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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RIN 3209–AA68

Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations

AGENCY: Office of Government Ethics.

ACTION: Final rule; technical amendments.

SUMMARY: The U.S. Office of Government Ethics (OGE) is updating its executive branch regulation on financial disclosure to reflect the retroactive statutory increase of the reporting thresholds for gifts and travel reimbursements. OGE is also updating the executive branchwide standards of ethical conduct regulation to raise the widely attended gatherings nonsponsor gifts exception dollar ceiling tied to these thresholds. This change is not retroactive.

DATES:

Effective date: This final rule is effective June 9, 2023.

Applicability date: The amendments to 5 CFR 2634.304 and 2634.907 are applicable as of January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Christie Chung, Assistant Counsel, or Melba Melton, Assistant Counsel; Telephone: 202–482–9300.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Office of Government Ethics (OGE) is amending pertinent sections of its executive branchwide ethics regulations on financial disclosure and standards of ethical conduct, as codified at 5 CFR parts 2634 and 2635, in order to update the thresholds for gifts and travel reimbursements, as well as the widely attended gatherings nonsponsor gifts exception dollar ceiling.

Increased Gifts and Travel Reimbursements Reporting Thresholds

First, OGE is revising its executive branch financial disclosure regulation at 5 CFR part 2634 to reflect the increased reporting thresholds for gifts, reimbursements, and travel expenses for both the public and confidential executive branch financial disclosure systems. The increased thresholds are applicable as of January 1, 2023. These increases conform to the statutorily mandated public disclosure reporting thresholds under the Ethics in Government Act as amended, 5 U.S.C. 13104(a)(2)(A) and (B), (Ethics Act) and are extended to confidential disclosure reporting by OGE's regulation. Under the Ethics Act, the gifts and travel reimbursements reporting thresholds are tied to the dollar amount for the ''minimal value'' threshold for foreign gifts as the General Services Administration (GSA) periodically redefines it.

GSA raised the ''minimal value'' amount under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to $480 for the three-year period 2023–2025 (from the prior level of $415) in a March 6, 2023, Federal Management Regulation Bulletin. See Gen. Servs. Admin., GSA Bull. FMR B–52, Foreign Gift and Decoration Minimal Value (2023) (revising retroactively to January 1, 2023, the foreign gifts minimal value definition as codified at 41 CFR 102–42.10).

Accordingly, applicable as of that same date, OGE is increasing the thresholds for reporting of gifts and travel reimbursements from any one source in 5 CFR 2634.304 and 2634.907(g). The thresholds have been raised to ''more than $480'' for the gifts and travel reimbursements aggregation thresholds and ''$192 or less'' for the de minimis exception for gifts and travel reimbursements that do not have to be aggregated. As noted, these regulatory increases implement the underlying statutory increases effective January 1, 2023. OGE is also updating the examples following those sections, including appropriate adjustments to gift values.

OGE will continue to adjust the gifts and travel reimbursements reporting thresholds in its part 2634 regulation in the future as needed in light of GSA's redefinition of ''minimal value'' every three years for foreign gifts purposes. See OGE's prior three-year adjustment of those regulatory reporting thresholds, as published at 85 FR 36715 (June 18, 2020) (for 2020–2022, the aggregate reporting thresholds were more than $415, with a $166 or less de minimis exception).

Increased Dollar Ceiling for the Exception for Nonsponsor Gifts of Free Attendance at Widely Attended Gatherings

OGE is also increasing the exception ceiling for nonsponsor gifts of free attendance at widely attended gatherings from $415 to $480 in the executive branch standards of ethical conduct regulation, as codified at 5 CFR 2635.204(g)(3) (and as illustrated in the examples following paragraph (g)). This separate regulatory change is effective upon publication in the **Federal Register**, on June 9, 2023. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is tied to the financial disclosure gifts reporting threshold. See 60 FR 31415 (June 15, 1995) and 61 FR 42965 (Aug. 20, 1996). Thus, OGE is again increasing the nonsponsor gift ceiling to match the further increase in the gifts and travel reimbursements reporting thresholds described above. The nonsponsor gift ceiling was last raised June 2020. See 85 FR 36715 (June 18, 2020). The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments concern matters of agency organization, procedure and practice. It is also in the public interest that the accurate and up-to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements is based on a statutory formula and lessens the reporting burden. Therefore,

that regulatory revision is retroactively applicable as of January 1, 2023, when the change became effective under the Ethics Act.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including 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. In promulgating this rulemaking, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. The rule has not been reviewed by the Office of Management and Budget because it is not a significant regulatory action for the purposes of Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: June 5, 2023.

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR parts 2634 and 2635 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. ch. 131; 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001, Pub. L. 104–134, 110 Stat. 1321, and sec. 701, Pub. L. 114–74; Pub. L. 112–105, 126 Stat. 291; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Amend § 2634.304 as follows:
■ a. In paragraphs (a) and (b), remove the dollar amount ''$415'' and add in its place ''$480'';
■ b. Designate the note to paragraph (a) as note 1 to paragraph (a) and revise the newly designated note;
■ c. In paragraph (d), remove the dollar amount ''$166'' and add in its place ''$192'';
■ d. In example 1 following paragraph (d):
■ i. Remove the dollar amount ''$240'' following ''Gift 1-Print'' and add in its place ''$280'';
■ ii. Remove the dollar amount ''$185'' following ''Gift 2-Pen and pencil set'' and add in its place ''$225''; and
■ iii. Remove the dollar amounts ''$415'' and ''$166'' in the sentences following ''Gift 3'' and add in their places ''$480'' and ''$192'', respectively; and
■ e. In example 2 following paragraph (d), remove ''2020'' and ''$166'' and add in their places ''2023'' and ''$192'', respectively;
■ f. In example 3 following paragraph (d), remove the year ''2020'' and add in its place ''2023''; and
■ g. In the example following paragraph (f), remove the dollar amount ''$450'' and add in its place ''$540''.

The revision reads as follows:

§ 2634.304 Gifts and reimbursements.

(a) * * *

Note 1 to paragraph (a): Under the Ethics in Government Act, 5 U.S.C. 13104(a)(2)(A) and (B), the reporting thresholds for gifts, reimbursements, and travel expenses are tied to the dollar amount for the ''minimal value'' threshold for foreign gifts established by the Foreign Gifts and Decorations Act, 5 U.S.C. 7342(a)(5). The General Services Administration (GSA), in consultation with the Secretary of State, redefines the value every 3 years. In 2023, the amount was set at $480. In paragraph (d) of this section, the Office of Government Ethics sets the aggregation exception amount and redefines the value every 3 years. In 2023, the amount was set at $192. The Office of Government Ethics will update this part in 2026 and every three years thereafter to reflect the new amounts.

* * * * *

■ 3. Amend § 2634.907 as follows:
■ a. In paragraph (g)(1), remove the dollar amount of ''$415'' and add in its place ''$480'';
■ b. In paragraph (g)(2), remove the dollar amount ''$166'' and add in its place ''$192'';
■ c. Revise the note to paragraph (g)(2); and
■ d. In the example following paragraph (g)(5):
■ i. Remove the dollar amount ''$275'' following ''Gift 3-Cell phone'' and add in its place ''$340''; and
■ ii. In the last two sentences, remove the dollar amount of ''$415'' and add in its place ''$480'' and remove the dollar amount ''$166'' and add in its place ''$192''.

The revision reads as follows:

§ 2634.907 Report contents.

* * * * *

(g) * * *

(2) * * *

Note to paragraph (g)(2): The Office of Government Ethics sets these amounts every 3 years using the same disclosure thresholds as those for public financial disclosure filers. In 2023, the reporting thresholds were set at $480 and the aggregation threshold was set at $192. The Office of Government Ethics

will update this part in 2026 and every three years thereafter to reflect the new amount.

* * * * *

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

■ 4. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2635.204 [Amended]

■ 5. In § 2635.204, in paragraph (g)(3)(iv) and examples 1 and 4 to paragraph (g), remove the dollar amount ''$415'' and add in its place ''$480''.

[FR Doc. 2023–12291 Filed 6–8–23; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1055; Project Identifier AD–2023–00583–T; Amendment 39–22445; AD 2023–10–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This AD was prompted by reports of damaged decompression panels from operators. This AD requires repetitive inspections for damaged fastener holes on the vertical and bottom edges of the inward and outward blowing decompression panels installed on the forward and aft cargo compartment vertical sidewall linings and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 26, 2023.

The FAA must receive comments on this AD by July 24, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–1055; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Nicole S. Tsang, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA has received a report indicating operators have found damaged fastener holes on vertical sidewall decompression panels installed in the forward and aft cargo compartments (*i.e.,* cargo liner panel). These decompression panels are designed to open only during a decompression event and otherwise remain sealed. Damaged fastener holes that exceed the allowable damage limits or fastener holes that are folded back during installation could result in movement of the decompression panel affecting the seal. This could result in possible leakage in the cargo compartments, which in the event of a cargo fire, could lead to insufficient Halon concentrations to adequately control the fire. This condition, if not addressed, could result in the loss of continued safe flight and landing of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires gaining access to the fastener holes on the vertical and bottom edges of the inward and outward blowing decompression panels installed on the forward and aft cargo compartment vertical sidewall linings; repetitive general visual inspections of those fastener holes for damage (such as a tear, cut, split, puncture, or delamination) and applicable on-condition actions; and making sure the panel fastener holes are not folded back when installing the decompression panel after completing the general visual inspection. On-condition actions include replacement of any decompression panel having damaged fastener holes that exceed the allowable damage limits with a serviceable panel. The allowable damage limits are as follows: damage on a fastener hole must not extend beyond the width of the fastener hole; if the damage is on one side of the fastener hole and the other side of the fastener hole has no damage, the damage must not extend more than the diameter of the fastener hole; the decompression panel must not have more than two adjacent damaged fastener holes with damage; and the decompression panel must not have more than four damaged fastener holes. For the purposes of this AD, a serviceable panel is one that has not exceeded the allowable damage limits. A decompression panel repaired using a method approved by The Boeing Company Organization Designation Authorization (ODA) is considered serviceable.

Minimum Equipment List (MEL) Provision

Paragraph (j) of this AD specifies that if any decompression panel is damaged and the decompression panel is deemed not serviceable, the airplane may be operated as specified in the operator's FAA-approved MEL, provided provisions that address the damaged decompression panel are included in the MEL.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a

final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because significant leakage in the cargo compartments, in the event of a cargo fire, could lead to insufficient Halon concentrations to adequately control the fire. This condition, if not addressed, could result in loss of continued safe flight and landing of the airplane. Since this issue significantly compromises the fire suppression system, which is a required safety feature for extended operations (ETOPS) flights, the FAA finds this unsafe condition to be an urgent safety issue. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2023–1055 and Project Identifier AD–2023–00583–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Nicole S. Tsang, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 152 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive Inspection	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle	$103,360 per inspection cycle

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	* $0	$85

* The FAA has received no definitive data for the parts cost on which to base the cost estimate for the on-condition replacement specified in this AD. There are 19 panels on each airplane.

Authority for This Rulemaking

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

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

unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–10–09 The Boeing Company: Amendment 39–22445; Docket No. FAA–2023–1055; Project Identifier AD–2023–00583–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 26, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Unsafe Condition

This AD was prompted by a report indicating operators have found damaged fastener holes on vertical sidewall decompression panels installed in the forward and aft cargo compartments (*i.e.,* cargo liner panel). The FAA is issuing this AD to address the possibility of leakage in the cargo compartments, which in the event of a cargo fire, could lead to insufficient Halon concentrations to adequately control the fire. The unsafe condition, if not addressed, could result in the loss of continued safe flight and landing of the airplane.

(f) Compliance

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

(g) Definitions

For the purposes of this AD, the following terms are defined as follows.

(1) A ''general visual inspection'' is a visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance, unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked. Basic cleaning may be required to ensure appropriate visibility.

(2) A ''damaged fastener hole'' is a fastener hole having damage such as a tear, cut, split, puncture, or delamination.

(3) A ''serviceable panel'' is a decompression panel that has not exceeded the allowable damage limits specified in paragraphs (g)(3)(i) through (iv) of this AD. A decompression panel repaired using a method approved by The Boeing Company Organization Designation Authorization (ODA) is considered serviceable.

(i) If the damage is on the fastener hole, the damage must not extend beyond the width of the fastener hole. Refer to figure 1 to paragraph (g)(3)(i) of this AD. Where figure 1 to paragraph (g)(3)(i) of this AD refers to tears or tearing, this includes all types of damage as defined in paragraph (g)(2) of this AD.

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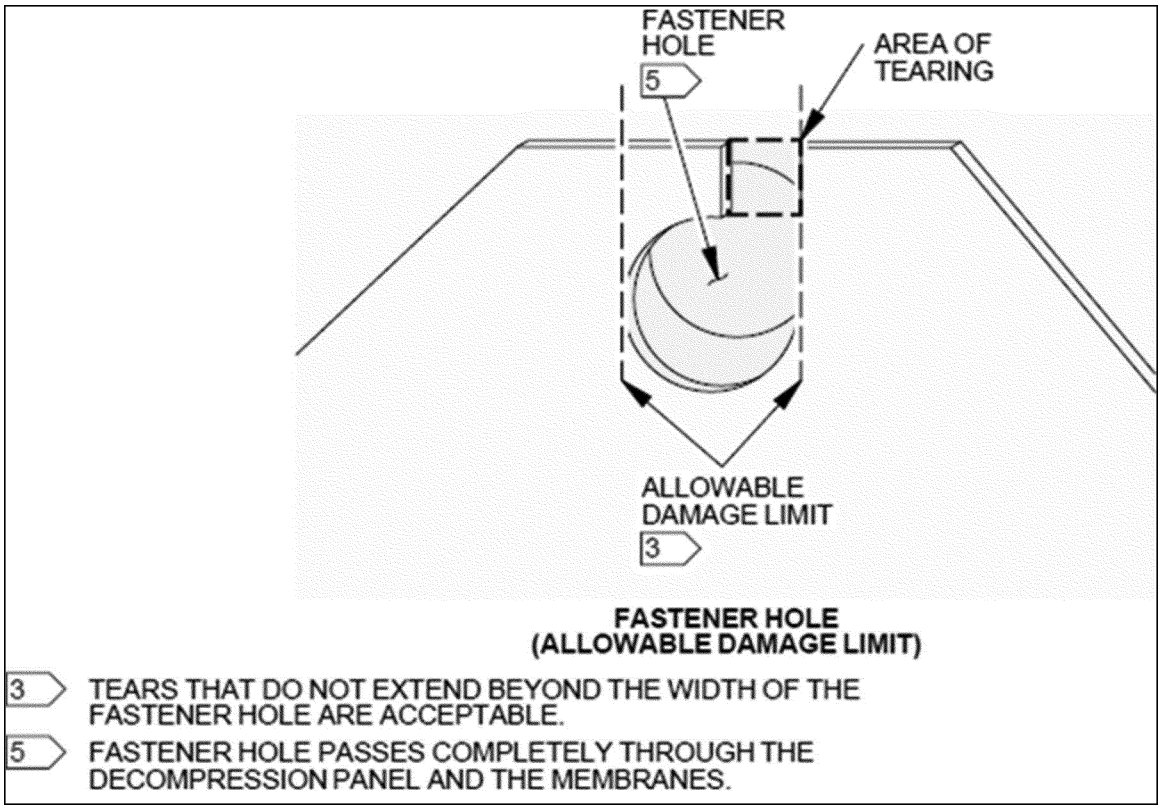
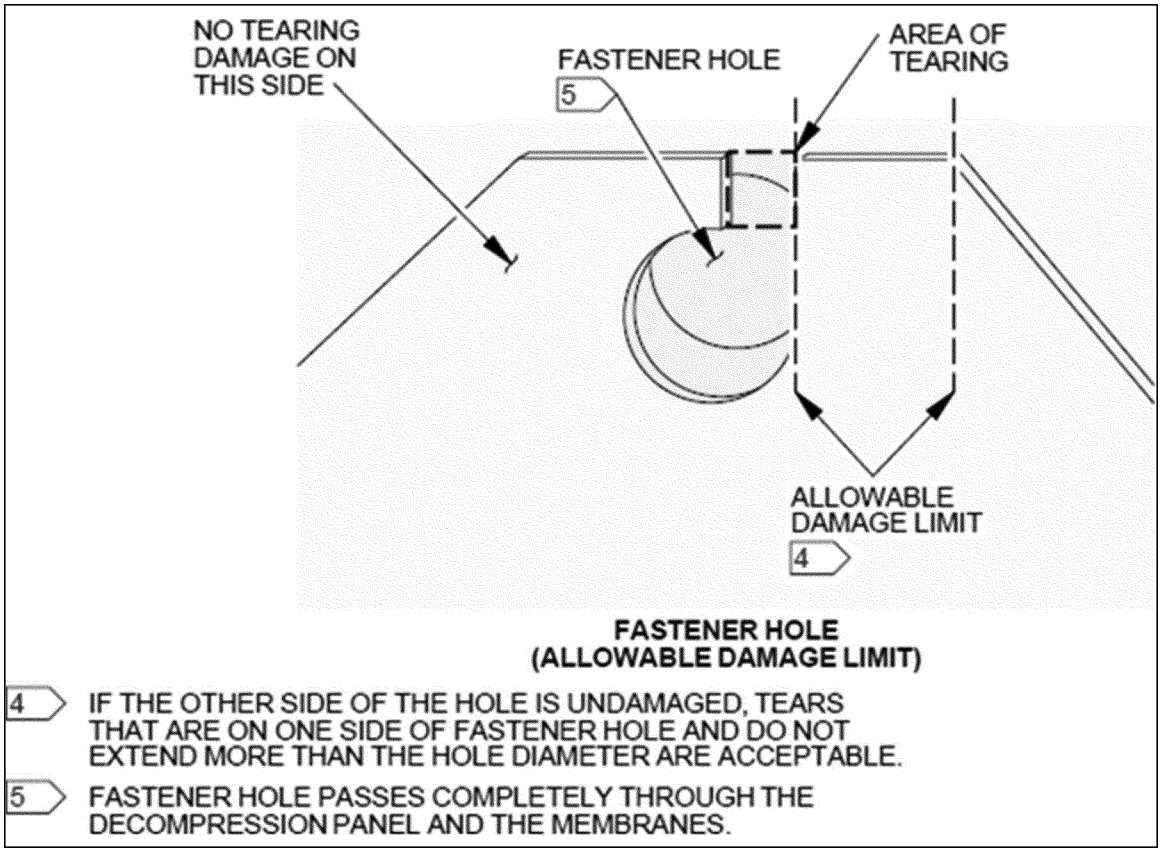
Figure 1 to paragraph (g)(3)(i)—*Allowable damage not extending beyond fastener hole width*



(ii) If the damage is on one side of the fastener hole and the other side of the fastener hole has no damage, the damage must not extend more than the diameter of the fastener hole. Refer to figure 2 to paragraph (g)(3)(ii) of this AD. Where figure 2 to paragraph (g)(3)(ii) of this AD refers to tears, tearing, or tearing damage, this includes all types of damage as defined in paragraph (g)(2) of this AD.

