibited purpose, and where applicable, that the use or disclosure is primarily for a purpose described at 45 CFR 164.502(a)(5)(iii)(C).

The Department believes the burden associated with revising the NPP consists of costs related to developing and drafting the revised NPP for covered entities. The Department estimates that the proposal to update and revise the language in the NPP would require 30 minutes of professional legal services at the wage reported in Table 3. Across all covered entities, the Department estimates a cost of $55,109,137 [= 774,331 × (30/60) × $142.34]. The Department does not anticipate any new costs for health care providers associated with distribution of the revised notice other than posting it on the entity's website (if it has one) because health care providers have an ongoing obligation to provide the notice to first-time patients that is already accounted for in cost estimates for the HIPAA Rules. Health plans that post their NPP online would incur minimal costs by posting the updated notice, and then, including the updated NPP in the next annual mailing to subscribers.[347] Health plans that do not provide an annual mailing would potentially incur an additional $12,743,700 in capital expenses for mailing the revised NPP to an estimated 10 percent of the 150,000,000 health plan subscribers who receive a mailed, paper copy of the notice, as well as the labor expense for an administrative support staff member at the rate shown in Table 3 to complete the mailing, for approximately $2,610,000 [= 62,500 hours × $41.76]. The Department further estimates the cost of posting the revised NPP on the covered entity's website would be 15 minutes of a web designer's time at the wage reported in Table 3. Across all covered entities, the Department estimates a cost of online posting as $17,770,896 [= 774,331 × (15/60) × $91.80].

e. Estimated Costs for Developing New or Modified Policies and Procedures

The Department anticipates that covered entities would need to develop new or modified policies and procedures related to new requirements for attestations, prohibited uses and disclosures, certain uses and disclosures permitted under 45 CFR 164.512, and clarification of personal representative qualifications. The Department estimates that the costs associated with developing policies and procedures would be the labor of a lawyer for 2.5 hours and that this expense would represent the largest area of cost for compliance with the rule once finalized, for a total of $275,545,686 [= 774,331 × 2.5 × $142.34].

f. Costs Associated With Training Workforce Members

The Department anticipates that covered entities would be able to incorporate new content into existing HIPAA training requirements and that the costs associated with doing so would be attributed to the labor of a training specialist for an estimated 90 minutes for a total of $75,543,732 [= 774,331 × (90/60) × $65.04].

The Department invites comments on all aspects of its estimates and assumptions, including the time spent on the identified activities and the occupations or professions of persons designated to perform those tasks.

g. Total Quantifiable Costs

The Department summarizes in Table 6 the estimated nonrecurring costs that covered entities and states would experience in the first year of implementing the proposed regulatory changes. The Department anticipates that these costs would be for requesting exceptions from preemption of state law, implementing the attestation requirement, revising business associate agreements, revising the NPP, mailing it, and posting it online, revising policies and procedures, and updating HIPAA training programs.

TABLE 6—NEW NONRECURRING COSTS OF COMPLIANCE WITH THE PROPOSED RULE

Nonrecurring costs	Burden hours/action × hourly wage	Respondents	Total costs (millions)
Exception Requests	16 × $87.60	26 States	$0.04
Attestations, New Form	30/60 × $142.34	774,331 Covered entities	55
BAAs, Revising	1 × $142.34	350,000 BAAs	50
NPP, Updating	30/60 × $142.34	774,331 Covered entities	55
NPP, Mailing	0.25/60 × $41.76	15,000,000 Subscribers	3
NPP, Posting Online	15/60 × $91.80	774,331 Covered entities	18
Policies & Procedures	150/60 × $142.34	774,331 Covered entities	276
Training	90/60 × $65.04	774,331 Covered entities	76
Capital Expenses, Mailing NPPs—Health Plans.	$.85/NPP	15,000,000 Subscribers	13
Total Nonrecurring Burden			[a] 544

[a] Totals may not add up due to rounding.

Table 7 summarizes the recurring costs that the Department anticipates covered entities would incur annually as a result of the proposed regulatory changes. These new costs would be based on responding to requests for disclosures for which an attestation is required.

[347] 45 CFR 164.520(c)(1)(v)(A).

TABLE 7—RECURRING ANNUAL COSTS OF COMPLIANCE WITH THE PROPOSED RULE [a]

Recurring costs	Burden hours/CE × wage	Respondents	Total annual cost (millions)
Disclosures for which an attestation is required.	1 × $87.60	774,331 Covered entities	$67,831,396
Total Recurring Annual Burden			67,831,396

[a] Totals may not add up due to rounding.

Costs Borne by the Department

The covered entities that are operated by the Department would be affected by the proposed changes in a similar manner to other covered entities, and those costs have been factored into the estimates above.

The Department expects that it would incur costs related to drafting and disseminating information about the proposed regulatory changes to covered entities, including health care providers and health plans. In addition, the Department anticipates that it may incur a 26-fold increase in the number of requests for exceptions from state law preemption in the first year after a final rule becomes effective, at an estimated total cost of approximately $146,319 to analyze and develop responses for an average cost of $7,410 per request. This increase is based on the number of states that have or are likely to pass more restrictive abortion laws [348] and may seek to use or disclose individuals' PHI to enforce those laws. This estimate assumes that the Department receives and reviews exception requests from each of those 26 states, that half of those require a more complex analysis, and that all requests result in a written response within one year of the final rule's publication.