Figure 2 to paragraph (g)(3)(ii)—*Allowable damage not extending more than fastener hole diameter*



(iii) The decompression panel must not have more than two adjacent damaged fastener holes.

Note 1 to paragraph (g)(3)(iii): The limits in paragraphs (g)(3)(iii) and (iv) of this AD refer only to the fastener holes found on the vertical and bottom edges of the decompression panel. These limits do not refer to the fastener holes found on the top edge of the decompression panel.

(iv) The decompression panel must not have more than four damaged fastener holes.

(h) Repetitive Inspections

Within 90 days after the effective date of this AD, or within 90 days since the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness, whichever occurs later, accomplish the actions specified in paragraphs (h)(1) and (2) of this AD. Repeat the actions thereafter at intervals not to exceed 90 days.

(1) Gain access to the fastener holes on the vertical and bottom edges of the inward and outward blowing decompression panels installed on the forward and aft cargo compartment vertical sidewall linings.

Note 2 to paragraph (h)(1): Additional guidance for gaining access to the fastener holes required by paragraph (h)(1) of this AD and performing the general visual inspection required by paragraph (h)(2) of this AD can be found in Boeing 787 Aircraft Maintenance Manual (AMM) Task B787–A–50–11–08–02A–280A–A, Lower Cargo Compartment Decompression Panel Inspection.

(2) Do a general visual inspection for any damaged fastener holes.

(i) Reinstallation or Replacement

(1) If, during any inspection required by paragraph (h) of this AD, no damaged fastener holes are found or any damaged fastener is found but the decompression panel is deemed serviceable, before further flight, reinstall the decompression panel and make sure the panel fastener holes are not folded back.

Note 3 to paragraph (i)(1): Additional guidance for reinstalling the decompression panel required by paragraph (i)(1) of this AD or replacing any damaged panel required by paragraph (i)(2) of this AD can be found in Boeing 787 AMM Task B787–A–50–11–06–03A–520A–A, Forward and Aft Cargo Compartment Vertical Sidewall Lining Removal; and Boeing 787 AMM Task B787–A–50–11–06–03A–720A–A, Forward and Aft Cargo Compartment Vertical Sidewall Lining Installation.

Note 4 to paragraph (i)(1): This note applies to paragraphs (i)(1) and (2) of this AD. A folded back panel edge could contribute to inadvertent movement of the decompression panel.

(2) If, during any inspection required by paragraph (h) of this AD, any damaged fastener hole is found and the decompression panel is deemed not serviceable, before further flight, replace the panel with a serviceable panel, except as provided by paragraph (j) of this AD. Replacement must be done in accordance with the operator's maintenance or inspection program, as applicable. Make sure the panel fastener holes are not folded back when installing the decompression panel.

(j) Minimum Equipment List (MEL) Provisions

If any decompression panel inspected as required by paragraph (h)(2) of this AD is damaged and the decompression panel is deemed not serviceable, the airplane may be operated as specified in the operator's FAA-approved MEL, provided provisions that address the damaged decompression panel are included in the MEL.

(k) Relief for Maintenance Review Board Report (MRBR) Task

Doing the inspection required by paragraph (h) of this AD is acceptable for compliance to Boeing 787 MRBR Task 50–005–00 (general visual inspection of cargo compartment liners) for inspecting the panel fastener holes required by the existing maintenance or inspection program.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company ODA that has been authorized by the Manager, AIR–520 Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Nicole S. Tsang, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 206–231–3959; email: *Nicole.S.Tsang@faa.gov.*

(2) For Boeing service information identified in this AD that is not incorporated by reference, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(n) Material Incorporated by Reference

None.

Issued on May 24, 2023.

Michael Linegang,

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

[FR Doc. 2023–12405 Filed 6–7–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1205; Project Identifier AD–2023–00441–E; Amendment 39–22452; AD 2023–11–06]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Engine Alliance (EA) Model GP7270, GP7272, and GP7277 engines. This AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) interstage seals were manufactured from material suspected to contain iron inclusion. This AD requires replacement of the affected HPT interstage seals. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 26, 2023.

The FAA must receive comments on this AD by July 24, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–1205; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA was notified by the manufacturer of the detection of iron inclusion in a turbine disk manufactured from the same material used to manufacture certain HPT interstage seals for EA Model GP7270, GP7272, and GP7277 engines. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain GP7270, GP7272, and GP7277 HPT interstage seals made from billets manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and subsequent uncontained failure. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires replacement of certain HPT interstage seals with a part eligible for installation.

Interim Action

The FAA considers this AD to be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Immediate Adoption and Determination of the Effective Date

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

The FAA justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from any U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''FAA–2023–1205 and Project Identifier AD–2023–00441–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 0 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT interstage seal	8 work-hours × $85 per hour = $680	$273,694 (pro-rated)	$274,374	$0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–11–06 Engine Alliance: Amendment 39–22452; Docket No. FAA–2023–1205; Project Identifier AD–2023–00441–E.

(a) Effective Date

This airworthiness directive (AD) is effective June 26, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Engine Alliance Model GP7270, GP7272, and GP7277 engines with an installed high-pressure turbine (HPT) interstage seal having part number (P/N) 2047M99P02 and serial number (S/N) BTB71863 or BTB86871.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain HPT interstage seals were manufactured from material suspected to contain iron inclusion. The FAA is issuing this AD to prevent fracture and subsequent uncontained failure

of certain HPT interstage seals. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

At the next piece-part exposure of the affected HPT interstage seal or before the affected HPT interstage seal exceeds 4,200 cycles since new, whichever occurs first after the effective date of this AD, remove the affected HPT interstage seal from service and replace with a part eligible for installation.

(h) Definition

(1) For the purpose of this AD, a ''part eligible for installation'' is any HPT interstage seal that does not have a P/N and S/N identified in paragraph (c) of this AD.

(2) For the purpose of this AD, ''piece-part exposure'' is when the affected part is removed from the engine and completely disassembled.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov*.

(k) Material Incorporated by Reference

None.

Issued on June 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–12287 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0375]

RIN 1625–AA00

Safety Zone; Marysville Funfest Fireworks, St. Clair River; Marysville, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters in the St. Clair River in Marysville, MI. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from potential hazards associated with fireworks displays created by the Marysville Funfest. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative.

DATES: This rule is effective from 9:30 p.m. on June 18, 2023, through 10:30 p.m. on June 19, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0375 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Tracy Girard, Waterways Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, email *Tracy.M.Girard@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 the event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment in the St. Clair River. It is impracticable and contrary to the public interest to publish a NPRM because we must establish this safety zone by June 18, 2022.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 200-yard radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 10:30 p.m. on June 18, 2023. In the case of inclement weather on June 18, 2023, this safety zone will be enforced from 10 p.m. through 10:30 p.m. on June 19, 2023. The safety zone will encompass all U.S. navigable waters of the St. Clair River within a 200-yard radius of the fireworks launch site located near the public launch site, in Marysville, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. The Captain of the Port

Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the St. Clair River one hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM Marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 1 hour that will prohibit entry within 200-yard radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0375 to read as follows:

§ 165.T09–0375 Safety Zone; Marysville Funfest Fireworks, St. Clair River; Marysville, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of the St. Clair River within a within a 200-yard radius of the fireworks launch site located at position 42°54.38′ N, 082°27.983 W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 9:30 p.m. through 10:30 p.m. on June 18, 2023. In the case of inclement weather on June 18, 2023, this safety zone will be enforced from 10 p.m. through 10:30 p.m. on June 19, 2023. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *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 Detroit (COTP) in the enforcement of the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2023–12344 Filed 6–8–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0463]

RIN 1625–AA00

Safety Zone; Laguna Madre, South Padre Island, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters in the Laguna Madre. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a firework display launched from a barge in the Laguna Madre, South Padre Island, Texas. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective from 9:30 p.m. through 11:59 p.m. from June 9, 2023 through August 25, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0463 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with fireworks launched from a barge in the waters of the Laguna Madre.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the fireworks displays occurring from 9:30 p.m. through 11:59 p.m. ong several dates from June 9, 2023 through August 25, 2023, will be a safety concern for anyone within the waters of the Laguna Madre area with a 700 yard radius from the following point; 26°6′02.1″ N, 97°10′17.7″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while the display of the fireworks takes place in the Laguna Madre.

IV. Discussion of the Rule

This rule establishes a temporary safety zone each night on June 9, 13, 16, 20, 23, 27, 30; July 7, 11, 14, 18, 21, 25, 28 and August 1, 4, 8, 11, 18, 25. The safety zone will encompass certain navigable waters of the Laguna Madre and is defined by a 700 yard radius around the launching platform. The regulated area encompasses a 700 yard radius from the following point; 26°6′02.1″ N, 97°10′17.7″ W. The fireworks display will take place in waters of the Laguna Madre. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–

939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of 2.5 hours, each night on June 9, 13, 16, 20, 23, 27, 30; July 7, 11, 14, 18, 21, 25, 28 and August 1, 4, 8, 11, 18, 25. The zone is limited to a 700 yard radius from the launching position of in the navigable waters of the Laguna Madre. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f) and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Laguna Madre in a zone defined by a 700-yard radius from the following coordinate: 26°6′02.1″ N, 97°10′17.7″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by fireworks display in the waters of the Laguna Madre. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A record of environmental consideration is not necessary, but will be provided if needed.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0463 to read as follows:

§ 165.T08–0463 Safety Zone; Laguna Madre, South Padre Island, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Laguna Madre encompassed by a 700-yard radius from the following point; 26°6′02.1″ N, 97°10′17.7″ W.

(b) *Enforcement period.* This section is subject to enforcement from 9:30 p.m. through 11:59 p.m. each night, on June 9, 13, 16, 20, 23, 27, 30; July 7, 11, 14, 18, 21, 25, 28 and August 1, 4, 8, 11, 18, 25.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into the temporary safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: June 6, 2023.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2023–12418 Filed 6–7–23; 11:15 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0049; FRL–10920–02–R5]

Air Plan Approval; Michigan; Michigan Nonattainment New Source Review Certification for the 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Michigan State Implementation Plan (SIP), Michigan's certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standard (NAAQS).

DATES: This direct final rule will be effective August 8, 2023, unless EPA receives adverse comments by July 10, 2023. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2023–0049 at *https://www.regulations.gov* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Andrew Lee, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)–353–7645, *lee.andrew.c@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On October 26, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292. Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. This action relates to nonattainment areas in Michigan that were designated nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018.

On December 6, 2018, EPA issued a final rule entitled, ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,'' which established the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 8-hour ozone NAAQS. Based on its initial nonattainment designation for the 2015 8-hour ozone standards, Michigan was required to make a SIP revision addressing NNSR program requirements. This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program, or an analysis demonstrating that the existing SIP-approved NNSR permit program meets the applicable 2015 ozone requirements and a letter certifying the analysis.

II. Michigan's Submittal

On January 24, 2023, Michigan submitted a SIP revision requesting that EPA approve Michigan's certification that its existing SIP-approved NNSR regulations fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for all areas not attaining the 2015 ozone NAAQS. Michigan has certified that specific sections of its NNSR rules in Part 19, New Source Review for Major Sources Impacting Nonattainment Areas, continue to meet the NNSR requirements for ozone nonattainment areas under the 2015 ozone NAAQS. Table 1 below provides the sections of Michigan's NNSR rule corresponding to the relevant requirements at 40 CFR 51.165. The Michigan rules were previously approved on May 12, 2021 (86 FR 25954). Each requirement identified in Michigan's certification has not been revised since EPA last approved it. Table 1 lists the specific

provisions of Michigan's NNSR rules that address the required elements of the Federal NNSR rules:

TABLE 1—NNSR SIP RULES COMPARISON

Federal rule	Michigan rule
40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*)–(*iv*)	R 336.2901(u)(i)(A), R 336.2901(u)(i)(A)(1), (2), (3), and (4).
40 CFR 51.165(a)(1)(iv)(A)(*2*)(*i*)–(*vi*)	R 336.2901(u)(i)(B), R 336.2901(u)(i)(B)(1), (2), (3), (4), (5), and (6).
40 CFR 51.165(a)(1)(iv)(A)(*3*)	R 336.2901(u)(i)(C).
40 CFR 51.165 (a)(1)(iv)(B)	R 336.2901(u)(i)(C)(ii).
40 CFR 51.165(a)(1)(v)(B)	R 336.2901(t)(ii).
40 CFR 51.165 (a)(1)(v)(E)	R 336.2901(t)(v).
40 CFR 51.165(a)(1)(v)(F)	R 336.2901(t)(vi).
40 CFR 51.165(a)(1)(x)(A)	R 336.2901(hh)(i) and R 336.2901(hh)(i)(D).
40 CFR 51.165(a)(1)(x)(B)	R 336.2901(hh)(ii).
40 CFR 51.165(a)(1)(x)(C)	R 336.2901(hh)(iii).
40 CFR 51.165(a)(1)(x)(E)	R 336.2901(hh)(v).
40 CFR 51.165 (a)(1)(xxxvii)(C)(*1*)	R 336.2901(ff).
40 CFR 51.165(a)(3)(ii)(C)(*1*)	R 336.2908(5)(c)(i), R 336.2908(5)(c)(i)(A) and (B).
40 CFR 51.165(a)(3)(ii)(C)(*2*)	R 336.2908(5)(c)(ii), R 336.2908(5)(c)(ii)(A) and (B).
40 CFR 51.165(a)(8)	R 336.2902(8).
40 CFR 51.165(a)(9)(ii)–(iv)	R 336.2908(6)(a)(i)–(v), and R 336.2908(6)(b) and (c).

III. Analysis of Nonattainment New Source Review Requirements

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources within a nonattainment area and is required under CAA sections 172(c)(5) and 173.

As mentioned in Section I of this preamble, NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 as part of the 2015 SIP Requirements Rule. The minimum SIP requirements for NNSR permitting programs for the 2015 ozone NAAQS are contained in 40 CFR 51.165. The SIP for each ozone nonattainment area must contain NNSR provisions that: (1) set major source thresholds for nitrogen oxides (NOX) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*) through (*iv*) and (a)(1)(iv)(A)(*2*); (2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*3*); (3) consider any significant net emissions increase of NOX as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); (4) consider any increase of VOC emissions in Extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); (5) set significant emissions rates for VOC and NOX as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A) through (C) and (E); (6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*) and (*2*); (7) provide that the requirements applicable to VOC also apply to NOX pursuant to 40 CFR 51.165(a)(8); (8) set offset ratios for VOC and NOX pursuant to 40 CFR 51.165(a)(9)(ii) through (iv); and (9) require public participation procedures compliant with 40 CFR 51.165(i).

Michigan's SIP-approved NNSR program, established in Part 19, ''New Source Review for Major Sources Impacting Nonattainment Areas,'' of the state's Air Pollution and Control rules, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. Michigan's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the state that the cited rules meet the Federal NNSR requirements for the applicable ozone nonattainment designation. EPA has reviewed the demonstration and cited program elements intended to meet the Federal NNSR requirements and is approving the state's submittal because the current SIP-approved NNSR program satisfies all the 2015 ozone NAAQS SIP Requirements Rule NNSR program requirements applicable to the Michigan ozone nonattainment areas.

IV. What action is EPA taking?

EPA is approving Michigan's January 24, 2023, SIP revision addressing the NNSR requirements of the 2015 ozone NAAQS. EPA has concluded that Michigan's submission fulfills the 40 CFR 51.1314 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective August 8, 2023 without further notice unless we receive relevant adverse written comments by July 10, 2023. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective August 8, 2023.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

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.''

EGLE 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. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 2, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for ''Ozone (8-hour, 2015) Nonattainment New Source Review Certification'' immediately following the entry for ''Determination of failure to attain the 2010 SO_2 standard'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *			*	*
Ozone (8-hour, 2015) Nonattainment New Source Review Certification.	Statewide	1/24/2023	6/9/2023, [INSERT **Federal Register** CITATION].	

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*

* * * * *

[FR Doc. 2023–12304 Filed 6–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0314; FRL–10994–01–OCSPP]

Sedaxane; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sedaxane in or on Onion, bulb, subgroup 3–07A and Vegetable, cucurbit, group 9. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 9, 2023. Objections and requests for hearings must be received on or before August 8, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0314, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0314 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before August 8, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0314, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2022 (87 FR 43231) (FRL 9410–03–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8986) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.665 be amended by establishing tolerances for residues of the fungicide sedaxane, N-[2-[1,1′-bicyclopropyl]-2-ylphenyl]-3-(difluoromethyl)-1-methyl-1H-pyrazole-4-carboxamide, in or on Vegetable, dry bulb, crop subgroup 3–07A and Vegetable, cucurbit, group 9 at 0.01 parts per million (ppm). The July 20, 2022, notice of filing referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *https://www.regulations.gov.*

There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is revising the commodity definition for ''Vegetable, dry bulb, crop subgroup 3–07A'' to ''Onion, bulb, subgroup 3–07A''. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

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

EPA has previously published tolerance rulemakings for sedaxane, most recently in the **Federal Registers** of December 8, 2017 (82 FR 57867) (FRL–9970–04) and August 27, 2019 (84 FR 44703) (FRL–9998–22), in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to sedaxane and established tolerances for residues of that pesticide chemical. EPA is incorporating previously published sections from the 2017 and 2019 rulemakings as described further in this rulemaking, as they remain unchanged.

A. Toxicological Profile

For a discussion of the Toxicological Profile of sedaxane, see Unit III.A. of the 2019 rulemaking.

B. Toxicological Points of Departure/Levels of Concern

For a summary of the Toxicological Points of Departure/Levels of Concern used for the safety assessment, see Unit III.B. of the 2017 rulemaking.

C. Exposure Assessment

Much of the exposure assessment remains the same since the 2019 rulemaking, although the new exposure assessment incorporates additional dietary exposures from the petitioned-for tolerances. The updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, see Unit III.C. of the 2019 rulemaking.

Dietary exposure from food and feed uses. In evaluating dietary exposure to sedaxane, EPA considered exposure under the petitioned-for tolerances as well as all existing sedaxane tolerances in 40 CFR 180.665. For the acute and chronic dietary exposure assessments, EPA used tolerance-level residues for all registered and proposed commodities. The acute and chronic analyses used 100 percent crop treated (PCT) for all commodities.

Drinking water exposure. Drinking water exposures are not impacted by the proposed seed treatment uses on Onion, bulb, subgroup 3–07A and Vegetable, cucurbit, group 9. Since the 2019 rulemaking, EPA has conducted a new drinking water assessment for the registration review of sedaxane and subsequently updated that assessment with respect to seed treatment uses. Estimated drinking water concentrations (EDWCs) for annual potato seed treatments resulted in the highest concentrations for total sedaxane residues. The proposed seed treatment uses are not expected to result in total sedaxane residues at concentrations higher than the annual potato seed treatments; therefore, the EDWCs for annual potato seed treatments are protective. The groundwater EDWCs are 22.0 parts per billion (ppb) for acute exposures and 19.3 ppb for chronic exposures. These EDWCs were calculated with the Pesticide Root Zone Model for Groundwater (PRZM–GW).

Non-occupational exposure. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Sedaxane is not registered for any specific use patterns that would result in residential exposure, and residential exposures are not impacted by the proposed seed treatment uses.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to sedaxane and any other substances. For the purposes of this action, therefore, EPA has not assumed that sedaxane has a common mechanism of toxicity with other substances.

D. Safety Factor for Infants and Children

EPA continues to conclude that there is reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor to 1X. See Unit III.D. of the 2019 rulemaking for a discussion of the Agency's rationale for that determination.

E. Aggregate Risks and Determination of Safety

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

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 1.4% of the aPAD for

all infants (<1 year old), the population group receiving the greatest exposure. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 1.4% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure.

Short- and intermediate-term aggregate exposure risks take into account short- and intermediate-term residential exposures, respectively, plus chronic exposure to food and water (considered to be a background exposure level). Because there are no proposed or registered residential uses of sedaxane, short- and intermediate-term risk assessments were not performed. The chronic risk assessment is protective for any short- and intermediate-term exposures from food and drinking water.

Because the chronic risk is below the Agency's level of concern, EPA concludes the chronic dietary risk assessment adequately accounts for any potential carcinogenicity that could result from exposure to sedaxane.

Therefore, based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to sedaxane residues. More detailed information can be found at *https://www.regulations.gov* in the document titled ''Sedaxane. Human Health Risk Assessment for a Proposed Seed Treatment Use on Bulb Onion Crop Subgroup 3–07A and Cucurbit Vegetables Crop Group 9'' in docket ID number EPA–HQ–OPP–2022–0314.

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The Codex has not established an MRL for sedaxane in or on Onion, bulb, subgroup 3–07A and Vegetable, cucurbit, group 9.

C. Revisions to Petitioned-For Tolerances

The petition requested a tolerance for ''Vegetable, dry bulb, crop subgroup 3–07A''. Since the time of submission, EPA has updated the preferred vocabulary for establishing pesticide tolerances, and the correct commodity definition is ''Onion, bulb, subgroup 3–07A''. The Agency is therefore revising the commodity definition for ''Vegetable, dry bulb, crop subgroup 3–07A'' to ''Onion, bulb, subgroup 3–07A''.

V. Conclusion

Therefore, tolerances are established for residues of sedaxane, N-[2-[1,1′-bicyclopropyl]-2-ylphenyl]-3-(difluoromethyl)-1-methyl-1H-pyrazole-4-carboxamide, in or on Onion, bulb, subgroup 3–07A at 0.01 ppm and Vegetable, cucurbit, group 9 at 0.01 ppm.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National Government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 26, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.665, the table in paragraph (a) is amended by:

■ a. Adding a table heading; and

■ b. Adding in alphabetical order the entries ''Onion, bulb, subgroup 3–07A'' and ''Vegetable, cucurbit, group 9''.

The additions read as follows:

§ 180.665 Sedaxane; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Onion, bulb, subgroup 3–07A	0.01
* * * * *	
Vegetable, cucurbit, group 9	0.01
* * * * *	

* * * * *

[FR Doc. 2023–12321 Filed 6–8–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1739–F]

RIN 0938–AU24

Medicare Program; Treatment of Medicare Part C Days in the Calculation of a Hospital's Medicare Disproportionate Patient Percentage

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final action.

SUMMARY: This final action establishes a policy concerning the treatment of patient days associated with persons enrolled in a Medicare Part C (also known as ''Medicare Advantage'') plan for purposes of calculating a hospital's disproportionate patient percentage for cost reporting periods starting before fiscal year (FY) 2014 in response to the Supreme Court's ruling in *Azar* v. *Allina Health Services,* 139 S. Ct. 1804 (June 3, 2019).

DATES: The policy set out in this final action is effective August 8, 2023.

FOR FURTHER INFORMATION CONTACT: Donald Thompson, *DAC@cms.hhs.gov,* (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Executive Summary and Background

A. Executive Summary

1. Purpose and Legal Authority

This final action creates a policy governing the treatment of days associated with beneficiaries enrolled in Medicare Part C for discharges occurring prior to October 1, 2013, for the purpose of determining the additional Medicare payments to subsection (d) hospitals under section 1886(d)(5)(F) of the Social Security Act (the Act).

2. Summary of Major Provisions

Section 1886(d)(5)(F) of the Act provides for additional Medicare payments to subsection (d) hospitals that serve a significantly disproportionate number of low income patients. The Act specifies two methods by which a hospital may qualify for the Medicare disproportionate share hospital (DSH) payment adjustment. Under the first method, hospitals that are located in an urban area and have 100 or more beds may receive a Medicare DSH payment adjustment if the hospital can demonstrate that, during its cost reporting period, more than 30 percent of its net inpatient care revenues are derived from State and local government payments for care furnished to needy patients with low incomes. This method is commonly referred to as the ''Pickle method.'' The second method for qualifying for the DSH payment adjustment, which is more common, is based on a complex statutory formula under which the DSH payment adjustment is based on the hospital's geographic designation, the number of beds in the hospital, and the hospital's disproportionate patient percentage (DPP). A hospital's DPP is the sum of two fractions: the ''Medicare fraction'' and the ''Medicaid fraction.'' The Medicare fraction (also known as the SSI fraction or SSI ratio) is computed by dividing the number of the hospital's inpatient days that are furnished to patients who were entitled to both Medicare Part A and Supplemental Security Income (SSI) benefits by the hospital's total number of patient days furnished to patients entitled to benefits under Medicare Part A. The Medicaid fraction is computed by dividing the hospital's number of inpatient days furnished to patients who, for such days, were eligible for Medicaid, but were not entitled to benefits under Medicare Part A, by the hospital's total number of inpatient days in the same period.

Because the DSH payment adjustment is part of the hospital inpatient prospective payment system (IPPS) for acute care hospitals, the statutory references to ''days'' in section 1886(d)(5)(F) of the Act have been interpreted to apply only to hospital acute care inpatient days. Regulations located at 42 CFR 412.106 implement the Medicare DSH payment adjustment and specify how the DPP is calculated as well as how beds and patient days are counted in determining the Medicare DSH payment adjustment.

3. Summary of Costs and Benefits

Including days associated with patients enrolled in Medicare Part C in the calculation of the Medicare fraction and excluding them from the calculation of the numerator of the Medicaid fraction, does not have any additional costs or benefits relative to the Medicare DSH payments that have already been made because those payments were made under the policy reflected in the fiscal year (FY) 2005 IPPS final rule (69 FR 49099) (prior to it having been vacated). The effect of this final action is to provide certainty as to how Part C days will be treated for DSH calculations for cost years not governed by the FY 2014 IPPS/Long-Term Care Hospital (LTCH) Prospective Payment System (PPS) final rule (78 FR 50614; hereinafter referred to as ''the FY 2014 IPPS final rule''), resolving any uncertainty that may otherwise continue into the future.

B. Background

In August 2020, we issued a proposed rule, which appeared in the **Federal Register** on August 6, 2020 (85 FR 47723) (hereinafter referred to as the ''August 2020 proposed rule''). The proposed rule would establish a policy concerning the treatment of patient days associated with persons enrolled in a Medicare Part C (also known as ''Medicare Advantage'' or ''MA'') plan for purposes of calculating a hospital's disproportionate patient percentage for cost reporting periods starting before October 1, 2013, in response to the Supreme Court's ruling in *Azar* v. *Allina Health Services.*

We received approximately 110 timely pieces of correspondence containing multiple comments on the August 2020 proposed rule. Summaries of the public comments received and our responses to those public comments are set forth in section II. of this final action.

II. Provisions of the Regulations—Treatment of Patient Days Associated With Patients Enrolled in Medicare Advantage Plans With Discharge Dates Before October 1, 2013, in the Medicare and Medicaid Fractions of the Disproportionate Patient Percentage (DPP)

Medicare Advantage (MA) plans are authorized under Medicare Part C. The regulation at 42 CFR 422.2 defines MA plan to mean ''health benefits coverage offered under a policy or contract by an MA organization that includes a specific set of health benefits offered at a uniform premium and uniform level of cost-sharing to all Medicare beneficiaries residing in the service area of the MA plan . . . .'' Generally, each MA plan must at least provide coverage of all services that are covered by Medicare Part A and Part B, but also may provide for Medicare Part D benefits and/or additional supplemental benefits. However, certain items and services, such as hospice benefits, continue to be covered under Medicare Part A fee-for-service (FFS) even if a beneficiary chooses to enroll in an MA plan. Generally, under § 422.50 of the regulations, an individual is eligible to elect an MA plan if he or she is entitled to Medicare Part A and enrolled in Medicare Part B. This is in accordance with section 1851(a)(3) of the Act, which requires that individuals enrolling in MA plans must be entitled to benefits under Part A and enrolled under Part B. Dually eligible beneficiaries (individuals entitled to Medicare and eligible for Medicaid) may choose to enroll in an MA plan.

In the FY 2004 IPPS proposed rule (68 FR 27208), in response to questions about whether the patient days associated with patients enrolled in an MA plan should be counted in the Medicare fraction or the Medicaid fraction of the DPP calculation, we proposed that once a beneficiary enrolls in an MA plan, patient days attributable to the beneficiary would not be included in the Medicare fraction of the DPP. (We note, at the time of the FY 2004 IPPS proposed rule and FY 2005 rulemaking, Medicare Part C was referred to as Medicare + Choice (M+C); however, to avoid confusion we use the current terminology (MA) when referring to Medicare Part C.) Instead, those patient days would be included in the numerator of the Medicaid fraction, if the patient also were eligible for Medicaid. In the FY 2004 IPPS final rule (68 FR 45422), we did not respond to public comments on this proposal, due to the volume and nature of the public comments we received, and we indicated that we would address those comments later in a separate document. In the FY 2005 IPPS proposed rule (69 FR 28286), we stated that we planned to address the FY 2004 comments regarding MA days in the IPPS final rule for FY 2005. After considering comments on this proposal, we decided not to implement the policy as proposed. Instead, in the FY 2005 IPPS final rule (69 FR 49099; hereinafter referred to as ''the FY 2005 IPPS final rule''), we determined that, under § 412.106(b)(2)(i) of the regulations, MA patient days should be counted in the Medicare fraction of the DPP calculation. We explained that, even where Medicare beneficiaries enroll in an MA plan, they are still entitled to benefits under Medicare Part A. Therefore, we noted that if an MA beneficiary is also entitled to SSI benefits, the patient days for that beneficiary would be included in the numerator of the Medicare fraction (as well as in the denominator) and not in the numerator of the Medicaid fraction. We note that, despite our statement in the FY 2005 IPPS final rule that the text of the regulation at § 412.106(b)(2)(i) would be revised to state explicitly that the days associated with MA beneficiaries are included in the Medicare fraction, due to a clerical oversight, the regulation at § 412.106(b)(2)(i) was not amended to reflect this policy until 2007 (72 FR 47384).

In 2012, a district court vacated the final policy adopted in the FY 2005 IPPS final rule on the basis that the final rule was not a ''logical outgrowth'' of the proposed rule. *Allina Health Svcs.* v. *Sebelius,* 904 F. Supp. 2d 75, 89 (D.D.C. 2012). In the FY 2014 IPPS/LTCH PPS proposed rule (hereinafter referred to as ''the FY 2014 IPPS proposed rule''), we proposed to re-adopt the policy of including MA patient days in the Medicare fraction prospectively for FY 2014 and subsequent fiscal years (78 FR 27578). We finalized this proposal in the FY 2014 IPPS final rule (78 FR 50614). We made no change to the regulation text at § 412.106(b)(2)(i) because the text of the regulation which was revised in 2007 (72 FR 47384) to incorporate the policy we first adopted in the FY 2005 IPPS final rule, already reflected the policy we again adopted in the FY 2014 IPPS final rule. In 2014, the United States Court of Appeals for the D.C. Circuit upheld the district court's holding that the policy adopted in the FY 2005 IPPS final rule requiring inclusion of Part C days in the Medicare fraction was not a logical outgrowth of the proposed rule, but left open the possibility that the agency could treat Part C days the same way through adjudication.

In *Azar* v. *Allina Health Services,* 139 S. Ct. 1804 (June 3, 2019, hereinafter referred to as *Allina II*), the Supreme Court considered a challenge to the agency's inclusion of MA patient days in the Medicare fractions it published for FY 2012. Section 1871(a)(2) of the Act requires notice-and-comment rulemaking for any Medicare ''rule, requirement, or other statement of policy'' that ''establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits.'' The Supreme Court held that section 1871(a)(2) of the Act required CMS to engage in notice-and-comment rulemaking before adopting its ''avowedly gap-filling policy'' regarding treatment of inpatient days for beneficiaries enrolled in MA plans for purposes of calculating the DPP.

Section 1871(e)(1)(A) of the Act authorizes CMS to engage in retroactive rulemaking when the Secretary determines that such retroactive application is necessary to comply with statutory requirements or that a failure to apply a policy retroactively would be contrary to the public interest. For example, CMS has invoked its authority to engage in retroactive rulemaking under section 1871(e)(1)(A) of the Act in connection with its policy related to bad debt (see the FY 2021 IPPS/LTCH PPS proposed rule (85 FR 32867)), predicate facts and cost report reopening (see the CY 2014 OPPS final rule (78 FR 75165)), and the low-volume hospital adjustment (see the FY 2020 IPPS/LTCH PPS final rule (84 FR 42349)).

The Secretary has determined that to the extent there is a statutory gap to fill with respect to the treatment of Part C patient days, retroactive application is necessary to comply with statutory requirements and a failure to apply this policy retroactively would be contrary to the public interest. Section 1886(d)(5)(F) of the Act requires CMS to make DSH payments to eligible hospitals. Calculating such payments, in turn, requires CMS to calculate a Medicare fraction and a Medicaid fraction for each hospital. Under section 1886(d)(5)(F)(vi)(I) of the Act, the Medicare fraction must include the patient days for beneficiaries ''entitled to benefits under part A.'' The Court of Appeals for the D.C. Circuit has held that the Medicare statute does not speak directly to how Part C days should be treated for purposes of DSH calculations, that is, whether Part C

patients are ''entitled to benefits under part A'' and should therefore be included in the Medicare fraction, or whether they are not so entitled, and should therefore be included in the numerator of the Medicaid fraction if they are also eligible for Medicaid. (See *Northeast Hospital Corporation* v. *Sebelius,* 657 F.3d 1, 13 (D.C. Cir. 2011) (hereinafter referred to as ''*Northeast*''.) However, the court has also found that section 1886(d)(5)(F)(vi) of the Act requires the Secretary to account for Part C days in the DPP calculation by including them in one of the fractions (Medicare or Medicaid) and excluding them from the other. (See *Allina Health Services.* v. *Sebelius,* 746 F.3d 1102, 1108 (D.C. Cir. 2014) (hereinafter referred to as ''*Allina I*'').)

Since the publication of our proposed rule, the Supreme Court handed down its decision in *Becerra* v. *Empire Health Foundation,* 142 S. Ct. 2354, 1368 (June 24, 2022) (hereinafter referred to as ''*Empire*''). In *Empire,* the Supreme Court held that the statutory text is clear that ''being 'entitled' to Medicare benefits . . . means—in the [DSH] fraction descriptions, as throughout the statute—meeting the basic statutory criteria.'' (142 S. Ct. at 2362.) Part C enrollees, who by definition must be ''entitled'' to Part A benefits to enroll under Part C, necessarily meet the basic statutory criteria (essentially that they are over 65 or disabled). *Empire* did not address Part C days specifically, it addressed the same statutory language that is the subject of the August 2020 proposed rule, the meaning of ''entitled to benefits under part A of [Medicare].'' The Supreme Court held that the Secretary was correct in interpreting that phrase as denoting a legal status that does not turn on whether Medicare pays for any particular hospital day. The Supreme Court concluded that the ''[t]ext, context, and structure all support calculating the Medicare fraction HHS's way. In that fraction, individuals 'entitled to [Medicare Part A] benefits' are all those qualifying for the program.'' We believe it is now clear that the statute itself requires the Secretary to count Part C days in the Medicare fraction because Medicare beneficiaries remain ''entitled to [Medicare Part A]'' regardless of whether they enroll in Part C, just as do beneficiaries who have exhausted their coverage for a spell of illness. Nonetheless, *Empire* did not address specifically whether Part C enrollees remain ''entitled to Part A,'' and because the FY 2005 IPPS final rule was vacated, the Secretary ''has no promulgated rule governing'' the treatment of Part C days ''for the fiscal years before 2014.'' *Allina Health Servs.* v. *Price,* 863 F.3d 937, 939 (D.C. Cir. 2017). As a result, to the extent there is still a statutory gap for the Secretary to fill after *Empire* regarding the treatment of Part C days in the Medicare DSH payment calculation, CMS must determine whether beneficiaries enrolled in Part C are ''entitled to benefits under part A'' and so must be included in the Medicare fraction (and excluded from the numerator of the Medicaid fraction), or are not so entitled and so must be excluded from the Medicare fraction (and included in the numerator of the Medicaid fraction, if dually eligible). The Secretary has therefore determined that, in order to comply with the statutory requirement to make DSH payments and in order to address any potential statutory gap, to the extent one might remain after *Empire,* it is necessary for CMS to engage in retroactive rulemaking to establish a policy to govern whether individuals enrolled in MA plans should be included in the Medicare fraction or in the numerator of the Medicaid fraction, if dually eligible, for fiscal years before 2014.

We continue to believe, as we stated in the preamble to the FY 2014 IPPS final rule (78 FR 50614 and 50615) and have consistently expressed since the issuance of the FY 2005 IPPS final rule, that individuals enrolled in MA plans are ''entitled to benefits under part A'' as the phrase is used in the DSH provisions at section 1886(d)(5)(F)(vi) of the Act. Even without relying on the Supreme Court's decision in *Empire,* which in our view confirms our interpretation, we believe this is the best reading of the statute.