Benefits of the Proposed Rule

The benefits of the proposed rule to individuals and families are likely substantial, and yet are not fully quantifiable because the area of health care the proposed rule addresses is among the most sensitive and life-altering if privacy is violated. Additionally, the value of privacy, which cannot be recovered once lost, and trust that privacy will be protected by others, is difficult to quantify fully. Notably, matters of reproductive health may include circumstances resulting in a pregnancy, considerations concerning maternal and fetal health, family genetic conditions, information concerning sexually transmitted infections, and the relationship between prospective parents (including victimization due to rape, incest, or sex trafficking). Involuntary or poorly-timed disclosures can irreparably harm relationships and reputations, and even result in job loss or other negative consequences in the workplace,[349] as well as investigation, civil litigation or proceedings, and prosecution for lawful activities.[350]Additionally, fear of potential penalties or liability that may result from disclosing information to a health care provider related to accessing abortion or other reproductive health care may cast a long shadow, decreasing trust between individuals and health care providers, discouraging and deterring access to other valuable and necessary health care, or compromising ongoing or subsequent care if patient medical records are not accurate or complete.[351] The proposed rule would prevent or reduce the harms discussed here, resulting in non-quantifiable benefits to individuals and their families, friends, and health care providers. In particular, the role of trust in the health care system and its importance to the provision of high-quality health care is discussed extensively in section III of this preamble.

The Department believes the proposed rule would increase health literacy by improving access to complete information about health care options for individuals.[352] For example, the proposal to prohibit use and disclosure of PHI for purposes of prosecuting an individual, a person assisting them, or their health care provider would enable health care providers to obtain and provide complete and accurate medical information about reproductive health care without undue fear of serious and costly repercussions.

The Department believes that the proposed rule would also contribute to increased access to prenatal health care at the critical early stages of pregnancy by affording individuals the assurance that they may obtain reproductive health care without fearing that records related to that care would be subject to disclosure. For example, if a sexually active individual fears they or their health care providers could be subject to prosecution as a result of disclosure of their PHI, the individual may avoid informing health care providers about symptoms or asking questions of medical experts and may consequently fail to receive the support and health care they need to obtain a pregnancy diagnosis and receive appropriate, lawful health care.[353] Similarly, the proposed rule would likely contribute to decreasing the rate of maternal mortality and morbidity by improving access to information about health services.[354]

The Department believes that the proposed rule would contribute to enhancing the mental health and emotional well-being of individuals seeking or obtaining reproductive health care by reducing fear that their PHI would be disclosed for an investigation

[348] *See* Elizabeth Nash, Lauren Cross, ''26 States Are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why,'' Guttmacher Institute (published Oct. 28, 2021; updated Apr. 19, 2022 and Jan. 10, 2023), *https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why.* In January 2023, the number of projected states dropped to 24.

[349] *See* Danielle Keats Citron and Daniel J. Solove, ''Privacy Harms,'' GWU Legal Studies Research Paper No. 2021–11, GWU Law School Public Law Research Paper No. 2021–11, 102 Boston University Law Review 793, 830—861 (Feb. 9, 2021), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3782222.*

[350] *See* ''Lawyers preparing for abortion prosecutions warn about health care, data privacy,'' *supra* note 166.

[351] See ''Women with chronic conditions struggle to find medications after abortion laws limit access,'' Centers for Disease Control and Prevention, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion (Jan. 4, 2023), *https://www.cdc.gov/teenpregnancy/health-care-providers/index.htm;* and ''Abortion Bans May Limit Essential Medications for Women with Chronic Conditions,'' supra note 176.

[352] *See* Lynn M. Yee, Robert Silver, David M. Haas, et al., ''Association of Health Literacy Among Nulliparous Individuals and Maternal and Neonatal Outcomes,'' JAMA Network Open (Sept. 1, 2021), *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783674.*

[353] *See* Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022, *supra* note 16.

[354] *See* Helen Levy, Alex Janke, ''Health Literacy and Access to Care,'' Journal of Health Communication (2016), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4924568/; see also* Brief for Zurawski.

of or proceeding against, or prosecution of the individual, their health care provider, or any persons facilitating the individual's access to reproductive health care. This is especially important for individuals who need access to reproductive health care because they are survivors of rape, incest, or sex trafficking. For at least some such individuals, certain types of reproductive health care, including abortion, generally remain legal even if the option to terminate a pregnancy is no longer available to the broader population under state laws. The proposed rule is projected to prevent or reduce re-victimization of pregnant individuals who have been subject to rape, incest, or sex trafficking by protecting their PHI from disclosure.

Investigations and prosecutions that rely on that information may be costly to defend against and thus financially draining for the target of the investigation or prosecution and for persons who are not the target of the investigation or prosecution but whose information may be used as evidence against others. Witnesses or targets of an investigation or prosecution may lose time from work and incur steep legal bills that create unmanageable debt or otherwise harm the economic stability of the individual, their family, and their health care provider. In the absence of the proposal, much of those costs may be for defending against the disclosure or use of PHI. Thus, the Department expects that the proposed rule would contribute to families' economic well-being by reducing the risk of exposure to costly investigation or prosecution for lawful activities as a result of disclosures of PHI.