Section 226 of the Act provides that an individual is automatically ''entitled'' to Medicare Part A when the person reaches age 65, provided that the individual is entitled to Social Security benefits under section 202 of the Act, or becomes disabled. Beneficiaries who are enrolled in MA plans provided under Medicare Part C continue to meet all of the statutory criteria for entitlement to Medicare Part A benefits under section 226 of the Act. Moreover, section 1851(a)(3) of the Act provides that in order to enroll in Medicare Part C a beneficiary must be ''entitled to benefits under Part A and enrolled under Part B.'' Thus, by definition, a beneficiary must be entitled to Part A to be enrolled in Part C. There is nothing in the Act that suggests that beneficiaries who enroll in a Medicare Part C plan thereby forfeit their entitlement to Medicare Part A benefits. To the contrary, enrollment in a plan under Medicare Part C is simply an option that a person entitled to Part A benefits may choose as a way to receive their Part A benefits. A beneficiary who enrolls in Medicare Part C is entitled to receive benefits under Medicare Part A through the MA plan in which he or she is enrolled, and the MA organization's costs in providing such Part A benefits are paid for by CMS with money from the Medicare Part A Trust Fund. In addition, under certain circumstances, Medicare Part A pays directly for care furnished to patients enrolled in Medicare Part C plans, rather than indirectly through Medicare Part A Trust Fund payments to MA organizations. For example, under section 1852(a)(5) of the Act, if, during the course of the year, the scope of benefits provided under Medicare Part A expands beyond a certain cost threshold due to congressional action or a national coverage determination, Medicare Part A will pay providers directly for the cost of those services provided to beneficiaries enrolled in Part C. Similarly, Medicare Part A pays directly for hospice care furnished to MA patients who elect under section 1812(d)(1) of the Act to receive such care from a particular hospice program and, under certain circumstances, for federally qualified health center (FQHC) services provided to MA patients by FQHCs that contract with MA organizations under sections 1853(h)(2) and 1853(a)(4) of the Act, respectively. Thus, we continue to believe that a patient enrolled in an MA plan remains entitled to benefits under Medicare Part A, and patient days associated with that patient should be counted in the Medicare fraction of the DPP, and not (in the case of a dually-eligible patient) the numerator of the Medicaid fraction.

Additionally, the Secretary has determined that it is in the public interest for CMS to adopt a retroactive policy for the treatment of MA patient days in the Medicare and Medicaid fractions through notice and comment rulemaking for discharges before October 1, 2013 (the effective date of the FY 2014 IPPS final rule). CMS must calculate DSH payments for periods that include discharges occurring before the effective date of the prospective FY 2014 IPPS final rule for hundreds of hospitals whose DSH payments for those periods are still open or have not yet been finally settled, encompassing thousands of cost reports. In order to calculate these payments, CMS must establish Medicare fractions for each applicable cost reporting period during the time period for which there is currently no regulation in place that

expressly addresses the treatment of Part C days. Because the Supreme Court has held in *Allina II* that, unless an exception applies, CMS cannot establish or change ''an avowedly 'gap'-filling policy'' under the Medicare statute except by notice-and-comment rulemaking, we have concluded that, to the extent there is a gap after *Empire,* the only way for CMS to resolve this issue and properly calculate DSH payments for time periods before FY 2014 is to promulgate a new regulation through notice-and-comment rulemaking that would apply retroactively to the determination of Medicare and Medicaid fractions for this time period. Consequently, retroactive rulemaking is not only necessary to comply with the statutory requirement to calculate DSH payments, it is also necessary to avoid an outcome that would be contrary to the public interest. Absent such a retroactive rulemaking, if there is a gap in the statute to fill, the Secretary would be unable to calculate and confirm proper DSH payments for time periods before FY 2014, which would be contrary to the public interest of providing additional payments to hospitals that serve a significantly disproportionate number of low-income patients, as expressed in the DSH provisions of the Medicare statute. Moreover, to the extent the Secretary must adopt an approach to calculate those payments, it is in the public interest to permit interested stakeholders to comment on the proposed approach and for the agency to have the benefit of those comments in the development of any final action. Therefore, for the purposes of calculating the Medicare and Medicaid fractions for cost reporting periods that include discharges before October 1, 2013, in the August 2020 proposed rule (85 FR 47725), we proposed to adopt the same policy of including MA patient days in the Medicare fraction that was prospectively adopted in the FY 2014 IPPS final rule and to apply this policy retroactively to any cost reports that remain open for cost reporting periods starting before October 1, 2013. We stated that we did not expect the proposed policy to have an effect on payments as the payments previously made already reflect the proposed policy. We did not propose any change to the regulation text because the current text at § 412.106(b)(2)(i) reflects the policy being proposed for fiscal years before FY 2014. In the August 2020 proposed rule (85 FR 47726), we stated that because we proposed to establish this policy retroactively, it would cover cost reporting periods for which many cost reports have already been final settled. Consistent with 42 CFR 405.1885(c)(2), any final action retroactively adopting the policy at 42 CFR 412.106(b)(2)(i) for fiscal years before FY 2014 would not be a basis for reopening these final settled cost reports, irrespective of how payments in those cost reports were calculated.

In the August 2020 proposed rule, we sought comments on our proposed approach to include MA patient days in the Medicare fraction for fiscal years before FY 2014, and also on an alternative, of including MA patient days for dually eligible beneficiaries in the numerator of the Medicaid fraction for those fiscal years, which we discussed in detail in section V. of the August 2020 proposed rule (85 FR 47727). We summarize and respond to the public comments received on our proposal and the alternative approach considered in the proposed rule.

Comment: Some commenters stated that the statute unambiguously forecloses the Secretary's interpretation and is self-executing, so retroactive rulemaking cannot be justified.

Response: We disagree that the statute unambiguously forecloses the Secretary's interpretation. Quite the opposite is true; based on the Supreme Court's intervening decision in *Empire,* we believe the statute itself requires the Secretary to count Part C days in the Medicare fraction, exactly as contemplated in the August 2020 proposed rule. To the extent that the statute itself establishes the applicable ''substantive legal standard,'' there is no need for a ''gap-filling policy'' that would trigger the notice-and-comment obligations of section 1871(a)(2) of the Act, nor any resulting need to rely on the retroactive rulemaking authority under section 1871(e) of the Act. The Supreme Court in *Allina II* made clear that while notice-and-comment rulemaking is required to change or establish an ''avowedly 'gap'-filling policy,'' its holding should not be construed to require such rulemaking where the substantive legal standard is established by the statute itself. (139 S. Ct. at 1816–17.) Of course, to the extent notice-and-comment rulemaking is required under *Allina II,* we continue to believe that this final action is a necessary and appropriate exercise of the Secretary's retroactive rulemaking authority under section 1871(e) of the Act. In our view, however, *Empire* now makes clear that the interpretation set forth in this final action simply reflects the ''substantive legal standard'' already set forth in the statute and the action thus does not ''establish or change'' that standard.

Although *Empire* did not address Part C days specifically, it addressed the same statutory language at issue here, and its analysis of that language compels the conclusion that Part C days must be treated as days for which patients are ''entitled to part A benefits.'' Under the governing statutory language, patients are ''entitled'' to Part A benefits if they meet the basic statutory criteria for such entitlement under section 226 of the Act—essentially, if they are over 65 or disabled. (142 S. Ct. at 2358, 2361–62, 2365–66.) As noted previously, Part C enrollees must, by definition, meet these statutory criteria. And because their enrollment in MA does not change their age or disability status, such enrollment also does not change their entitlement to benefits under Part A.[1] There is no indication in the *Empire* Court's opinion to suggest that some other interpretation might be permissible. To the contrary, the Court held that the meaning of the statute was clear (indeed, ''surprisingly clear''), and that the Secretary had ''correctly'' interpreted the statutory language.[2] It also held that the alternative reading (including the reading advanced by the plaintiffs in *Northeast,* a Part C days case) would render various statutory provisions ''unworkable or unthinkable or both,'' which ''is not the statute Congress wrote.'' [3] It further found that excluding Medicare beneficiaries from the Medicare fraction denominator simply because payment was not made under Medicare Part A would ''deflate'' the Medicare fraction denominator and ''distort[ ] what the Medicare fraction is designed to measure—the share of low-income Medicare patients relative to the total.'' [4] The same concern applies at least as much, if not more, in the context of Part C days.

In short, based on the *Empire* Court's clarification of the governing statute, we now believe the interpretation announced here simply reflects the substantive legal standard already established in ''the statute Congress wrote,'' and that this action itself does not establish or change that standard.[5] That being the case, we now believe that notice-and-comment rulemaking is not required under *Allina II,* and the interpretation set forth in this action is proper without a need to rely on the

[1] 142 S. Ct. at 2364 (explaining that ''entitlement'' arises when a person meets the basic criteria and, unless a disability diminishes, ''never goes away'').

[2] *Id.* at 2362.

[3] *Id.* at 2364.

[4] *Id.* at 2367–68.

[5] 142 S. Ct. at 2364.

Secretary's retroactive rulemaking authority.

Alternatively, if notice-and-comment rulemaking is required, then we continue to believe this action reflects an appropriate exercise of the Secretary's retroactive rulemaking authority. The commenters are incorrect to say the statute unambiguously forecloses the Secretary's interpretation. Even before the Supreme Court in *Empire* found that the Secretary had correctly construed the statutory language, the D.C. Circuit in *Northeast* held that ''the statute does not unambiguously foreclose the Secretary's interpretation.'' [6] The D.C. Circuit found that Congress ''left a statutory gap, and it is for the Secretary . . . to fill that gap.'' [7] Thus, to the extent that any such gap remains in the wake of the Supreme Court's clarification in *Empire,* the decision in *Allina II* would require notice-and-comment rulemaking to establish the gap-filling policy stated in this action.[8]

Comment: Several commenters stated that retroactive rulemaking in this context offends ''fundamental notions of justice'' and the public interest and sets a dangerous precedent by giving CMS a way to evade the notice-and-comment requirements of the Medicare statute and the Administrative Procedure Act (APA) whenever it loses a procedural challenge in court. Some stated that retroactive rulemaking subverts what the Supreme Court in *Allina II* identified as Congress' purpose in the notice-and-comment requirement—giving the public fair warning and a chance to be heard. Some commenters suggested that it is poor public policy and contrary to the public interest to finalize a retroactive rule when the earlier rulemaking was found deficient on logical outgrowth grounds. A commenter stated that CMS's proposal suggests that there are no practical consequences associated with the agency's failure to comply with the APA.

Response: To the extent that *Empire* has now held that our interpretation of the statute reflects its clear meaning, we need not rely on retroactive rulemaking authority, as discussed previously. But to the extent retroactive rulemaking is necessary, we do not agree that retroactive rulemaking here offends justice, sets a dangerous precedent, or evades the APA's notice-and-comment rulemaking requirement. As described in the August 2020 proposed rule and herein, this retroactive rulemaking is authorized by statute, specifically section 1871(e) of the Act, complies with the Medicare statute's notice-and-comment requirement, and implements the Supreme Court's decision in *Allina II,* thereby upholding fundamental notions of justice. The Supreme Court did not expressly instruct CMS to promulgate a retroactive rule, but it did hold that the Medicare statute requires the agency to engage in notice-and-comment rulemaking before it may either ''establish'' or ''change'' a substantive legal standard, such as its policy governing the treatment of Part C days in the DSH statute, if such a policy is intended to fill a statutory gap. As noted previously, because the FY 2005 IPPS final rule was vacated, no policy governing the treatment of Part C days has been established by rulemaking for fiscal years before 2014. Thus, for fiscal years not already addressed by the FY 2014 IPPS final rule,[9] whether CMS interprets the statute to treat beneficiaries enrolled in Part C as ''entitled to benefits under part A'' or as not so entitled, the Medicare statute requires a policy established by notice-and-comment rulemaking to resolve the issue for these years, at least to the extent that any statutory ''gap'' remains to be filled after *Empire.* If CMS were to proceed to calculate DSH adjustments for fiscal years before 2014 without a promulgated rule in place, this would (to the extent any gap remains) be contrary to the holding of *Allina II* because the Supreme Court held that gaps in the Medicare statute can only be filled via rulemaking (unless an exception applies). The *Allina II* plaintiffs prevailed only on their procedural challenge. No provision of either the Medicare statute or the APA requires CMS to adopt a different substantive legal standard. Instead, the Medicare statute contemplates that ''if the Secretary publishes a final regulation that includes a provision that is not a logical outgrowth of'' a proposed rule, as happened here, under section 1871(a)(4) of the Act, ''such provision'' may still take effect after ''further opportunity for public comment and a publication of the provision again as a final regulation.'' Here, the August 2020 proposed rule provided that further opportunity, and all interested parties have had a full opportunity to share their views on the proper interpretation of the statute. We have fully considered all comments received before finalizing this action.

We are not setting a precedent in this action that the agency can always engage in retroactive rulemaking when courts find that one of our final rules is not a logical outgrowth of the associated proposed rule. Retroactive rulemaking is authorized only when the Secretary determines that retroactive application: (1) is necessary to comply with statutory requirements; or (2) that a failure to do so would be contrary to the public interest. These circumstances will not always be present. For example, as to necessity to comply with statutory requirements, there will not always be, as there is here, a statutory directive to calculate payments that demands an interpretation of the very statutory provision interpreted in the vacated rule coupled with the absence of a prior rule addressing the issue that needs to be resolved (here, how to treat days attributable to Part C enrollees in the DPP).

We do not agree that this retroactive rulemaking has deprived the public of a chance to be heard as the agency has provided a period for comment and considered all the comments submitted.

We also do not agree with the underlying premise that either the APA or the Medicare statute require some sort of punitive ''consequences'' to an agency as the result of a logical outgrowth deficiency, especially where, as here, the alternative interpretation (that Part C enrollees are not entitled to benefits under Part A) would be contrary to statute. CMS has given the public a chance to submit comments and has considered those comments, thereby curing the procedural error.

Comment: Some commenters stated that the DSH statute does not require any specific treatment of Part C days and so retroactive rulemaking is not authorized because retroactivity is not ''necessary to comply with statutory requirements'' as contemplated by section 1871(e)(i) of the Act. Similarly, a commenter asserted that because the D.C. Circuit in *Northeast* and the D.C. District Court in *Alegent Health-Immanuel Medical Center* v. *Sebelius,* 917 F. Supp. 2d 1 (D.D.C. 2012), have read the statute to permit excluding Part C days from the Medicare fraction, retroactive rulemaking would not be necessary to comply with the statute. Some commenters stated that retroactive rulemaking is only permitted to adopt what they believe to be CMS' pre-2004 policy.

Response: The commenters misunderstand the Secretary's position in the August 2020 proposed rule. Section 1871(e) of the Act authorizes retroactive rulemaking when the Secretary determines that, in order to

[6] 657 F.3d at 2.

[7] *Id.* at 13.

[8] 139 S. Ct. at 1816–17.

[9] For more information on the FY 2014 IPPS final rule, which became effective October 1, 2013, we refer readers to 78 FR 50614.

comply with statutory requirements, it is necessary to apply a ''substantive change in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability . . . retroactively to items and services furnished before the effective date of the change.'' Here the DSH statute requires the Secretary to calculate DSH payments by, in part, treating Part C enrollees as either ''entitled to benefits under part A'' or as not so entitled, but there is no promulgated rule governing the treatment of Part C days for fiscal years before 2014. Therefore, unless the statute itself establishes the substantive legal standard, retroactive rulemaking is required in order make the statutorily required DSH adjustments. In other words, the Secretary's determination that retroactive rulemaking is necessary to comply with statutory requirements is not based on the view that the statute admits of only one interpretation of ''entitled to benefits under part A,'' which the Court in *Empire* has now confirmed. Rather, the basis of the determination is that the statute requires the Secretary to make DSH adjustments, which in turn requires him (to the extent the statute itself contains any ambiguity or ''gap'') to interpret the phrase ''entitled to benefits under part A'' as that phrase relates to Part C days, and the Supreme Court has instructed that such an interpretation must be promulgated by notice-and-comment rulemaking. This same conclusion—that retroactive rulemaking is required—results even if CMS found the commenters' preferred treatment of Part C days to be the better interpretation and wished to adopt it. *Northeast* and *Alegent* did not address section 1871 of the Act and have been superseded in some respects by the Supreme Court's decision in *Allina II.*

Comment: A commenter stated that CMS has authority to adopt a retroactive rule only if the substantive change in the regulation itself is required, in other words, only if the statute unambiguously requires the proposed interpretation. Some commenters stated that, contrary to the August 2020 proposed rule (as they interpret it), the *Allina* cases created no legal ambiguity and so retroactive rulemaking is not required. Another commenter stated that any legal ambiguity is already resolved by following the precedent of *Northeast.*

Response: By its terms, section 1871(e)(1)(A)(i) of the Act permits retroactive rulemaking when the Secretary determines rulemaking is ''necessary to comply with statutory requirements,'' not only when the Secretary determines that the interpretation embodied in a proposed regulation is itself unambiguously required by the statute. Where the statute admits of only one interpretation, rulemaking (prospective or retroactive) may not be required at all. In *Allina II,* the Court held that rulemaking is necessary under section 1871(a)(2) of the Act when HHS's policy fills a statutory gap. Here, as noted before, the D.C. Circuit previously found that the statute is ambiguous as to whether Part C days are days of beneficiaries ''entitled to benefits under Part A,'' and that the Secretary's interpretation is not foreclosed. Subsequently, in *Empire,* the Supreme Court held that ''entitled to benefits under part A'' clearly refers to ''all those qualifying for the [Medicare] program.'' (142 S. Ct. at 2368.) We believe this reasoning supports the Secretary's interpretation that ''entitled to benefits under part A'' includes Part C enrollees since, in order to enroll in Part C, an individual must be entitled to Part A.[10]

Some commenters appear to have misunderstood the discussion of legal ambiguity in the August 2020 proposed rule. In that rule, we stated that failing to finalize a regulation through notice-and-comment rulemaking would create ''legal ambiguity'' in the future as to the Secretary's treatment of Part C days for fiscal periods before 2014. As noted previously and in the August 2020 proposed rule, until this action is finalized and in effect, no regulation governs the treatment of Part C days for years before FY 2014. Because there is no rule governing the treatment of Part C days for discharges before October 1, 2013, the Secretary concluded he must promulgate a rule that governs this period—whether the rule counts the Part C days in the numerator of the Medicaid fraction (for individuals also eligible for Medicaid), as most commenters desire, or in the Medicare fraction, as CMS proposed. The *Northeast* decision striking down the exclusion of Part C days from the numerator of the Medicaid fraction for FYs 1999 to 2002 and holding that the Secretary could not apply her 2004 interpretation retroactively to those years does not control in the face of the Supreme Court's decision in *Allina II,* as discussed throughout this action.

Comment: Some commenters stated that there was no missed statutory deadline to justify a retroactive rule.

Response: Section 1871(e) of the Act authorizes retroactive rulemaking when the Secretary determines that, in order to comply with statutory requirements, it is necessary to apply a ''substantive change in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability'' or it is in the public interest. The Secretary's authority to undertake retroactive rulemaking is not limited to instances when a statutory deadline has been missed. As explained in this action, the Secretary has determined that retroactive rulemaking is necessary to comply with statutory requirements, to the extent a statutory gap is left to fill after *Empire,* and is in the public interest.

Comment: Some commenters stated that the Secretary's argument that retroactive rulemaking is in the public interest is circular because it presupposes that the DSH statute cannot be given effect except through regulation. Some stated that the Secretary's arguments that a retroactive rule would be in the public interest simply repeat his arguments for why a retroactive rule is required by statute.

Response: We do not agree that the conclusion that the treatment of Part C days cannot be resolved without rulemaking is a mere presupposition, and therefore that the Secretary's argument is circular. Rather, as stated previously, there is no ''promulgated rule governing the treatment of Part C days for fiscal years before 2014'' (*Allina Health Servs.,* 863 F.3d at 939), and the Supreme Court held that the Secretary cannot establish or change an avowedly gap-filling policy for the treatment of Part C days without first promulgating a regulation. Thus, to the extent the Supreme Court in *Empire* did not foreclose any other interpretation of the statute than the one the Secretary proposes, the need for rulemaking on the treatment of Part C days under the statute is not a presumption. We also believe it is in the public interest for the Secretary to enact rulemaking that reflects what he believes is the best interpretation of the statute, one consistent with what the Supreme Court has since described as the clear meaning of the statute, because to do otherwise may result in payments from the Medicare Trust Fund in excess of what he believes is authorized in the DSH statute.

Comment: Some commenters stated that the Medicare statute's authorization of a retroactive substantive change in regulations may apply only when the Secretary determines that the change has a positive impact on providers.

[10] 142 S. Ct. at 2359 (''[E]ntitlement to Part A generally enables a patient to enroll (if he wishes) in Medicare's other programs . . . [including] Part C's coverage.'') (citing section 1851(a)(3) of the Act)).

Similarly, some commenters stated that CMS does not have authority to act retroactively because its proposed rule would cause a loss to most hospitals and the public interest exception was intended to apply only where beneficial to providers. Some commenters relied on language in a 2001 Ways and Means Committee report that stated that a retroactive substantive change would be permissible if it would ''have a positive effect on beneficiaries or providers of services and suppliers.''

Response: By its terms, the statute as enacted does not restrict the Secretary's determination that a retroactive substantive change in regulations is in the public interest only in those instances where the change would have a positive impact on providers. The statute refers to ''public interest'' not ''providers' interest.'' It is in each providers' interest to receive as much in DSH payments as possible. It is in the public interest that hospitals are paid in accordance with the statute. To the extent that any statutory gap remains following the Supreme Court's *Empire* decision, the Secretary believes rulemaking on the Part C days issue for years prior to the FY 2014 IPPS final rule is required by *Allina II* and is in the public interest. We believe that the interpretation articulated in the August 2020 proposed rule best reflects the statutory text as well as congressional intent. We also believe that applying that interpretation retroactively is in the public interest because the alternative interpretation (that Part C enrollees are not entitled to benefits under Part A) would in many instances result in payments in excess of what Congress intended.

Comment: A commenter reasoned that because the D.C. Circuit held in *Allina Health Services* v. *Price* that CMS could not bypass notice-and-comment rulemaking and resolve the treatment of Part C days through adjudication, which is inherently retroactive, retroactive rulemaking is likewise impermissible.

Response: The Medicare statute at section 1871(e)(1)(A) of the Act expressly provides authority for retroactive rulemaking under certain conditions, as explained previously, and for the reasons articulated in the August 2020 proposed rule and in this final action, the Secretary finds that those conditions are met here.

Comment: Most commenters opposed CMS's proposal and urged CMS to exclude Part C days from the Medicare fraction of the DPP calculation and include them (for dually eligible individuals) in the numerator of the Medicaid fraction. (We note that, as explained previously, all patient days, regardless of eligibility for Medicaid or entitlement to Medicare Part A, are included in the denominator of the Medicaid fraction.) Many commenters disagreed that individuals enrolled in Part C are ''entitled'' to benefits under Part A and asserted that the proposed interpretation is inconsistent with their view of the intent of the statute. Commenters cited the following statutory provisions in support of their arguments:

- Section 226(c)(1) of the Act, which states that entitlement of an individual to hospital insurance benefits for a month under Part A ''shall consist of entitlement to have payment made under, and subject to the limitations in, part A.''
- Section 1851(a)(1) of the Act, which states persons eligible for Medicare Advantage are ''entitled to elect to receive benefits'' either ''through the original Medicare fee-for-service program under parts A and B'' or ''through enrollment in a [Medicare Advantage plan] under [Part C].''
- Section 1851(i)(1) of the Act, which states that ''payments under a contract with a [Medicare Advantage] organization . . . with respect to an individual electing a [Medicare Advantage] plan . . . shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under parts A and B . . .''

Commenters contended that individuals who enroll in an MA plan receive benefits under Part C and not Part A, and so cannot be ''entitled'' to benefits under Part A. Some stated that, because the payments received by providers under contract with the MA organization are made instead of the amounts that would otherwise be payable under Part A, Part C enrollees are not entitled to benefits under Part A. Some commenters stated that a patient who is enrolled in Part C on a given patient day is not entitled to Part A benefits ''for that hospitalization''; several argued that while a beneficiary must at some point be entitled to benefits under Part A in order to enroll in Part C, once they do so they are no longer entitled to benefits under Part A. Similarly, a commenter suggested that the benefits to which beneficiaries are entitled under Part A are ''subject to the limitations'' of Part A, but Part C enrollees may receive benefits from their MA plans that are in excess of benefits to which they are entitled under Part A, such that beneficiaries must not be entitled to benefits under Part A.

Response: We disagree with the commenters, and we believe the Supreme Court's intervening decision in *Empire* now forecloses the commenters' interpretation. (142 S. Ct. 2354, 2368.) Indeed, even before *Empire,* we did not find these comments persuasive. These comments are the same or similar to comments CMS received in response to the proposed prospective rule concerning the treatment of Part C days that was finalized in the FY 2014 IPPS final rule.[11] We continue to disagree that Medicare beneficiaries enrolled in Part C no longer receive benefits under Part A and that, because the payment structure of Part C applies (that is, CMS pays the MA plans so that the plans may make payments to hospitals for the care of the beneficiaries), those beneficiaries are not entitled to Part A benefits. As we stated in the FY 2014 final rule, section 226 of the Act provides that an individual is automatically ''entitled'' to Medicare Part A when the person reaches age 65, provided that the individual is entitled to Social Security Benefits under section 202 of the Act, or becomes disabled.

We continue to believe, as we concluded in the FY 2014 IPPS final rule, that Congress uses the phrase ''entitled to benefits under part A'' consistently to refer to an individual's legal status as a Medicare Part A beneficiary. This phrase is used in numerous other sections of the Medicare statute, indicating that it has a specific, consistent meaning throughout the statutory scheme, rather than a varying, context-specific meaning in each section and subsection. Enrolling in Part C does not change an enrollee's status as a Medicare Part A beneficiary and does not remove or reduce any benefits the beneficiary would otherwise have received; indeed, the MA plan must provide the benefits to which the beneficiary is entitled under Part A as described by section 1852(a)(1)(A) and (B)(i) of the Act and may provide additional supplemental benefits as described by section 1852(a)(3)(C) of the Act. The D.C. Circuit rejected many of the commenters' views that the agency's interpretation is inconsistent with the plain language of the statute. (*Northeast,* 657 F.3d at 6–13.) We note that the Supreme Court in *Empire* further explained that, for purposes of calculating hospitals' DPPs, ''individuals 'entitled to [Medicare Part A] benefits' are *all those qualifying for the program*'' and that entitlement to Part A benefits is, ''according to the statute, simply a legal status arising from'' meeting the statutory criteria in

[11] For more information on that rule, including a summary of the comments received, we refer readers to 78 FR 50496.

section 226(a)–(b) of the Act. (142 S. Ct. 2354 at 2368 and 2363 (emphasis added).) A person's entitlement to Part A benefits arises when the ''person meets the basic statutory qualifications and (unless a disability diminishes) never goes away.'' (*Id.* at 2364.)

In response to commenters' concerns about section 226(c)(1) of the Act, we note that, for purposes of section 226(c)(1) of the Act, beneficiaries enrolled in Part C are having payment made under Part A for the month in question, via the Part A component of the monthly payment made to the MA organization, and are receiving Part A benefits subject to the limitations on such benefits provided for in Part A.

In response to commenters' concerns about section 1851(a)(1) of the Act, we note that, for purposes of section 1851(a)(1) of the Act, the ''benefits'' referenced in the phrase quoted by the commenters (''entitled to elect to receive benefits'') are the benefits provided for in Part A and Part B. Thus, this language confirms that beneficiaries enrolled in Part C remain ''entitled'' to benefits under Part A, and thus supports our interpretation of the statute. It is only the vehicle ''through'' which such Part A benefits are received that changes, from the ''fee-for-service'' method spelled out under Part A to the capitation payment method spelled out in Part C.

Section 1851(i)(1) of the Act similarly refers only to whether Part A benefits are provided via payments to, and by, the MA organization or direct payments made under the ''fee-for-service'' payment procedures provided for in Part A and Part B. It is only the process for furnishing these benefits that is at issue in the provision, not entitlement to such benefits themselves. That Part C enrollees may receive supplementary benefits beyond what other Part A-entitled beneficiaries are entitled to does not deprive the Part C enrollees of entitlement to Part A benefits.

Commenters who argue that it is obvious that a beneficiary cannot be entitled to both Part C and Part A benefits on the same day confuse the method for covering Part A benefits with whether an individual is entitled to receive such benefits. The question of whether a beneficiary is ''entitled'' to Part A benefits is distinct from how the provider is paid for furnishing those benefits. As we stated in the August 2020 proposed rule (85 FR 47725), and has been subsequently affirmed by the Supreme Court in *Empire,* section 226 of the Act identifies statutory criteria for an individual's entitlement to Part A benefits. (142 S. Ct. at 2362.) Beneficiaries who are enrolled in MA plans provided under Medicare Part C continue to meet all the statutory criteria for entitlement to Medicare Part A benefits under section 226 of the Act. Moreover, section 1851(a)(3) of the Act provides that, in order to be eligible to enroll in Medicare Part C, a beneficiary must be ''entitled to benefits under Part A and enrolled under Part B.'' Thus, by definition, a beneficiary must be entitled to Part A to be enrolled in Part C. We do not believe that the Act suggests that beneficiaries who enroll in a Medicare Part C plan thereby forfeit their entitlement to Medicare Part A benefits. To the contrary, as affirmed in *Empire,* because they continue to meet the basic statutory criteria for entitlement under the statute (that is, being over 65 or disabled), their entitlement status is unaffected by such enrollment. (142 U.S. at 2362.) In our view, enrollment in a plan under Medicare Part C is simply an option that a person entitled to Part A benefits may choose as a way to receive their Part A benefits. A beneficiary who enrolls in Medicare Part C is entitled to receive benefits under Part A through the MA plan in which he or she is enrolled, and the MA organization's costs for providing such Part A benefits are paid for by CMS with money from the Medicare Part A Trust Fund.

In addition, under certain circumstances, Medicare Part A pays providers directly for care furnished to patients enrolled in Medicare Part C plans, rather than indirectly through capitated payments to MA organizations from the Medicare Part A Trust Fund. For example, under section 1852(a)(5) of the Act, if, during the course of the year, the scope of benefits provided under Medicare Part A expands beyond a certain cost threshold due to Congressional action or a national coverage determination, Medicare Part A will pay providers directly for the cost of those services provided to beneficiaries enrolled in Part C. Similarly, Medicare Part A pays directly for hospice care (a Part A benefit) furnished to MA patients who elect under section 1812(d) of the Act to receive such care from a particular hospice program and, under certain circumstances, for FQHC services provided to MA patients for FQHCs that contract with MA organizations under sections 1853(h)(2) and 1853(a)(4) of the Act, respectively. Thus, we continue to believe that a patient enrolled in an MA plan remains entitled to benefits under Part A and should be counted in the Medicare fraction, not in the numerator of the Medicaid fraction (should the Part C enrollee also be eligible for Medicaid). Indeed, in light of the Supreme Court decision in *Empire,* we do not believe the statute can properly be read otherwise.

Comment: Some commenters stated that the Secretary's interpretation of ''entitled to benefits under part A'' in the DSH statute is inconsistent with his interpretation of ''entitled to [SSI] benefits'' in that same statute because he treats people as ''entitled'' to Medicare Part A benefits if they meet the statutory criteria for entitlement, regardless of whether Medicare pays for hospital services during a given hospital stay, but treats patients as ''entitled'' to SSI benefits only if they are actually paid those monthly cash benefits for the month(s) in which they are hospitalized. Some commenters suggested that, if CMS interprets ''entitled'' to Medicare to include unpaid days it must include in the Medicare fraction numerator days for beneficiaries who are (they argue) ''entitled'' to SSI but who do not receive any cash benefit. Some commenters proposed additional Social Security Administration status codes that, in their opinion, should be included in the numerator of the Medicare fraction because they capture individuals who, purportedly, are entitled to SSI.

Response: The meaning of ''entitled to [SSI] benefits'' in the DSH statute is beyond the scope of this action. However, we note that, as the Secretary explained in the FY 2014 IPPS final rule (78 FR 50617), the differing interpretation of these two distinct phrases is based on the two different kinds of entitlements at issue. Because SSI is a cash benefit, and because entitlement to that benefit depends on factors (such as income level) that can change over time, only a person who is actually entitled to be paid these benefits for the month in question is considered entitled to those benefits. This differs from entitlement to Medicare benefits under Part A, which are a distinct set of health insurance benefits where an individual's entitlement to such benefits does not generally evolve over time. The health insurance benefits also include ongoing, continuous coverage for various specified kinds of healthcare service, regardless of income status or other financial factors.[12] The Secretary has more extensively addressed these two different kinds of entitlement for purposes of the DSH calculation in another notice-and-comment rulemaking. For more information, we refer readers to the FY 2011 IPPS/LTCH

[12] 142 S. Ct. at 2363 (emphasizing that Part A entitlement under the statute ''reflects the complexity of health insurance'').

PPS final rule (75 FR 50275 through 50286). That rulemaking further elaborates on the reasons for distinguishing between entitlement to SSI benefits and entitlement to Medicare benefits under Part A. (*Id.* at 75 FR 50280 and 50281.) We note also that courts have upheld the Secretary's distinction between these two different kinds of entitlement against similar allegations of ''inconsistency.'' [13]

Comment: Some commenters stated that the August 2020 proposed rule did not discuss the phrase ''for such days'' in the DSH statute and impermissibly seeks to eliminate that statutory clause through rulemaking. Other commenters state the phrase ''for such days'' could or must be interpreted to exclude Part C days from the Medicare fraction, which includes days for patients who ''(for such days) were entitled to benefits under part A.'' (Section 1886(d)(5)(F)(vi) of the Act.) These commenters believe this phrase requires that, to be included in the Medicare fraction, a patient must be entitled to Part A hospital benefits on the patient day being counted, and that Part C-enrolled patients are not so entitled.

Some commenters agree with then-Judge Kavanaugh's concurrence in *Northeast* when he reasoned that the statute's use of ''were'' indicates that the calculation of the Medicare fraction is meant to determine ''what kind of benefits a specific patient received on a specific day'' and so HHS must ''isolate hospital days attributable to patients who were, on those days, receiving benefit payments through Part A of Medicare,'' which in his (and the commenters') view excludes a Part C enrollee. (*Northeast,* 657 F.3d. at 19 (Kavanaugh, J., concurring).) Moreover, these commenters assert that since a patient who is receiving benefits under Part A for a given day cannot also receive benefits under MA for that day, the ''for such days'' language indicates there is a clear delineation between MA days and Medicare Part A days.

Response: The Secretary's interpretation does not seek to eliminate the clause ''for such days.'' As the Supreme Court explained in *Empire:*

> The ''(for such days)'' phrase instead works as HHS says: hand in hand with the ordinary statutory meaning of ''entitled to [Part A] benefits.'' The parenthetical no doubt tells HHS to ask about a patient on a given day. But the query the agency must make is not whether that patient on that day has received Part A *payments;* the query is, consistent with what ''entitled'' means all over the statute, whether that patient on that day is *qualified* to do so.

142 S. Ct at 2365 (emphasis added). We note that Justice Kavanaugh authored the dissenting opinion in *Empire,* adhering to his view in his *Northeast* concurrence. The majority in *Empire* accepted the Secretary's view and necessarily rejected then-Judge Kavanaugh's interpretation of ''for such days'' in *Northeast.*

In the Secretary's view, Part C enrollees are entitled to all Part A benefits (including hospital benefits) regardless of how those benefits are (or are not) paid, that is they are ''entitled'' to Part A benefits when providers are paid by an MA organization (which in turn is paid from the Part A trust fund) and also when providers are paid directly from the Part A trust fund, such as in the case of hospice benefits. Part A entitlement is a status that does not change with enrollment in Part C. The Secretary's interpretation, which is the same one adopted by the Supreme Court in *Empire,* gives meaning to the clause ''for such days'' and does isolate hospital days attributable to patients who were entitled to—meaning qualified for—Part A benefits on specific patient days. An individual's entitlement to Medicare Part A is largely, but not perfectly static, and ''[n]ot every patient who meets the criteria . . . during some portion of his hospital stay will meet those criteria for all of the stay.'' *Northeast,* 657 F.3d at 12. For example, ''a person who collects Social Security and who turns 65 during his hospital stay will become 'entitled' to benefits under Part A on his sixty-fifth birthday,'' and ''a person under age 65 who reaches his twenty-fifth calendar month of entitlement to disability benefits under [section 223 of the Act] during his hospital stay will become 'entitled' to benefits under Part A upon reaching his twenty-fifth month of disability entitlement.'' (*Id.*) For such beneficiaries, the days before they become entitled to benefits under Part A are excluded from the Medicare fraction, but the days on or after they become entitled to benefits under Part A are included in that fraction.[14]

Although our interpretation of the statute is not driven by the financial impact of that interpretation, we note also that excluding Part C days from the Medicare fraction based on the commenters' understanding of the statutory phrase ''for such days'' may put some hospitals in a *worse* position than the Secretary's view because those days would not necessarily be includable (for individuals also eligible for Medicaid) in the Medicaid fraction. The statutory language defining the Medicaid fraction only counts in that fraction patient days attributable to patients who ''were not entitled to benefits under part A [of Medicare]'' (section 1886(d)(5)(F)(vi)(II) of the Act); that phrase is not modified with the same ''for such days'' phrase that is present in the statutory language defining the Medicare fraction (section 1886(d)(5)(F)(vi)(I) of the Act). Therefore, under *Empire,* ''the 'not entitled' phrase in [the Medicaid fraction] should mean (consistent with the rest of the statute) not qualifying for Medicare,'' which includes Part C enrollees that the commenters ''would oust from the Medicare fraction,'' and those Part C enrollees thus would ''fall . . . outside the Medicaid fraction,'' too. (142 S. Ct. at 2367.)