The Department believes that the proposed rule would also contribute to improved continuity of care and ongoing and subsequent health care for individuals, thereby improving health outcomes. If a health care provider believes that the patient's PHI is likely to be disclosed without the patient's or the health care provider's knowledge or consent, possibly to initiate or be used in criminal or civil proceedings against the patient, their health care provider, or others, the health care provider is more likely to omit information about a patient's medical history or condition, or leave gaps or include inaccuracies, when preparing patient medical records. And if an individual's medical records lack complete information about the individual's health history, a subsequent health care provider may not be able to conduct an appropriate health assessment to reach a sound diagnosis and recommend the best course of action for the individual. Alternatively, health care providers may withhold from the individual full and complete information about their treatment options because of liability concerns stemming from fears about the privacy of an individual's PHI.[355] Heightened confidentiality and privacy protections enable a health care provider to feel confident maintaining full and complete patient records. Without complete patient records, an individual is less likely to receive appropriate ongoing or future health care, including correct diagnoses, and will be impeded in making informed treatment decisions.

Comparison of Benefits and Costs

The Department expects the totality of the benefits of the proposed rule to outweigh the costs because the rule would create a net benefit to society, particularly for the significant number of individuals who could become pregnant (nearly one-fourth of the population of the U.S.) and who need access to lawful health care without the risk of their PHI being used or disclosed in furtherance of criminal, civil, or administrative investigations or proceedings. The Department expects covered entities and individuals to benefit from covered entities' increased flexibility and confidence to be able to provide health care according to professional standards.

The Department's benefit-cost analysis asserts that the proposed regulatory changes would help support individuals' right to access health care and information about their health care options free of government intrusion, enhance the relationship between health care professionals and individuals, strengthen maternal well-being and family stability, and support victims of rape, incest, and sex trafficking. The regulatory proposals would also aid health care providers in developing and maintaining a high level of trust between health care professionals and individuals and maintaining complete and accurate patient medical records to aid ongoing and subsequent health care. Greater levels of trust would further enable individuals to develop and maintain relationships with health care professionals, which would enhance continuity of health care for all individuals receiving care from the health care provider, not only those in need of reproductive health care.

The financial costs of the proposed rule would accrue primarily to covered entities, particularly health care providers and health plans in the first year after implementation of a final rule, with recurring costs accruing annually at a lower rate.

4. Request for Comment

jj. The Department requests comment on all the estimates, assumptions, and analyses within the cost-benefits analysis, including the costs to regulated entities and individuals.

kk. The Department also requests comments on any relevant information or data that would inform a quantitative analysis of proposed reforms that the Department qualitatively addresses in this RIA. Specifically, the Department requests comment on the following:

i. Whether this proposed rule would affect other activities of regulated entities, including their ability to comply with other laws, and, if so, how.

ii. Whether the proposed prohibition on the use or disclosure of PHI for a criminal, civil, or administrative investigation or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided would affect the disclosure of PHI between health care providers or between health care providers and health plans for treatment purposes.

iii. Whether the proposed prohibition on the use or disclosure of PHI for a criminal, civil, or administrative investigation or proceeding against any person in connection with seeking obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided would affect the provision of access to individuals who request copies of their own PHI.

iv. Data about the costs to regulated entities of determining whether reproductive health care revealed in PHI that is the subject of a request under 45 CFR 164.512(d) through (f) and (g)(1) was lawful under the circumstances in which it was provided.

v. Data about the costs to regulated entities of determining whether a request for the use or disclosure of PHI is for a prohibited purpose where an attestation is not provided.

vi. Whether the ongoing cost associated with the burden of responding to requests for PHI with an authorization is an appropriate comparator for the ongoing cost associated with the burden of responding to requests for PHI that may require an attestation.

vii. The number of requests regulated entities receive annually for uses and disclosures under 45 CFR 164.512(d) through (f) and (g)(1), and the number of individuals' records encompassed by those requests.

[355] *See* Brief for Zurawski at p. 10.

viii. Data about the costs and any other burdens for regulated entities associated with determining that a request is for PHI that is potentially related to reproductive health care.

ix. Whether the lack of an attestation for some requests received under 45 CFR 164.512(d) through (f) and (g)(1) would increase the time needed to process each request.

ll. The Department also requests comments on whether there may be other indirect costs and benefits resulting from the changes in the proposed rule and welcomes additional information that may help quantify those costs and benefits.

B. Regulatory Alternatives to the Proposed Rule

The Department welcomes public comment on any benefits or drawbacks of the following alternatives it considered, but did not propose, while developing this proposed rule. The Department also requests comment on whether the Department should reconsider any of the alternatives considered, and if so, why.

No Regulatory Changes

The Department carefully considered several alternatives to issuing this NPRM, including the option of not pursuing any regulatory changes, but rejected that approach for several reasons. Recent developments in state law that impose greater restrictions on access to reproductive health care are generating significant confusion for individuals, health care providers, and family, friends, and caregivers regarding their ability to privately seek, obtain, provide, or facilitate lawful reproductive health care. In light of these developments, there is significant confusion about the extent to which reproductive health care information is protected by the Privacy Rule. Perhaps most importantly, the current regulatory environment is diminishing the ability of individuals to receive medically appropriate health care that remains legal under the circumstances in which it is provided—including in a wide range of contexts beyond reproductive care—thus putting their health at increased risk.[356] The Department believes that the Privacy Rule should be modified to protect the privacy of PHI to better support the provision of appropriate, timely, and lawful reproductive health care and other health care for pregnant individuals in the current environment. The proposed regulatory changes would further Congressional intent to protect the privacy of IIHI and bolster patient-provider confidentiality. Revising the Privacy Rule would clarify covered entities' obligations and flexibilities, protect the privacy of individuals' PHI, and improve the quality of individuals' health care.