Comment: A commenter stated that because the statute expressly references Part C days in the indirect medical education (IME) provisions of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) in order to provide IME payments to hospitals in connection with patients enrolled in Part C plans, but did not also change the DSH statute to expressly refer to Part C days, the DSH Medicare fraction should not be interpreted to include Part C days and the Medicaid fraction should not be interpreted to exclude Part C days because Congress did not mean for Part A and Part C to be synonymous.

Response: The IME add-on for patients enrolled in Part C plans under section 1886(d)(5)(B) of the Act is designed to compensate IPPS teaching hospitals for increases in costs that are presumed to occur as an indirect consequence of the involvement of student doctors in patient care. Payments for IME costs in traditional Medicare are calculated on the basis of payments for discharges (Section 1886(d)(5)(B) of the Act); this language does not include any reference to entitlement to Part A benefits. Prior to the BBA, Medicare did not make any separate payment to hospitals for IME costs associated with Medicare patients enrolled in Part C plans. Sections 4622 and 4624 of the BBA directed the Secretary to provide for an additional payment amount to hospitals for IME in connection with Medicare beneficiaries enrolled in a Part C plan. Congress expressly referenced Part C in the IME provisions of the BBA because neither hospitals nor Part C plans are paid by

[13] *Metro. Hosp.* v. *HHS,* 712 F.3d 248, 268 (6th Cir. 2013); *Advoc. Christ Med. Ctr.* v. *Azar,* No. 17–CV–1519 (TSC), 2022 WL 2064830, at *9 (D.D.C. June 8, 2022); *Florida Health Scis. Ctr.* v. *Becerra,* 19–cv–3487–RC, 2021 WL 2823104, at *15–16 (D.D.C. July 7, 2021).

[14] *Empire,* 142 S. Ct. at 2366 (''By the way, said Congress . . .: If someone turns 65 during the year the fraction covers, make sure to exclude his pre-birthday hospital days.'').

the Secretary on the basis of discharges of Part C enrollees. (Section 1886(d)(5)(B) of the Act.) We disagree with the commenter that because the DSH statute does not expressly mention Part C days, the statute unambiguously treats such days as days for which beneficiaries are *not* entitled to Part A. Rather, other statutory provisions contemplate that Part C enrollees remain entitled to Part A, indicating that the statute includes them in the Medicare fraction. The Secretary's position is not that ''Part A'' and ''Part C'' are synonymous, but that Part C enrollees remain entitled to benefits under Part A.

Comment: A commenter stated that CMS is proposing to remove the word ''covered'' from the regulation. Other commenters stated that CMS implicitly conceded that Part C days are not ''covered'' days when it stated in the FY 2014 IPPS final rule that the corresponding proposed rule did not propose any change to the text of the regulation because ''the current text [already] reflects the policy [that was] proposed'' (78 FR 50615). The commenters appeared to mean that if, in CMS's view, the text of the regulation did not need to change in the FY 2014 IPPS final rule in order to include Part C days in the Medicare fraction, that is because the word ''covered'' had already been removed from the text of the regulation.

Response: We disagree with the suggestion that in the August 2020 proposed rule, CMS proposed to remove the word ''covered'' from the regulation; the regulation had already been revised to remove the word ''covered'' (69 FR 49099). Although the FY 2005 IPPS final rule was vacated by the D.C. Circuit as to its treatment of Part C days in *Allina I,* that decision did not address the issue of exhausted benefit days; that is, days that are not ''covered.'' Before we proposed the August 2020 proposed rule, the regulation had already been revised to remove the word ''covered'' (69 FR 49099). We also disagree with the commenters' interpretation that the statement in the FY 2014 IPPS final rule implied that Part C days are not ''covered days.'' When CMS stated in the FY 2014 IPPS proposed rule that the text already reflected the proposed policy, that was because the text of 42 CFR 412.106(b)(2)(i)(B) and (b)(2)(iii)(B) expressly included Part C days in the Medicare fraction numerator and denominator, not because the word ''covered'' had already been removed from the regulation. In the FY 2005 IPPS final rule, the agency had stated that it was ''revising [its] regulations''—which at the time simply parroted the language of the statute—to specifically ''include the days associated with M+C beneficiaries in the Medicare fraction of the DSH calculation'' (69 FR 49099). Although, the agency inadvertently failed to make that revision in the text of the regulations at that time, the Secretary made a ''technical correction'' to the regulations in 2007 to expressly incorporate the interpretation announced in the FY 2005 IPPS final rule. (72 FR 47384 (August 22, 2007))

Comment: A commenter read our description of the alternative considered in the August 2020 proposed rule to contemplate the restoration of the term ''covered'' to the DSH regulation (meaning that exhausted benefit or unpaid days would not be included in the calculation of the Medicare fraction), which the commenter favored.

Response: This commenter misunderstood our proposal and the alternative considered. As discussed in more detail elsewhere in the action, under both our proposal and the alternative considered, Part C days would be treated as ''covered'' days for the purposes of calculating a hospital's DPP and neither the rule proposed nor the alternative considered directly addressed the status of exhausted benefit or other unpaid days. As we did not propose the change the commenter supports, we will not be adopting the commenter's suggestion.

Comment: A commenter stated that the August 2020 proposed rule is arbitrary and capricious because the Secretary excludes from the Medicare fraction patient days paid under Medicare Part B and patient days for areas of a hospital not payable under Part A.

Response: The August 2020 proposed rule is not inconsistent with the exclusion of Part B days from the Medicare fraction; to enroll in Part B under section 1836 of the Act, an individual need not be ''entitled to benefits under part A.'' In a December 2, 2015 decision on remand in *Allina I,* the Administrator explained that the restriction on patient days to certain units of the hospital is entirely unrelated to the Secretary's interpretation of ''entitled to benefits under part A'' but is instead based on an interpretation of the term ''patient days'' in the DSH provision as limited to inpatient days payable under the IPPS.

Comment: Several commenters stated that the August 2020 proposed rule is inconsistent with the D.C. Circuit's holding in *Allina Health Services* v. *Price,* 863 F.3d 937 (D.C. Cir. 2017) and the Supreme Court's decision in *Allina II* because those cases held that the Secretary cannot undertake a policy change without first promulgating a regulation. Several commenters stated that the August 2020 proposed rule disregarded or circumvented the Supreme Court's holding in *Allina II.* Some commenters stated that CMS must not interpret the statute to treat Part C days as days beneficiaries are entitled to benefits under Part A because CMS has, purportedly, gotten more than one adverse decision on this issue. They argue that the higher DSH payments that would be calculated by excluding these days from the Medicare fraction and including them in the Medicaid fraction numerator (for patients also eligible for Medicaid) have therefore been wrongfully withheld from providers for many years.

Response: We agree that the Supreme Court in *Allina II* held that, because the policy on the treatment of Part C days in the DSH calculation was intended to address an avowed statutory gap, the Secretary cannot establish or change such a policy without first promulgating a regulation. The purpose of this final action is to comply with that requirement (to the extent any gap-filling policy is even necessary now that the Supreme Court has clarified the meaning of ''entitled to benefits under part A,'' as discussed more elsewhere), not to disregard or circumvent the Court's ruling. As stated in *Allina Health Services,* there is ''no promulgated rule governing the [treatment of Part C days] for the fiscal years before 2014.'' (863 F.3d at 939.) The Secretary explained in briefing to the Supreme Court in *Allina II* that if the Medicare statute required the Secretary's interpretation of ''entitled to benefits under part A'' to be promulgated through notice-and-comment procedures (as the Supreme Court ultimately held), then notice-and-comment rulemaking would also be necessary before the Secretary could adopt the respondents' preferred interpretation. And, even if considered retroactive in application, this action will not be effective until after the completion of this notice-and-comment rulemaking, which will have given interested parties the opportunity to present their arguments as to the proper interpretation of the statute and given the Secretary the opportunity to consider those arguments before the action is finalized.

No final binding court decision has found fault with the Secretary's interpretation of ''entitled to benefits under part A'' to include Part C enrollees. That is why, after the Supreme Court issued its *Allina II* decision, the United States District

Court for the District of Columbia remanded to the Secretary cases presenting the Part C days issue, holding that the district court had ''no basis to direct the agency as to what the formula for the [DSH] recalculation should be'' because ''this was the aspect of the case left open by previous opinions.'' (*In Re Allina II-Type DSH Adjustment Cases,* Misc. No. 19–0190, Dkt. 74 (D.D.C. Jan. 19, 2021).)

Indeed, the weight of authority—in our view—now conclusively shows that the Secretary's interpretation of the relevant phrase is permissible, if not required, under the language of the statute. In *Northeast,* the D.C. Circuit held that ''the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat 251, which enacted M+C, as well as subsequent amendments to Part C, assume that a person enrolled in [Part C] remains entitled to benefits under Part A, and nothing in the text or structure of the DSH fractions compels a different result.'' Most importantly, the Supreme Court's decision in *Empire* has now confirmed the validity of the Secretary's interpretation. While *Empire* addressed exhausted benefit and other unpaid days, not Part C days, the Court's reasoning confirms that ''entitled to benefits under part A'' should be read to include Part C days. The Court concluded that the statutory text is clear: ''being 'entitled' to Medicare benefits . . . means—in the [DSH] fraction descriptions, as throughout the statute—meeting the basic statutory criteria.'' (*Empire,* 142 S. Ct at 2362.) Part C enrollees, who by definition must be ''entitled'' to Part A benefits, necessarily meet these basic statutory criteria. They do not cease to meet them through enrollment in Part C because such enrollment does not affect their age or disabled status.

Comment: Some commenters stated that CMS did not change what they call its ''covered days'' rule when Part C was added to the statute, and that CMS has acknowledged that, before the FY 2005 IPPS final rule, it had a practice of excluding Part C days from the Medicare fraction. The commenters appear to suggest that the pre-FY 2005 regulation therefore excluded Part C days from the Medicare fraction because they are (purportedly) not ''covered days.''

Response: This argument was made by plaintiffs in *Allina Health Services* v. *Price,* 863 F.3d 937, 939 (D.C. Cir. 2017) and rejected by the D.C. Circuit, which held in that case that ''HHS *has no promulgated rule* governing the interpretation of 'entitled to benefits under part A' for the fiscal years before 2014.'' (Emphasis added.) The 1986 regulation, which preceded the FY 2005 IPPS final rule, established the limitation to ''covered'' days and was promulgated more than a decade before the creation of Medicare Part C and thus plainly could not have addressed whether enrollees in the later-created Part C program are ''entitled to benefits'' under Part A. And the ''covered'' days limitation in the pre-FY 2005 IPPS final rule was not based on any interpretation of ''entitled to benefits under part A,'' nor did it establish any policy that would have excluded Part C days. Rather, as the Secretary explained in the 1986 rulemaking, the rule was intended to clarify that it ''refer[red] only to Medicare covered days,'' that is, days for which Medicare is authorized to make payment.[15] The ''covered'' limitation was an interpretation of the statutory phrase ''for such days,'' which modifies the phrase ''entitled to benefits under part A'' (51 FR 31460 and 31461). The determination of whether a patient day is ''covered'' has never depended on whether the day is attributable to an individual under the traditional Part A fee-for-service program or one enrolled in a managed care plan, such as under Part C. A Part C enrollee is entitled to receive benefits under Part A through the Part C plan in which he is enrolled, and such benefits are paid from the Medicare Part A Trust Fund. (Section 1853(f) of the Act.) Therefore, Part C days have always been considered to be paid or ''covered'' days even though Medicare payments for Part C days are made to managed care plans rather than directly to hospitals.

Comment: Some commenters stated that because the Ninth Circuit in *Empire* v. *Becerra,* 958 F.3d 873 (2020), vacated CMS's regulatory amendment in the FY 2005 IPPS final rule that removed the word ''covered'' from the DSH regulation, and (purportedly) did so on a nationwide basis, the previous regulation was reinstated and so only ''covered'' days can be included in the Medicare fraction. According to these commenters, Part C days can therefore not be included in the Medicare fraction because they are not paid for under Part A and so are not ''covered'' days. These commenters also believe that the Secretary ought to have discussed *Empire* in the proposed rule.

Response: The Supreme Court reversed the Ninth Circuit's decision in *Empire,* concluding that ''individuals 'entitled to [Medicare Part A] benefits' are all those qualifying for the program, regardless of whether they are receiving Medicare payments for part or all of a hospital stay.'' (142 S. Ct. at 2368 (alteration in original).) *Empire* did not involve the treatment of Part C days, nor did the Ninth Circuit's analysis of its own prior precedent bear directly on that issue, which is why the Ninth Circuit's holding was not discussed in the August 2020 proposed rule. Regardless, and putting aside the fact that the Ninth Circuit's decision in *Empire* was overturned by the Supreme Court, any relevance of the Ninth Circuit's decision in *Empire* to the Part C days issue would lie only in the Ninth Circuit's interpretation of ''entitled to benefits under part A,'' an issue that was addressed at length in the August 2020 proposed rule. The Secretary has explained why Part C enrollees remain entitled to benefits under Part A and also that, because MA plans are paid from the Part A trust fund and use such payments to pay hospitals for Part C days, Part C days are ''covered'' days. Accordingly, the Ninth Circuit's conclusion that only ''covered'' or paid days are included in the Medicare fraction would not have required the exclusion of Part C days. In any event, the Supreme Court's holding in *Empire* that individuals who meet the basic statutory criteria for Medicare Part A benefits are ''entitled to benefits under part A,'' and their patient days are included in the Medicare fraction, has now confirmed the Secretary's interpretation.

Comment: Some commenters stated that CMS must apply what they assert is its pre-FY 2005 practice of excluding Part C days from the Medicare fraction. Of these, some rely on *CropLife America* v. *EPA,* 329 F.3d 876, 879 (D.C. Cir. 2003), and *Action on Smoking & Health* v. *C.A.B.,* 713 F.2d 795, 797 (D.C. Cir. 1983), for the proposition that when an agency's rule is vacated, the agency's previous practice is reinstated. In *Action on Smoking* the Court of Appeals held that its vacatur of the challenged portion of a rule ''had the effect of reinstating the rules previously in force.'' In *CropLife America* the Court of Appeals held that the consequence of vacatur of a rule was the restoration of ''the agency's previous practice.'' Some of these commenters stated that CMS must therefore exclude Part C days from the Medicare fraction and include them in the Medicaid fraction (for individuals also eligible for Medicaid) either based on the pre-FY 2005 regulation or based on a ''clarification'' of its regulation to reflect the pre-FY 2005 ''policy'' for years before the effective date of the prospective rule. Some commenters

[15] See the September 3, 1986 **Federal Register** (51 FR 31460 and 31461) and 42 CFR 409.3 (''Covered'' refers to ''services for which the law and the regulations authorize Medicare payment.'').

stated that the Supreme Court's *Allina II* decision does not prevent CMS from reverting to its prior practice because the statute requires notice and comment only for ''rule[s], requirement[s] or other statement[s] of policy,'' not practices. Some commenters stated that the pre-FY 2005 practice could be reinstated without notice-and-comment rulemaking because the practice did not impose any ''requirement'' to which section 1871(a)(2) of the Act would apply, unlike the FY 2005 IPPS final rule that was vacated in *Allina I.* A commenter relied on *Catholic Health Initiatives Iowa Corp.* v. *Sebelius,* 718 F.3d 914 (D.C. Cir. 2013), in support of their argument that, whether a prior policy or practice is valid is irrelevant to the question of whether retroactive rulemaking is permissible; it matters only that such policy existed.

Response: To the extent these comments suggest that the agency must apply an alleged pre-FY 2005 practice of excluding Part C days from the Medicare fraction and including them in the Medicaid fraction, we believe that approach would violate existing law. First, as discussed in more detail previously, we believe that the statute, as construed in *Empire,* does not reasonably permit the agency to treat persons enrolled in Medicare Advantage as not ''entitled'' to benefits under Part A. Second, to the extent that the statute, as construed in *Empire,* does not itself establish the applicable substantive legal standard, then the Supreme Court's *Allina II* decision requires the agency to engage in notice-and-comment rulemaking to address whatever statutory ''gap'' might remain as to that issue. We do not agree that the agency could, consistent with *Allina II,* adopt an approach on the treatment of Part C days by relying on an alleged pre-FY 2005 practice, even if the practice could be said to amount to a ''policy.'' If rulemaking was required to change the Secretary's approach, as held in *Allina II,* then rulemaking was also required to establish the Secretary's approach in the first place.

Moreover, in a December 2, 2015 decision on remand in *Allina I,* the Administrator determined that ''it has never been CMS policy for Part C days to be included in the numerator of the Medicaid fraction, nor has CMS included such days'' as a matter of practice. The Secretary's practice prior to FY 2005 was to exclude Part C days from both the Medicare fraction and from the numerator of the Medicaid fraction (for individuals also eligible for Medicaid), and no approach to Part C days was embodied in a notice-and-comment rule before the now-vacated rule. We recognize that the D.C. Circuit in *Northeast* stated, in the context of discussing retroactivity, that the agency had a pre-FY 2005 ''practice'' of excluding Part C days from the Medicare fraction (657 F.3d at 17), but that case did not hold that this practice amounted to a policy or that the agency had adopted a legal interpretation of the statute that would require the Secretary to account for Part C days in the manner preferred by providers. Most importantly, the D.C. Circuit has confirmed that any such practice, however characterized, did not amount to a notice-and-comment rule, as required to establish a gap-filling policy under the Supreme Court's *Allina II* decision. Specifically, the D.C. Circuit found that HHS has ''no promulgated rule'' governing the treatment of Part C days for fiscal years prior to FY 2014. (863 F.3d at 939.)

Neither *CropLife* nor *Action on Smoking and Health* were Medicare cases and so they did not address section 1871(a)(2) of the Act. Under the Supreme Court's opinion in *Allina II,* pursuant to that provision a ''substantive legal standard'' concerning the treatment of Part C days can be established or changed only via notice and comment rulemaking, not merely by practice. Contrary to some commenters' suggestion, there is no valid substantive legal standard embodied in agency practice that the agency could ''reinstate'' for years prior to the effective date of the prospective rule, nor any ''policy'' created by adjudication or otherwise. The prior practice did not establish any policy consistent with section 1871(a)(2) of the Act as construed by the Supreme Court in *Allina II.* No commenter identified statutory language, or language from the Supreme Court in *Allina II,* that would suggest that the Secretary could establish a substantive legal standard concerning the treatment of Part C days simply by adopting a practice in the absence of notice-and-comment rulemaking.

As noted, the agency's prior practice was generally to exclude the days from both the Medicare fraction and the numerator of the Medicaid fraction (for individuals also eligible for Medicaid). In order to resolve the Part C days issue for pending appeals for cost years ending before the effective date of the prospective FY 2014 IPPS final rule, CMS must put these days in either the Medicare fraction or in the Medicaid fraction numerator (for individuals also eligible for Medicaid). In other words, CMS must instruct its contractors as to where these days are to be placed for DSH calculations for pending appeals. We do not agree that, after holding that the agency did not follow the proper procedure in adopting a policy regarding the treatment of Part C days after its rule was vacated, the Supreme Court contemplated that the Secretary could simply adopt a policy by reverting to an alleged prior practice that could not itself have established any policy under the terms of section 1871(a)(2) of the Act.

We also do not agree that the Secretary could finalize a rule that ''clarifies'' or ''codifies'' the regulation to reflect what some commenters refer to as the pre-FY 2005 ''policy.'' First, we believe that the characterization of the agency's practice of generally excluding Part C days from the Medicare fraction as a ''policy'' is mistaken. As already noted, and as we explained in the prospective FY 2014 IPPS final rule (78 FR 50496), as a matter of practice, the Secretary generally excluded these days from both the Medicare fraction and the numerator of the Medicaid fraction (for individuals also eligible for Medicaid). In order for a regulation to reflect the general pre-FY 2005 practice, the Secretary would have to interpret the DSH statute to treat Part C days as both days on which beneficiaries are ''not entitled to benefits under part A'' (and thus to be excluded from the Medicare fraction) AND ''entitled to benefits under part A'' (and thus to be excluded from the numerator of the Medicaid fraction (for individuals also eligible for Medicaid)). Such an interpretation would not be a ''clarification,'' as it would interpret the phrase ''entitled to benefits under part A'' in two different ways in the same clause of the statute and would not be in accord with *Allina I,* 746 F.3d at 1108, which stated that the statute ''unambiguously'' requires Part C days to be counted in one fraction or the other because ''a Part C-enrolled individual is either eligible for Medicare Part A, or not.'' *Id.* Second, as discussed further elsewhere, such a policy would be inconsistent with what the Supreme Court has now held in *Empire* is the clear meaning of ''entitled to benefits under part A'': ''meeting the basic statutory criteria.'' (142 S. Ct. 2362.) Part C enrollees must meet the basic statutory criteria to enroll in Part C and do not cease to meet them through enrollment in Part C. For these reasons, we believe it would be legally impermissible to adopt a rule that codifies the agency's past practice.

Comment: Some commenters stated that CMS's prior practice (before FY 2005) was to exclude Part C days from the Medicare fraction and include them in the Medicaid fraction. Some commenters stated the D.C. Circuit held

in *Allina I* that prior to FY 2005 the Secretary put Part C days in the Medicaid fraction.

Response: As explained previously, in a December 2, 2015 decision on remand in *Allina I,* the Administrator determined that ''it has never been CMS policy for Part C days to be included in the numerator of the Medicaid fraction, nor has CMS included such days'' as a matter of practice. Part C days were thus generally excluded from both fractions, and no regulation governed the issue before FY 2005. And in *Allina I,* the D.C. Circuit did not hold that the Secretary had a policy of putting Part C days in the Medicaid fraction, but instead stated, in connection with the logical outgrowth challenge at issue there, that ''a party reviewing the Secretary's notice of proposed rulemaking understandably would have assumed that the Secretary was proposing to 'clarify' a then-existing policy, *i.e.,* one of excluding Part C days from the Medicare fraction and including them in the Medicaid fraction.'' (746 F.3d at 1108.) But the Court of Appeals did not say that this *was* CMS's actual policy or practice.

Comment: A commenter argued that the proposed interpretation is inconsistent with statements the Secretary made in the **Federal Register** (68 FR 45419) stating that section 1886(d)(5)(F) of the Act requires him to consider only inpatient days to which the prospective payment system applies.

Response: The commenter mischaracterizes our statement in the **Federal Register**, which was discussing our interpretation of ''patient days'' and was unrelated to when a patient is considered entitled to benefits under Part A.

Comment: Numerous commenters stated that higher payments to hospitals, especially safety net hospitals, and especially during and in light of the COVID–19 pandemic, are in the public interest, with some commenters specifying programs they state they cannot expand without higher DSH payments. Commenters also asserted that many hospitals will receive less in DSH payments under the Secretary's proposed interpretation than they would under the alternative interpretation that Part C enrollees are not ''entitled to benefits under part A,'' and therefore they suggested the public interest lies in making DSH adjustments using their preferred interpretation. Similarly, some commenters criticized the August 2020 proposed rule for suggesting that, in the Secretary's (purported) view, the alternative model is not in the public interest because it costs more than would effectuating the proposed model. A commenter stated that the ''public interest'' exception does not apply merely because the agency is required to pay monies that it owes.

Response: We are adopting the interpretation of ''entitled to benefits under part A'' that we believe best comports with the statute enacted by Congress. Indeed, based on the Supreme Court's decision in *Empire,* we believe our interpretation is the only reasonable interpretation. We also do not agree it would be good public policy or in the public interest to promulgate a retroactive rule embodying the interpretation that beneficiaries enrolled in Part C are not entitled to Part A. Not only would this be a change from the position CMS has articulated consistently for many years, we believe that such an interpretation, in many instances, would result in payments in excess of what Congress authorized in the DSH statute and would be contrary to the Supreme Court's holding in *Empire* that a beneficiary is ''entitled to benefits under part A'' whenever he meets the statutory criteria for entitlement.

In any event, for all the reasons articulated in the August 2020 proposed rule and reiterated in this final action, we believe the better interpretation by far is that beneficiaries enrolled in Part C remain ''entitled to benefits under part A.'' And the Supreme Court's decision in *Empire* confirms this view, given its holding that, in the Medicare fraction of a hospital's DSH adjustment, ''individuals 'entitled to [Medicare Part A] benefits' are all those qualifying for the program, regardless of whether they are receiving Medicare payments for part or all of a hospital stay.'' (142 S. Ct. at 2368 (alteration in original).) Congress, not the Secretary, can decide whether the resulting DSH payments are adequate, insufficient, or even too generous. ''[T]he point of the DSH provisions is not to pay hospitals the most money possible; it is instead to compensate hospitals for serving a disproportionate share of low-income patients.'' (*Id.* at 2367.)

Comment: A commenter argued that the D.C. Circuit's decision in *Allina Health Services.* v. *Price,* 863 F.3d 937, 939 (D.C. Cir. 2017) forecloses retroactive rulemaking here because that case held that section 1871(a)(4) of the Act applied and required notice and comment before a rule can ''take effect'' when a regulatory provision is not the logical outgrowth of a proposed rulemaking. The commenter states that there are two possible meanings of ''take effect'' in section 1871(a)(4) of the Act, and the proposed retroactive rulemaking is impermissible under either of them. According to the commenter, either this final action will be impermissibly made effective earlier than the notice-and-comment period that was required under section 1871(a)(4) of the Act, or the action will be made effective later than the required notice-and-comment period but will apply to cost reporting periods pre-dating that period in violation of section 1871(e)(1)(C) of the Act, which provides, ''No action shall be taken against a provider of services or supplier with respect to noncompliance with such a substantive change for items and services furnished before the effective date of such a change.'' Relatedly, some commenters stated that retroactive rulemaking in the face of a logical outgrowth finding renders section 1871(a)(4) of the Act meaningless.

Response: We do not agree that the D.C. Circuit's holding in *Allina Health Services* v. *Price* concerning section 1871(a)(4) of the Act forecloses retroactive rulemaking here. The D.C. Circuit in *Allina I* held that the FY 2005 IPPS final rule was not a logical outgrowth of the proposed rule. *Allina I,* 746 F.3d at 1109. Section 1871(a)(4) of the Act states that ''[i]f the Secretary publishes a final regulation that includes a provision that is not a logical outgrowth, such provision shall be treated as a proposed regulation and shall not take effect until there is the further opportunity for public comment and a publication of the provision again as a final regulation.'' There was no retroactive rule challenged in *Allina Health Services* v. *Price* the providers in that case challenged SSI ratios that included Part C days that CMS posted after the FY 2005 IPPS final rule had been vacated. Thus, the D.C. Circuit was considering whether section 1871(a)(2) of the Act incorporates the APA's notice-and-comment exception for interpretive rules. In that context, the D.C. Circuit held that even if section 1871(a)(2) of the Act did incorporate an exception for interpretive rules (which the Supreme Court subsequently held it does not), section 1871(a)(4) of the Act required ''further opportunity for public comment and a publication of the provision again as a final regulation' before HHS could re-impose the rule.'' 863 F.3d at 945. This final action complies with that holding as it follows a further opportunity for public comment on a proposed rule and results in publication of a final action. This action will not ''take effect'' until after the notice-and-comment period has closed. Section 1871(e)(1)(C) of the Act is irrelevant here because CMS is not taking any enforcement action against

providers for noncompliance with the policy adopted in this retroactive rulemaking. Instead, CMS will issue NPRs and revised NPRs, the DSH adjustments of which will be calculated pursuant to this final action. Finally, retroactive rulemaking after a failure of logical outgrowth problem does not render section 1871(a)(4) of the Act meaningless both because the retroactive rulemaking follows an opportunity for public comment, as required, and because CMS can only exercise retroactive rulemaking authority based on a finding that doing so ''is necessary to comply with statutory requirements'' or that failing to do so ''would be contrary to the public interest.'' (Section 1871(e)(1)(A) of the Act.)

Comment: A commenter argued that promulgation of retroactive rulemakings to remedy procedural defects in a rule ''make a mockery of the provisions of the [Administrative Procedure Act],'' citing *Georgetown University Hospital* v. *Bowen,* 821 F.2d 750, 758 (D.C. Cir. 1987).

Response: In *Georgetown University Hospital,* the D.C. Circuit noted that the circuit had ''previously held that the effect of invalidating an agency rule is to 'reinstat[e] the rules previously in force.' '' (*Id.* at 757 (alteration in original) (emphasis omitted).) Here, there was no rule governing the treatment of Part C days ''previously in force.'' Moreover, that 1987 case pre-dated Congress' express grant of authority to the Secretary for retroactive rulemaking; section 1871(e) of the Act was added by section 903 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, 117 Stat. 2066, 2376. To the extent *Empire* has not resolved the interpretive issue, the Medicare statute would require rulemaking, where it might not otherwise have been required under the APA, and the Medicare statute explicitly authorizes retroactive rulemaking.

Comment: Some commenters stated the retroactivity provision was intended to prevent HHS from generally applying rules retroactively by ''changing the rules'' and then ''punishing providers,'' or ''taking action against'' them, and the provision specifically bars the agency from ''reimposing'' a rule on the Part C days issue on which the commenters assert HHS has lost three times in the Court of Appeals and once in the Supreme Court.

Response: We agree that Congress intends that HHS not generally apply a substantive change in regulations retroactively. Yet Congress did authorize retroactive rulemaking in specified circumstances. HHS's intent is not to punish providers in any way, nor do we believe this action punishes them. This action will affect final payment determinations for many providers with a new rulemaking that applies retroactively, but providers have been on notice of the Secretary's interpretation since no later than the publication of the FY 2005 IPPS final rule. While that rule eventually was vacated on notice-and-comment grounds in 2014, even then the D.C. Circuit prohibited the district court from directing the agency to calculate DSH fractions by excluding Part C days from the Medicare fraction. The Secretary has advanced the same interpretation of the statute consistently since the publication of the FY 2005 IPPS final rule. And that rule was consistent with both the agency's prior rulemaking on HMO days and its longstanding definition of ''entitled'' under the Medicare statute, promulgated in 1983, as meaning that ''an individual meets all the requirements for Medicare benefits'' (42 CFR 400.202). Providers, therefore, cannot be said to have relied on a contrary interpretation at a minimum since FY 2005. Moreover, the D.C. Circuit has never taken issue with the Secretary's interpretation, even when it invalidated the FY 2005 IPPS final rule on procedural grounds. The Supreme Court also did not address the merits of the Secretary's interpretation when it held that the Secretary could not use Medicare fractions embodying that interpretation that were published in the absence of notice and comment rulemaking. (139 S. Ct. at 1816–17 (notice-and-comment rulemaking is required to change or establish an ''avowedly 'gap'-filling policy.'').) After the Supreme Court issued its *Allina II* decision, the United States District Court for the District of Columbia remanded cases presenting the Part C days issue to the agency, holding that the court had ''no basis to direct the agency as to what the formula for the [DSH] recalculation should be'' because ''this was the aspect of the case left open by previous opinions.'' *In Re Allina II-Type DSH Adjustment Cases,* Misc. No. 19–0190, Dkt. 74 (Jan. 19, 2021). Paying providers in accordance with the Secretary's interpretation after remedying the procedural problems identified by the D.C. Circuit and the Supreme Court is consistent with those court decisions and permitted by section 1871(e) of the Act under these circumstances. We do not agree that paying providers consistent with our interpretation of the statute punishes providers.

Comment: Some commenters stated the proposed retroactive rulemaking was foreclosed by Supreme Court precedent prohibiting giving retroactive effect to statutes burdening private rights.

Response: We disagree that hospitals have any private right to compensation in excess of what Congress has provided for according to the best interpretation of the DSH statute. Nor was it reasonable for providers to expect that the Secretary would change his long-standing consistent interpretation of the DSH statute in the absence of any binding court ruling rejecting that interpretation on the merits.

Comment: Some commenters stated that the Medicare statute authorizes the Secretary to ''change'' a policy retroactively, but not to ''establish'' one, and because the Secretary concedes he did not have a regulation in place that governed the treatment of Part C days, he cannot establish one retroactively, relying on *Bowen* v. *Georgetown Hosp.,* 488 U.S. 204 (1988).

Response: Section 1871(e) of the Act authorizes the Secretary to retroactively effect a ''substantive change in regulations, manual instructions, interpretive rules, statements of policy, or guidelines of general applicability'' when the Secretary makes one or both of specified determinations. We believe this rulemaking effects a ''substantive change'' to the DSH regulations, which until now did not address how to treat Part C days in the DSH calculation for discharges prior to October 1, 2013. *Bowen* held that the Medicare statute's grant of authority to provide in regulation for ''suitable retroactive corrective adjustments,'' section 1861(v)(1)(A) of the Act, did not provide authority for the promulgation of retroactive cost limit rules and neither did the Secretary's general rulemaking authority. (488 U.S. at 209.) However, *Bowen* pre-dates Congress' grant of retroactive rulemaking authority at section 1871(e) of the Act that the Secretary relies upon in this action and so its interpretation of ''suitable retroactive corrective adjustments'' does not speak to the interpretation of the far broader ''substantive change in regulations'' language in section 1871(e).

Comment: Some commenters stated that the August 2020 proposed rule flouts the D.C. Circuit's decision in *Northeast.* In that case, a hospital challenged the Secretary's exclusion of Part C days from the numerator of the Medicaid fraction for FYs 1999 to 2002. The court of appeals held that the

Secretary could not apply his interpretation retroactively to those years. Commenters noted that the August 2020 proposed rule did not mention *Northeast* or any of the agency's prior instructions to its contractors acquiescing in that decision and subsequent resolution of cases challenging application of the FY 2005 IPPS final rule to earlier periods. Some commenters stated that *Northeast* controls the treatment of Part C days for all years prior to the prospective FY 2014 IPPS final rule. Some commenters stated that, contrary to the holding of *Northeast,* the August 2020 proposed rule ''attaches new legal consequences to hospitals' treatment of low-income patients during the relevant time period.''

Response: In *Northeast,* the D.C. Circuit observed ''[i]t is well settled that an agency may not promulgate a retroactive rule absent express congressional authorization.'' (657 F.3d at 13.) The Secretary had not invoked the retroactive rulemaking authority in *Northeast,* and neither party brought that authority to the court's attention. That circumstance likely explains the court's statement that it was ''aware of no statute that authorizes the Secretary to promulgate retroactive rules for the DSH calculations.'' (657 F.3d at 17.) Such a statute does exist, however, and the Secretary is invoking it here. The D.C. Circuit has held that the Medicare statute ''unambiguously requires that Part C days be counted in one fraction or the other'' (*Allina I,* 746 F.3d at 1108), yet does not dictate which fraction (*Northeast,* 657 F.3d at 13). And, to the extent the statute could still be said to ''leave[ ] a 'gap' for the agency to fill'' (*Allina II,* 139 S. Ct. at 1817) after the Supreme Court's clarifying decision in *Empire,* the Secretary cannot decide where to put the Part C days without first undertaking notice-and-comment rulemaking (*Id.*). In other words, because there is no rule governing the treatment of Part C days for discharges before October 1, 2013, if there is a statutory gap left to fill post-*Empire,* a rule that governs this period would be necessary even if the Secretary were to adopt the hospitals' preferred interpretation. In many cases, even a rule interpreting ''entitled to benefits under part A'' to exclude Part C days from the Medicare fraction (as most commenters would prefer) would itself attach new legal consequences to past discharges because the appeals were of DSH adjustments that were based on the (later-vacated) rule that embodied the Secretary's interpretation.

Comment: Several commenters inferred from CMS's promulgation of the FY 2014 IPPS final rule that CMS understood and impliedly conceded that it lacked authority to implement a retroactive rule.

Response: The prospective nature of the FY 2014 IPPS final rule did not reflect any understanding by CMS that it lacked authority to promulgate a retroactive rule. The FY 2014 IPPS final rule appeared in the **Federal Register** on August 19, 2013 (78 FR 50496), before the D.C. Circuit affirmed the vacatur of the FY 2005 IPPS final rule in *Allina I* in 2014. Furthermore, in *Allina I,* the D.C. Circuit reversed the district court's decision insofar as it prohibited the Secretary from applying his interpretation to the *Allina I* plaintiffs' FY 2007 DSH adjustments on remand. The Secretary interpreted this aspect of the D.C. Circuit's *Allina I* decision to mean that he could proceed to calculate DSH adjustments for cost years predating the prospective FY 2014 IPPS final rule by interpreting the DSH statute's treatment of Part C days in adjudications. The Administrator issued a 46-page decision after remand in that case, concluding anew that Part C days are to be included in the Medicare fraction. However, as discussed previously, the agency's attempt to resolve this issue through adjudication was rejected in *Allina II,* and so the Secretary must instead proceed by rulemaking, to the extent there is a statutory gap to fill.

Comment: Some commenters stated that the August 2020 proposed rule is unfair to DSH hospitals because they have challenged the treatment of Part C days for more than a decade and now CMS is, in their view, attempting to circumvent the results of that litigation and reduce payments they believe are rightfully due to the hospitals. Similarly, many commenters expressed the opinion that it is unfair to hospitals to attempt to remedy notice and comment problems so many years after the D.C. Circuit vacated the rule; some commenters expressed that hospitals have counted on receiving additional money in DSH adjustments that would result from excluding Part C days from the Medicare fraction.