Modify Privacy Rule Without Preempting State Law

The Department also considered whether to remove the Privacy Rule permissions for a covered entity to comply with certain other legal requirements to use or disclose PHI, such as the terms of a court order or other judicial or administrative process without preempting statutes or regulations that specifically require regulated entities to make uses and disclosures of PHI about an individual's reproductive health. The Department believes that this approach would not protect an individual from having their PHI disclosed and used against them when another law requires the disclosure. As discussed in the preamble, the Department believes that this result would undermine trust in the health care system and thereby decrease access to quality health care, as well as interfere with continuity of care by compromising the accuracy and completeness of patient medical records, contrary to Congress' intent in enacting HIPAA. The Department believes that these harms outweigh the states' interests in this context. The Department therefore proposes to preempt state law that would require use or disclosure of PHI about an individual's reproductive health for prohibited purposes, as discussed herein.

Modify the Privacy Rule To Align With 42 CFR Part 2 for Uses and Disclosures of PHI for Certain Criminal and Noncriminal Proceedings Against an Individual

The Department also considered proposing to apply requirements equivalent to 42 CFR part 2 (referred to as ''part 2'') for uses and disclosures of PHI for certain criminal and noncriminal proceedings against an individual based on their alleged decision to obtain, or attempt to obtain, reproductive health care. However, the Department believes this approach also would not protect an individual from having their PHI disclosed and potentially used against them pursuant to a court order, and thus it also would not prevent regulated entities from disclosing an individual's PHI for purposes of imposing criminal or civil liability on an individual, health care provider, or other person, for obtaining, providing, or facilitating lawful reproductive health care. Part 2 affords some discretion to courts to order disclosures of part 2 records in certain circumstances; however, part 2 also expressly prohibits further use or disclosure of those records by any recipient for a proceeding against a patient. The Privacy Rule only regulates uses and disclosures by regulated entities; the Privacy Rule cannot limit further uses or disclosures by other persons who receive an individual's health information from a regulated entity. Therefore, an approach similar to part 2 would not sufficiently strengthen privacy protections with respect to the purposes for which this proposal would prohibit the use or disclosure of PHI.

Require a Valid Authorization Before Using or Disclosing PHI for Certain Purposes

As an alternative to prohibiting certain uses and disclosures as proposed in this NPRM, the Department considered proposing to permit regulated entities to make such uses or disclosures of PHI only after obtaining a valid authorization. However, the Department has concerns regarding the potential for coercion or harassment of individuals to pressure them into providing authorization for access to their PHI by persons requesting the disclosure, such as law enforcement. In such a scenario, covered entities would be forced to choose between their obligations under state law and their Privacy Rule compliance responsibilities in the event that an individual declined to provide an authorization, undermining health information privacy protections for individuals. As a result, the Department's current view is that an authorization approach would not adequately ensure trust in the relationship between health care professionals and individuals.

Require Covered Entities To Agree to Requests for Restrictions on Disclosures of PHI for Treatment, Payment, and Health Care Operations

Concerns have arisen that some states may attempt to criminalize or otherwise penalize individuals for traveling out of state to obtain reproductive health care, or other persons for assisting individuals who do, notwithstanding

[356] *See* ''Methotrexate access becomes challenging for some patients following Supreme Court decision on abortion,'' ''Abortion restrictions may be making it harder for patients to get a cancer and arthritis drug,'' ''Abortion bans complicate access to drugs for cancer, arthritis, even ulcers,'' *supra* note 175. *See also, e.g.,* ''Women with chronic conditions struggle to find medications after abortion laws limit access,'' ''Abortion Bans May Limit Essential Medications for Women with Chronic Conditions,'' *supra* note 176.

relevant constitutional protections. The Department thus considered including a proposal that would have required regulated entities to agree to requests from individuals to restrict disclosures of PHI related to reproductive health care for treatment, payment, or health care operations. This may lower the risk of PHI being disclosed to covered entities in states that may seek to obtain it pursuant to a criminal, civil, or administrative investigation or proceeding related to the receipt or facilitation of reproductive health care. However, the Department has concerns about the ability of regulated entities to operationalize such a requirement. Further, the requirement would likely be overly restrictive for regulated entities and may not improve the quality of health care. Additionally, this approach would be dependent on individuals' awareness of their right to make a request for restrictions and confidence that such requests would be granted. The Privacy Rule permits regulated entities to accept requests for restrictions from individuals, although they are only mandated to accept such requests to prevent disclosures to an individual's health plan for health care that has been paid in full by the individual.

Prohibit Uses and Disclosures of PHI Related to Reproductive Health Care

The Department considered limiting the prohibition to uses and disclosures of PHI related to reproductive health care for certain purposes. However, as discussed in the preamble, this would have required the Department to define what constitutes ''related to'' reproductive health care. Given the connection between reproductive health care and other types of health care, the Department believes that it would not be possible to create such a definition at this time without being both under- and over-inclusive. The difficulty of defining this category could make it impossible for electronic health records to reliably segregate the information.

In addition, requiring regulated entities to take actions that necessitate treating one category of PHI differently than other PHI (*e.g.,* imposing conditions on uses and disclosures that would require such entities to label or segment certain PHI within medical records) would hinder coordinated care and potentially result in negative health outcomes if treating clinicians are unaware of an individual's complete medical history. As a result, the Department believes that this approach would not enhance access to quality health care.

Under the current proposal, regulated entities would be required to obtain an attestation from persons requesting PHI that is ''potentially related to reproductive health care'' when the request is made pursuant to the use and disclosure permissions at 45 CFR 164.512(d) through (f) or (g)(1). While the language itself is similar, the Department believes using it in this instance would not create the same operational challenges described above. For example, because the proposed attestation requirement would apply only to certain permissions that are not used by covered health care providers to disclose PHI to other health care providers for treatment purposes, care coordination would not be hindered. Additionally, we do not believe that this approach would implicate the segmentation concerns described above because ''potentially related to reproductive health care'' is broader than ''related to reproductive health care.'' This would require regulated entities to consider the full scope and context of the PHI requested to determine whether it could reveal information about the individual's reproductive health.

Prohibit the Uses and Disclosures of PHI Proposed in This Rule Without the Rule of Applicability

The Department considered prohibiting the use or disclosure of PHI for the purpose of investigating or conducting a proceeding against any person for seeking, obtaining, providing, or facilitating reproductive care, regardless of whether the care was lawful under state or Federal law. However, the Department is concerned that this uniform approach would have placed significant burdens on states' abilities to enforce their laws. The Department has therefore proposed the more tailored approach in this proposed rule.

Require Attestations for Requests for Any PHI Under 45 CFR 164.512(d) Through (f) and (g)(1)

The Department considered requiring that regulated entities obtain an attestation before using or disclosing any PHI under 45 CFR 164.512(d) through (f) and (g)(1). However, this could have placed an unnecessary burden on regulated entities and persons requesting PHI by requiring attestations even under circumstances in which the requested disclosure would be unlikely to implicate the prohibition. Thus, the Department has taken a narrower approach to the proposed attestation requirement.

Require Attestations To Include Names of Individuals Whose PHI Is Being Sought for All Requests

The Department considered requiring that an attestation include the name of any individual whose PHI is being requested, without providing an option for the requestor to identify a class of individuals if it is not practicable to provide the individuals' names. However, this could have impeded investigations of health care fraud, for example, where health oversight agencies and law enforcement authorities know the name of a suspected health care provider, but may not know the names of individuals before the request is made. Therefore, where providing the names of individuals is not practicable, the Department has proposed an option for identifying a class of individuals.

C. Regulatory Flexibility Act—Small Entity Analysis

The Department has examined the economic implications of this proposed rule as required by the RFA. This analysis, as well as other sections in this RIA, serves as the Initial Regulatory Flexibility Analysis, as required under the RFA.

For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. The Act defines ''small entities'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, and (3) a small government jurisdiction of less than 50,000 population. Because 90 percent or more of all health care providers meet the SBA size standard for a small business or are a nonprofit organization, the Department generally treats all health care providers as small entities for purposes of performing a regulatory flexibility analysis. The SBA size standard for health care providers ranges between a maximum of $8 million and $41.5 million in annual receipts, depending upon the type of entity.[357]

With respect to health insurers, the SBA size standard is a maximum of $41.5 million in annual receipts, and for third party administrators it is $40 million.[358] While some insurers are classified as nonprofit, it is possible

[357] *See* ''Table of Small Business Size Standards,'' U.S. Small Business Administration (July 14, 2022), *https://www.sba.gov/sites/default/files/2022-07/Table%20of%20Size%20Standards_Effective%20July%2014%202022_Final-508.pdf.*

[358] *Id.*

they are dominant in their market. For example, a number of Blue Cross/Blue Shield insurers are organized as nonprofit entities; yet they dominate the health insurance market in the states where they are licensed.

For the reasons stated below, it is not expected that the cost of compliance would be significant for small entities. Nor is it expected that the cost of compliance would fall disproportionately on small entities. Although many of the covered entities affected by the proposed rule are small entities, they would not bear a disproportionate cost burden compared to the other entities subject to the proposed rule.

The projected total costs are discussed in detail in the RIA. The Department does not view this as a burden because the result of the changes would be annualized costs per covered entity of approximately $236 [= $183 million [359]/ 774,331 covered entities]. Thus, this analysis concludes, and the Secretary proposes to certify, that the proposed rule, if finalized, would not result in a significant economic effect on a substantial number of small entities.

D. Executive Order 13132—Federalism

As required by E.O. 13132 on Federalism, the Department has examined the effects of provisions in the proposed regulation on the relationship between the Federal Government and the states. In the Department's view, this proposed regulation would have federalism implications because it would have direct effects on the states, the relationship between the National Government and states, and on the distribution of power and responsibilities among various levels of government relating to the disclosure of PHI.

Any federalism implications of the rule, however, flow from and are consistent with the underlying statute—and the proposed Rule of Applicability would limit the proposed regulation to those circumstances in which the state lacks any substantial interest in seeking the disclosure. The statute allows the Department to preempt state or local rules that provide less stringent privacy protection requirements than Federal law.[360] Section 3(b) of E.O. 13132 recognizes that national action limiting the policymaking discretion of states will be imposed only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. The privacy of PHI is of national concern by virtue of the scope of interstate health commerce. As described in the preamble, recent state actions on reproductive health care have undermined the longstanding expectation among individuals in all states that their highly sensitive reproductive health information will remain private. These state actions thus directly threaten the trust that is essential to ensuring access to, and quality of, lawful health care. HIPAA's provisions reflect this position by authorizing the Secretary to promulgate regulations to implement the Privacy Rule.

Section 4(a) of E.O. 13132 expressly contemplates preemption when there is a conflict between exercising state and Federal authority under a Federal statute. Section 4(b) of the E.O. authorizes preemption of state law in the Federal rulemaking context when ''the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.'' The approach in this regulation is consistent with these standards in the Executive order in superseding state authority only when such authority is inconsistent with standards established pursuant to the grant of Federal authority under the statute. State and local laws that impose less stringent requirements for the protection of reproductive health information undermine Congress' intent to ensure that all individuals who receive health care are assured a minimum level of privacy for their PHI. Both the personal and public interest is served by protecting PHI so as not to undermine an individual's access to and quality of health care services and their trust in the health care system.

Section 6(b) of E.O. 13132 includes some qualitative discussion of substantial direct compliance costs that state and local governments would incur as a result of a proposed regulation. The Department anticipates that the most significant direct costs on state and local governments would be the cost for state and local government-operated covered entities to revise business associate agreements, revise policies and procedures, create a new form for attestations, update the NPP, update training programs, and process requests for disclosures for which an attestation is required. In addition, the Department anticipates that approximately half of the states may choose to file a request for an exception to preemption. The longstanding regulatory provisions that govern preemption exception requests under the HIPAA Rules would remain undisturbed by this proposed rule.[361] However, based on the legal developments in some states that are described elsewhere in this preamble, the Department believes it is likely that, in the first year of implementation of a final rule, more states will submit requests for exceptions from preemption than have done so in the past. The RIA above addresses these costs in detail.

The Department requests comment from local and state governments on provisions in the proposed rule that would preempt state and local laws and on whether state and local governments are likely to incur additional costs, such as those associated with the effects of the prohibited disclosures on law enforcement's access to information.

E. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 [362] requires Federal departments and agencies to determine whether a proposed policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law.

The proposed rule would strengthen the stability of the family and marital commitment because it enables individuals and families to have access to the full range of reproductive health care information and access to options for consideration when making sensitive decisions about family planning. The proposed rule may be carried out only by the Federal Government because it would modify Federal health privacy law, ensuring that American families have access to reproductive health care information and can freely discuss their reproductive health, regardless of the state where they are located when health care is accessed. Access to reproductive health care and information about the full range of reproductive health care is vital for individuals who may become pregnant or who are capable of becoming pregnant.

F. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 [363] (PRA), agencies are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirements inherent in a

[359] This figure represents annualized costs discounted at a 3% rate.

[360] 42 U.S.C. 1320d–7(a)(1).

[361] 45 CFR 160.201 through 160.205.

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

[363] Public Law 104–13, 109 Stat. 163 (May 22, 1995).

proposed or final rule, and are required to publish such proposed requirements for public comment. The PRA requires agencies to provide a 60-day notice in the **Federal Register** and solicit public comment on a proposed collection of information before it is submitted to OMB for review and approval. To fairly evaluate whether an information collection should be approved by the OMB, section 3506(c)(2)(A) of the PRA requires that the Department solicit comment on the following issues:

1. Whether the information collection is necessary and useful to carry out the proper functions of the agency;

2. The accuracy of the agency's estimate of the information collection burden;

3. The quality, utility, and clarity of the information to be collected; and

4. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The PRA requires consideration of the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section. The Department explicitly seeks, and will consider, public comment on its assumptions as they relate to the PRA requirements summarized in this section. To comment on the collection of information or to obtain copies of the supporting statements and any related forms for the proposed paperwork collections referenced in this section, email your comment or request, including your address and phone number to *Sherrette.Funn@hhs.gov,* or call the Reports Clearance Office at (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

In this NPRM, the Department is revising certain information collection requirements and, as such, is revising the information collection last prepared in 2019 and previously approved under OMB control # 0945–0003. The revised information collection describes all new and adjusted information collection requirements for covered entities pursuant to the implementing regulation for HIPAA at 45 CFR parts 160 and 164, the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules.

The estimated annual labor burden presented by the proposed regulatory modifications in the first year of implementation, including nonrecurring and recurring burdens, is 5,189,569 burden hours at a cost of $596,728,985 [364] and $67,831,396 of estimated annual labor costs in years two through five. The overall total burden for respondents to comply with the information collection requirements of all of the HIPAA Privacy, Security, and Breach Notification Rules, including nonrecurring and recurring burdens presented by proposed program changes, is 955,098,062 burden hours at a cost of $101,685,085,101, plus $188,873,438 in capital costs for a total estimated annual burden of $101,873,958,539 in the first year following the effective date of the final rule, assuming all changes are adopted as proposed. Details describing the burden analysis for the proposals associated with this NPRM are presented below.

1. Explanation of Estimated Annualized Burden Hours

Below is a summary of the significant program changes and adjustments made since the 2019 information collection. These program changes and adjustments form the bases for the burden estimates presented in information collection request associated with this NPRM.

Adjusted Estimated Annual Burdens of Compliance

(1) Increasing the number of covered entities from 700,000 to 774,331 based on program change;

(2) Increasing the number of respondents requesting exceptions to state law preemption from 1 to 27 based on an expected reaction by states that have enacted restrictions on reproductive health care access;

(3) Increasing the burden hours by a factor of two for responding to individuals' requests for restrictions on disclosures of their PHI under 45 CFR 164.522 to represent a doubling of the expected requests; and

(4) Increasing the total number of NPPs distributed by health plans by 50% to total 300,000,000 due to the increase in number of Americans with health coverage.

New Burdens Resulting From Program Changes

In addition to these changes, the Department added new annual burdens as a result of program changes:

(1) A nonrecurring burden of 30 minutes per covered entity to create a new attestation form using the sample provided by the Department;

(2) A recurring burden of 1 hour per covered entity for uses and disclosures for which an attestation must be obtained from the person requesting the use and disclosure;

(3) A nonrecurring burden of 1 hour per business associate agreement that is revised as a result of the proposed changes to handling requests under 45 CFR 164.512(d), (e), (f), and (g)(1), to allocate responsibilities between covered entities and their release-of-information contractors;

(4) A nonrecurring burden of 30 minutes per covered entity to update the required content of its NPP;

(5) A nonrecurring burden of 15 minutes per covered entity for posting an updated NPP online;

(6) A nonrecurring burden of 2.5 hours for each covered entity to update its policies and procedures; and

(7) A nonrecurring burden of 90 minutes for each covered entity to update the content of its HIPAA training program.

VI. Request for Comment

In addition to the questions posed above, the Department also seeks comment on the following questions:

mm. Whether individuals who are members of historically underserved and minority communities are more likely to be subjects of investigations into or proceedings against persons in connection with obtaining, providing, or facilitating lawful reproductive health care. If so, please explain the relationship to and effects on the health information privacy of community members, including data and citations to relevant literature.

nn. Whether individuals who are members of historically underserved and minority communities are less likely to have access to legal counsel when facing investigations into or proceedings against persons in connection with obtaining, providing, or facilitating lawful reproductive health care. If so, please explain the relationship to and effects on the health information privacy of community members, including data and citations to relevant literature.

oo. With respect to an individual's right to restrict uses and disclosures of their PHI under 45 CFR 164.522(a)(1):

i. Whether individuals are generally aware of this right.

ii. Whether covered entities have experienced an increase in requests from individuals to exercise this right.

iii. Whether regulated entities have been or are more likely to grant individuals such requests considering the recent developments in the legal environment.

[364] This includes an increase of 416 burden hours and $36,442 in costs added to the existing information collection for requesting exemption determinations under 45 CFR 160.204.

VII. Public Participation

The Department seeks comment on all issues raised by the proposed regulation, including any unintended adverse consequences. Because of the large number of public comments normally received on **Federal Register** documents, the Department is not able to acknowledge or respond to them individually. In developing the final rule, the Department will consider the public comments that are received by the date and time specified in the **DATES** section of the Preamble, in accordance with the agency practices described in the section labeled **ADDRESSES**.

List of Subjects

45 CFR Part 160

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health professions, Health records, Hospitals, Investigations, Medicaid, Medical research, Medicare, Penalties, Preemption, Privacy, Public health, Reporting and recordkeeping requirements, Reproductive health care, Security.

45 CFR Part 164

Administrative practice and procedure, Computer technology, Drug abuse, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health professions, Health records, Hospitals, Medicaid, Medical research, Privacy, Public health, Reporting and recordkeeping requirements, Reproductive health care, Security.

Proposed Rule

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter C, parts 160 and 164 as set forth below:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

■ 1. The authority citation for part 160 continues to read as follows:

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 1320d–1320d–9; sec. 264, Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)); 5 U.S.C. 552; secs. 13400–13424, Pub. L. 111–5, 123 Stat. 258–279; and sec. 1104 of Pub. L. 111–148, 124 Stat. 146–154.

■ 2. Amend § 160.103 by:

■ a. Revising the definition of ''Person''; and

■ b. Adding in alphabetical order the definitions of ''Public health'' and ''Reproductive health care''.

The revision and additions read as follows:

§ 160.103 Definitions.

* * * * *

Person means a natural person (meaning a human being who is born alive), trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

* * * * *

Public health, as used in the terms ''public health surveillance,'' ''public health investigation,'' and ''public health intervention,'' means population-level activities to prevent disease and promote health of populations. Such activities do not include uses and disclosures for the criminal, civil, or administrative investigation into or proceeding against a person in connection with obtaining, providing, or facilitating reproductive health care, or for the identification of any person in connection with a criminal, civil, or administrative investigation into or proceeding against a person in connection with obtaining, providing, or facilitating reproductive health care.

Reproductive health care means care, services, or supplies related to the reproductive health of the individual.

* * * * *

PART 164—SECURITY AND PRIVACY

■ 3. The authority citation for part 164 continues to read as follows:

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 1320d–1320d–9; sec. 264, Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2(note)); and secs. 13400–13424, Pub. L. 111–5, 123 Stat. 258–279.

■ 4. Amend § 164.502 by revising paragraphs (a)(1)(iv) and (vi) and adding paragraphs (a)(5)(iii) and (g)(5)(iii) to read as follows:

§ 164.502 Uses and disclosures of protected health information: General rules.

(a) * * *

(1) * * *

(iv) Except for uses and disclosures prohibited under paragraph (a)(5)(i) or (iii) of this section, pursuant to and in compliance with a valid authorization under § 164.508;

* * * * *

(vi) As permitted by and in compliance with any of the following:

(A) This section.

(B) Section 164.512 and, where applicable, § 164.509.

(C) Section 164.514(e).

(D) Section 164.514(f).

(E) Section 164.514(g).

* * * * *

(5) * * *

(iii) *Reproductive health care*—(A) *Prohibition.* Subject to paragraphs (a)(5)(iii)(C) and (D) of this section, a covered entity or business associate may not use or disclose protected health information for either of the following purposes.

(*1*) Where the use or disclosure is for a criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care.

(*2*) To identify any person for the purpose of initiating an activity described at paragraph (a)(5)(iii)(A)(*1*) of this section.

(B) *Scope of prohibition.* For the purposes of this subpart, seeking, obtaining, providing, or facilitating reproductive health care includes, but is not limited to, any of the following: expressing interest in, inducing, using, performing, furnishing, paying for, disseminating information about, arranging, insuring, assisting, or otherwise taking action to engage in reproductive health care; or attempting any of the same.

(C) *Rule of applicability.* The prohibition at paragraph (a)(5)(iii) of this section applies where one or more of the following conditions exists.

(*1*) The relevant criminal, civil, or administrative investigation or proceeding is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care outside of the state where the investigation or proceeding is authorized and where such health care is lawful in the state in which it is provided.

(*2*) The relevant criminal, civil, or administrative investigation or proceeding is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care that is protected, required, or authorized by Federal law, regardless of the state in which such health care is provided.

(*3*) The relevant criminal, civil, or administrative investigation or proceeding is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care that is provided in the state in which the investigation or proceeding is authorized and that is permitted by the law of that state.

(D) *Rule of construction.* Nothing in this section shall be construed to prohibit a use or disclosure of protected health information otherwise permitted by this subpart unless such use or

disclosure is primarily for the purpose of investigating or imposing liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.

* * * * *

(g) * * *

(5) * * *

(iii) Paragraph (g)(5) of this section does not apply where the primary basis for the covered entity's belief is the facilitation or provision of reproductive health care by such person for and at the request of the individual.

* * * * *

■ 5. Add § 164.509 to read as follows:

§ 164.509 Uses and disclosures for which an attestation is required.

(a) *Standard: Attestations for certain uses and disclosures of protected health information to persons other than covered entities.* A covered entity may not use or disclose protected health information potentially related to reproductive health care for purposes specified in § 164.512(d), (e), (f), or (g)(1), without obtaining an attestation that is valid under this section from the person requesting the use or disclosure.

(b) *Implementation specifications: General requirements*—(1) *Valid attestations.* (i) A valid attestation is a document that meets the requirements of paragraph (c)(1) of this section.

(ii) A valid attestation verifies that the use or disclosure is not otherwise prohibited by § 164.502(a)(5)(iii).

(iii) A valid attestation may be electronic, provided that it meets the requirements in paragraph (c)(1) of this section, as applicable.

(2) *Defective attestations.* An attestation is not valid if the document submitted has any of the following defects:

(i) The attestation lacks an element or statement required by paragraph (c) of this section.

(ii) The attestation contains an element or statement not required by paragraph (c) of this section.

(iii) The attestation violates paragraph (b)(3) of this section.

(iv) The covered entity has actual knowledge that material information in the attestation is false.

(v) It is objectively unreasonable for the covered entity to believe that the attestation is true with respect to the requirement at paragraph (c)(1)(iv) of this section.

(3) *Compound attestation.* An attestation may not be combined with any other document.

(c) *Implementation specifications: Content requirements and other obligations*—(1) *Required elements.* A valid attestation under this section must contain the following elements:

(i) A description of the information requested that identifies the information in a specific fashion, including one of the following:

(A) The name of any individual(s) whose protected health information is sought, if practicable.

(B) If including the name(s) of any individual(s) whose protected health information is sought is not practicable, a description of the class of individuals whose protected health information is sought.

(ii) The name or other specific identification of the person(s), or class of persons, who are requested to make the use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity is to make the requested use or disclosure.

(iv) A clear statement that the use or disclosure is not for a purpose prohibited under § 164.502(a)(5)(iii).

(v) Signature of the person requesting the protected health information, which may be an electronic signature, and date. If the attestation is signed by a representative of the person requesting the information, a description of such representative's authority to act for the person must also be provided.

(2) *Plain language requirement.* The attestation must be written in plain language.

(d) *Material misrepresentations.* If, during the course of using or disclosing protected health information in reasonable reliance on a facially valid attestation, a covered entity discovers information reasonably showing that the representations in the attestation were materially false, leading to uses or disclosures for a prohibited purpose, the covered entity must cease such use or disclosure.

■ 6. Amend § 164.512 by:

■ a. Revising the introductory text and the heading of paragraph (c);

■ b. Adding paragraph (c)(3); and

■ c. Revising paragraph (f)(1)(ii)(C) introductory text.

The revisions and addition read as follows:

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

Except as provided by § 164.502(a)(5)(iii), a covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section and § 164.509. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given verbally.

* * * * *

(c) *Standard: Disclosures about victims of abuse, neglect, or domestic violence.* * * *

(3) *Rule of construction.* Nothing in this section shall be construed to permit disclosures prohibited by § 164.502(a)(5)(iii) when the report of abuse, neglect, or domestic violence is based primarily on the provision of reproductive health care.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(C) An administrative request for which response is required by law, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

* * * * *

■ 7. Amend § 164.520 by adding paragraphs (b)(1)(ii)(F) and (G) to read as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(F) A description, including at least one example, of the types of uses and disclosures prohibited under § 164.502(a)(5)(iii) in sufficient detail for an individual to understand the prohibition.

(G) A description, including at least one example, of the types of uses and disclosures for which an attestation is required under § 164.509.

* * * * *

Dated: April 5, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–07517 Filed 4–12–23; 8:45 am]

BILLING CODE 4153–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 73 April 17, 2023

Part III

The President

Memorandum of April 4, 2023—Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Federal Register
Vol. 88, No. 73
Monday, April 17, 2023

Presidential Documents

Title 3—

The President

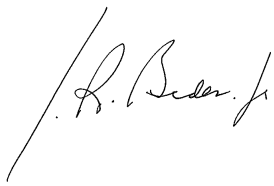
Memorandum of April 4, 2023

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $500 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, April 4, 2023

[FR Doc. 2023–08228
Filed 4–14–23; 11:15 am]
Billing code 4710–10–P

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Federal Register

Vol. 88, No. 73

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