Response: Hospitals have pursued procedural challenges to the FY 2005 IPPS final rule, however, that rule was not vacated on logical outgrowth grounds until 2014. This action implements the subsequent directive of the Supreme Court that the Secretary establish or change a substantive legal standard concerning the treatment of Part C days only by rulemaking, if there is still a statutory gap to fill, and thus we do not agree that it is unfair for HHS to propose and finalize such a rule. We do not agree that it was reasonable for hospitals to have counted on additional reimbursement as a result of the *Allina* litigation since neither the D.C. Circuit nor the Supreme Court addressed the merits of our interpretation of ''entitled to benefits under part A'', and the Secretary has consistently articulated the same interpretation for nearly twenty years. Nor do we agree that the Secretary's interpretation reduces payments that are due to hospitals. The Secretary believes this final action embodies the correct interpretation of the Medicare statute and that the alternative interpretation, that beneficiaries enrolled in Part C are not entitled to benefits under Medicare Part A, would, in many cases, result in payments in excess of what Congress intended.

Comment: Some commenters who disagreed that retroactive rulemaking is required here stated that if CMS nonetheless concludes that retroactive rulemaking is required, it should propose to adopt its prior practice of excluding Part C days from the Medicare fraction. A commenter stated that adoption of the August 2020 proposed rule is impermissibly retroactive, but CMS could instead simply ''codify'' the agency's prior agency practice and such rule would not be retroactive because, unlike the proposed interpretation, the alternative interpretation would (purportedly) not attach new legal consequences to events completed before its enactment.

Response: In order to exclude Part C days from the Medicare fraction, the Secretary would have to construe ''entitled to benefits under part A'' in the Act as excluding Part C days, and construe ''not entitled to benefits under part A'' as including these days. The Secretary has never so interpreted the Act. As explained previously, we believe the correct interpretation of the statute is that beneficiaries enrolled in Part C remain entitled to Part A and that the commenters' proposed interpretation would require ''entitled to benefits under part A'' to mean something different in the DSH statute than it does in other parts of the Medicare statue. The Supreme Court in *Empire* has foreclosed the commenters' interpretation. Even setting aside that the general prior practice was to exclude Part C days from both the Medicare fraction and the numerator of the Medicaid fraction, we do not agree that a rule that codified such a practice would not also be retroactive. Section 1871(a)(2) of the Act contemplates that policies are ''establishe[d] or change[d]'' only by notice and comment rulemaking. As acknowledged by the

D.C. Circuit in *Northeast,* no rule addressed the treatment of Part C days before the FY 2005 IPPS final rule, and, of course, that rule was then vacated.

Comment: Some commenters stated that other instances of retroactive rulemaking by CMS are distinguishable from this instance.

Response: The citation to other instances of retroactive rulemaking in the August 2020 proposed rule was intended to illustrate that retroactive rulemaking is not unprecedented, not because the same legal arguments justify each instance of retroactive rulemaking.

Comment: A commenter stated that CMS should finalize a policy of excluding Part C days from the Medicare fraction and including those days for individuals also eligible for Medicaid in the numerator of the Medicaid fraction and could lawfully do so because CMS gave the public an opportunity to comment on that proposal in the FY 2004 IPPS proposed rule.

Response: The Secretary believes the correct interpretation of the statute is that Part C enrollees remain entitled to benefits under Part A and for that reason will not finalize a policy of excluding such days from the Medicare fraction. Moreover, the Supreme Court's decision in *Empire* forecloses a policy of excluding Part C days from the Medicare fraction and including those days for individuals also eligible for Medicaid in the numerator of the Medicaid fraction.[16] In any event, there has been notice of and an opportunity to comment in advance on the interpretation adopted in this final action. Thus, even if the statute itself does not give rise to the substantive legal standard adopted here, thereby necessitating reliance on retroactive rulemaking authority, the public has now had an opportunity to comment on the proper interpretation of the statute, and we have considered all comments to the August 2020 proposed rule that were timely submitted as part of the development of this final action.

Comment: A commenter stated that because there was no valid regulation governing the treatment of Part C days between FY 2005 and FY 2014, there is a legitimate legal question of what policy governs their proper treatment, and this question should be determined by the courts in light of facts and circumstances that existed during those years. The commenter stated that CMS's proposed rule would usurp the authority of the courts.

[16] 142 S. Ct. at 2362 (''The text and context support the agency's reading: HHS has interpreted the words in those provisions to mean just what they mean throughout the Medicare statute.'').

Response: We agree that no valid regulation governs the treatment of Part C days between FY 2005 and FY 2014, and even before FY 2005. But CMS's interpretation of the proper treatment of Part C days has been consistent since FY 2005. The D.C. Circuit in *Allina I* held the lower court erred by directing the Secretary to include Part C days in the numerator of the Medicaid fraction, recognizing that it was an open question whether CMS could apply its interpretation retroactively through adjudication. And then the Supreme Court in *Allina II* concluded that the Secretary could only apply any gap-filling interpretation through rulemaking. Therefore, the courts have used their authority to judge the Secretary's acts, and there will be an opportunity for providers to exhaust administrative remedies and seek judicial review of the interpretation embodied in this final action, and so the role of the courts is preserved.

Comment: Some commenters stated that in 2012 (after the *Northeast* decision), Medicare contractors were instructed to include Part C days for dual-eligibles in the Medicaid fraction numerator for discharges on or after January 1, 1999, and before October 1, 2004. Along the same lines, some commenters noted that Medicare contractors have finalized some cost reports that were remanded under CMS Ruling 1498–R of appeals specific to the *Baystate* case (which concerned the SSI data used by CMS in calculating the Medicare fraction) with Part C days for dually eligible beneficiaries included in the Medicaid fraction numerator, while other cost reports that are the subject of appeals remanded under 1498–R will be finalized, pursuant to this final action, with Part C days included in the Medicare fraction instead. A commenter questioned what will happen for cost reports that have Part C days in the Medicaid fraction numerator but are still subject to remand or realignment where the Medicare fraction will be revised. And similarly, a commenter stated that there will be cost reports where Part C days for discharges before October 1, 2004, were already included in the Medicaid fraction but will now be finalized with these days included in the Medicare fraction. A commenter requested that the Secretary make a distinction between discharges occurring prior to October 1, 2004, and later discharges to avoid what the commenter sees as arbitrary treatment depending on when remands or resolutions are completed and to avoid counting Part C days in both fractions.

Response: We appreciate the commenters' concern with treating all hospitals fairly. We do not agree that it is arbitrary or capricious to treat hospitals' Part C days differently on the basis of the timing of their appeals vis-à-vis Supreme Court and lower court decisions. The instructions to contractors that issued after the *Northeast* decision cannot control over the holding of the Supreme Court in *Allina II.* It is also not unusual for cost reports to be finalized differently from one another with respect to a legal issue depending on the outcome of litigation raising that issue and the status of a hospital's appeal at the time of a final non-appealable decision. Providers will also be able to request to have their Medicare fraction realigned to be based on their individual cost reporting periods rather than the Federal fiscal year, in accordance with the normal rules. Providers who remain dissatisfied after receiving NPRs and revised NPRs that reflect the interpretation adopted in this final action retain appeals rights and can challenge the reasonableness of the Secretary's interpretation set forth in this final action.

Comment: A commenter sought clarification concerning whether this action applies to pre-2000 discharges of patients enrolled in managed care organizations, such as health maintenance organizations (HMOs), or only to patients enrolled in Part C plans (first known as Medicare + Choice and later as Medicare Advantage plans). The commenter stated that the action should not be applied to pre-2000 patient discharges for days attributable to patients enrolled in Medicare HMOs authorized under section 1876 of the Act. The commenter stated that the application of this action to pre-2000 days would be inconsistent with *Baptist Medical Center* v. *Burwell,* 2019 WL 978957 (D.D.C. Feb. 29, 2019).

Response: The treatment of patients entitled to benefits under Part A and enrolled in an HMO authorized under section 1876 of the Act is outside of the scope of this rulemaking, which applies to discharges of patients enrolled in Part C prior to FY 2014. We note, however, that section 1876 of the Act repeatedly refers to beneficiaries who are ''entitled to benefits under part A,'' and as stated throughout this final action preamble, the statute unambiguously requires the inclusion in the Medicare fraction of patients entitled to benefits under Part A.

Comment: Some commenters stated that the August 2020 proposed rule would renege on the statements included in reopening notices issued between 2013 and 2015 that the CMS would adjust DSH calculations in the

event of an unfavorable final, non-appealable decision in *Allina I.*

Response: Between 2013 and 2015 the Secretary did not yet know that neither *Allina I* nor *Allina Health Services* v. *Burwell,* 201 F. Supp. 3d 94 (D.D.C. 2016) (the district court case that became *Allina II*) would not lead to a final, non-appealable decision on the merits of his interpretation of ''entitled to benefits under part A'' to include Part C days. In 2016, the district court upheld the Secretary's interpretation in *Allina Health Services* v. *Burwell* but neither the D.C. Circuit nor the Supreme Court reached the merits of that interpretation.

Once this final action is effective, the Secretary will commence issuing NPRs and revised NPRs pursuant to the action, including for those NPRs previously held open.

Comment: Some commenters stated that the action, if it finalizes the policy proposed, will deprive hospitals with pending appeals of the Part C days issue of their right to be heard in court. Some commenters characterized a final action that embodies the proposed interpretation as a ''non-action'' of the Secretary and questioned how hospitals will appeal the alleged ''non-action'' of the Secretary, if a hospital's DSH payments calculated under the new action do not change.

Response: Providers with pending appeals subject to this action challenge DSH payments that were based on Medicare fractions that were issued in the absence of a valid rule addressing the Part C days issue (or, providers brought appeals to the Provider Reimbursement Review Board based on untimely NPRs and challenge Medicare fractions issued in the absence of a valid rule). The Secretary has already acquiesced in the Supreme Court's *Allina II* holding that if the statute itself does not dictate the substantive legal standard, then such fractions could not be lawfully issued without rulemaking. Providers who have pending appeals reflecting fractions calculated in the absence of a valid rule will receive NPRs or revised NPRs reflecting DSH fractions calculated pursuant to this new final action and will have appeal rights with respect to the treatment of Part C days in the calculation of the DSH fractions contained in the NPRs or revised NPRs. Providers whose appeals of the Part C days issue have been remanded to the Secretary will likewise receive NPRs or revised NPRs reflecting fractions calculated pursuant to this new final action, with attendant appeal rights. Because NPRs and revised NPRs will reflect the application of a new DSH Part C days rule, CMS will have taken action under the new action, and the new or revised NPRs will provide hospitals with a vehicle to appeal the new final action even if the Medicare fraction or DSH payment does not change numerically.

Comment: Some commenters stated that the August 2020 proposed rule is unfair because it did not mention CMS Ruling 1739–R (hereinafter referred to as ''the Ruling''), that the Ruling demonstrates that the outcome of the rulemaking was pre-ordained, and that the Ruling would deprive providers of appeal rights. Some commenters recommended that the final action state that the hospitals may ''reinstate'' any appeals remanded under the Ruling within a year after the issuance of the final action. Some commenters stated that it is unfair that the Ruling permits CMS to ''reopen'' properly appealed cost reports to apply this final action, but does not permit providers to cite this action as a basis for reopening closed cost reports.

Response: The Ruling is outside the scope of this action, but we will respond to the concern about appeal rights. The commenters misperceive the purpose and intended effect of the Ruling. The Ruling was not intended to cut off appeal rights and will not operate to do so. It was intended to promote judicial economy by announcing HHS's response to the Supreme Court's decision in *Allina II.* After the Supreme Court made clear that CMS could not resolve the avowedly gap-filling issue of whether Part C enrollees are or are not ''entitled to benefits under part A'' for years before FY 2014 without rulemaking, HHS issued the Ruling so that providers would not need to continue litigating over DPP fractions that were issued in the absence of a valid rule. In other words, the point of the Ruling was to avoid wasting judicial, provider, and agency resources on cases in which the Secretary agreed that, after the Supreme Court's decision in *Allina II,* he could not defend such appeals of fractions issued in the absence of a valid regulation.

Because rulemaking would be necessary to the extent there remains a statutory gap to fill after *Empire,* and irrespective of what interpretation CMS were to adopt, the Ruling does not demonstrate that the outcome of any rulemaking was foreordained. CMS's intention was (and is) to issue new and revised NPRs consistent with this final action, in order to implement the statute and respond to the Supreme Court's decision in *Allina II.* When the Secretary's treatment of Part C days in this final action is reflected in NPRs and revised NPRs, providers, including providers whose appeals were remanded under the Ruling, will be able to challenge the agency's interpretation by appealing those NPRs and revised NPRs. While some providers have already received reopening notices and had their NPRs held open for resolution of the Part C days issue, the issuance of new NPRs and revised NPRs pursuant to remands under the Ruling are not reopenings.

Comment: Some commenters stated that in his petition for certiorari in *Allina II,* the Secretary said that a loss would result in significant costs, so the Secretary presumed he would have to pay these sums to providers if he lost that case.

Response: The Secretary's petition stated that ''the particular issue in this case concerning the proper interpretation of the Medicare-fraction statute alone implicates between $3 and $4 billion in reimbursement for FY2005 through FY2013.'' The Secretary's acknowledgement that the underlying merits issue implicated significant costs to the Medicare program neither stated nor implied that an adverse Supreme Court decision that did not touch on the merits of his interpretation would lead him to pay providers according to their preferred interpretation.

Comment: A commenter speculated that some hospitals may have made financial decisions, such as taking out debt through notes or bonds, or taking on construction projects, on the basis of their expectation that, after the Supreme Court's decision in *Allina II,* additional DSH funds would be forthcoming. This same commenter noted that the Secretary's November 15, 2019 motion to voluntarily remand the consolidated cases presenting the *Allina* issue in *In Re Allina II-Type DSH Adjustment Cases,* Misc. No. 19–0190 (D.D.C.), stated that voluntary remand would give the providers that had appeals pending before the district court the ''functional equivalent of a victory on the merits without any need to litigate the matter''; this commenter interpreted this statement to mean that CMS was intending to pay additional DSH funds after recalculating Medicare fractions to exclude Part C days.

Response: No hospital commented that it had made financial decisions in reliance on the expectation of additional payment after the Supreme Court's decision, based on the expected exclusion of Part C days from the Medicare fraction for years with open appeals. Nor would such reliance have been reasonable, as the reasonableness of the Secretary's interpretation was not the issue before the Supreme Court in *Allina II,* nor did it opine on this issue.

The Secretary's statement in district court that a remand was the functional equivalent of a victory for plaintiff hospitals did not imply that the Secretary intended to pay plaintiffs according to their preferred interpretation of the DSH statute. The Secretary's November 15, 2019 motion to voluntarily remand the consolidated cases that presented the *Allina* issue stated accurately that a remand would give the plaintiff hospitals all they could achieve in a victory in their challenge to the procedural defects of the Secretary's calculation of Medicare fractions in the absence of a validly promulgated rule: namely, a remand for further proceedings consistent with the Supreme Court's decision. In other words, there was no need to litigate the issue of whether notice-and-comment rulemaking was necessary for deciding the treatment of Part C days because the cases were all controlled by the Supreme Court's decision in *Allina II.* Moreover, the Secretary disclosed in his November 15, 2019 motion to dismiss that he was contemplating retroactive rulemaking. And, as noted, the Supreme Court had not addressed the reasonableness of the Secretary's interpretation of the DSH statute, and *Allina II* pre-dated *Empire* wherein the Court agreed with the Secretary's interpretation of what it means to be ''entitled to benefits under part A'' of the Act.

Comment: Some commenters, relying on the Ninth Circuit's *Empire* decision, stated that the Secretary's interpretation of ''entitled to benefits under part A'' impermissibly treats ''entitled'' and ''eligible'' as synonymous. According to these commenters, beneficiaries are ''entitled'' to Part A benefits only on covered days but are eligible for Medicaid on days for which Medicaid does not pay. Therefore, these commenters conclude, the Secretary errs in treating a day for which Medicare Part A does not pay as a day for which that patient is entitled to benefits under Part A.

Response: Whether exhausted benefit days and Medicare Secondary Pay days attributable to Medicare beneficiaries should be included in the Medicare fraction even though Medicare has not paid for them is beyond the scope of this action and has been resolved by the Supreme Court in *Empire.* As the Secretary explained in his briefing in that case, Congress's use in the Medicare and Medicaid fractions of ''entitled'' and ''eligible'' in referring to the Medicare and Medicaid programs, respectively, merely reflects Congress's usage of different terminology in the underlying Medicare and Medicaid statutes. (*Northeast,* 657 F.3d at 12.) The Supreme Court agreed with this reading of the statute. (*Empire,* 142 S. Ct. at 2363 n.3.) Moreover, as noted previously, CMS has always considered Part C days to be covered days.

Comment: Some commenters stated that CMS is mistaken that the Supreme Court's holding in *Allina II* requires notice-and-comment rulemaking to resolve fiscal years before the FY 2014 final rule became effective. They state that the Court held only that ''the rule'' before it was invalid because it did not go through notice-and-comment rulemaking. They further assert that because the D.C. Circuit in *Allina I* held that CMS could resolve the treatment of Part C days in the DSH fraction by adjudication, and CMS agreed with this in its briefing in *Allina II,* CMS could now proceed by adjudication, and retroactive rulemaking is therefore not required.

Response: We disagree that there was a rule at issue in *Allina II.* Rather, plaintiffs in that case challenged the publication of Medicare fractions on CMS's website, fractions that CMS had expected could be used in DSH calculations, then appealed and, under *Allina I,* resolved by adjudication. However, the Supreme Court in *Allina II* held that publishing of the Medicare fractions was ''at least a 'statement of policy' because it 'le[t] the public know [the agency's] current . . . adjudicatory approach' to a critical question involved in calculating payments for thousands of hospitals nationwide.'' (139 S. Ct. at 1810 (alterations in original).) The Court held that, because that policy established an avowedly gap-filling substantive legal standard, the Medicare statute required notice-and-comment rulemaking.

The Secretary does not see an adjudicatory approach to the treatment of Part C days that would be consistent with the Supreme Court's holding in *Allina II* (at least to the extent that a statutory gap remains after *Empire*). Medicare fractions necessarily include or exclude Part C days. Whether Part C enrollees are ''entitled to benefits under part A,'' or are not so entitled, is a legal question that does not turn on facts unique to any particular hospital. Thus, to resolve this issue by adjudication, hospitals would appeal fractions that, just as in *Allina II,* would necessarily already reflect a policy establishing the substantive legal standard of which DPP fraction includes Part C days and would end in final agency decisions that reflect the same policy in each case.

Comment: Some commenters stated that their Medicare Administrative Contractors (MACs) are still issuing NPRs applying the vacated policy; thus, they opine, the Secretary is being disingenuous in claiming that retroactive rulemaking is necessary to calculate fractions. Similarly, some commenters stated that because CMS issued fractions before FY 2005 without a regulation governing the treatment of Part C days, CMS knows that it can calculate fractions in the absence of a rule.

Response: After the Supreme Court's decision in *Allina II,* in April 2020 the Secretary instructed MACs to stop issuing NPRs calculating DSH fractions until promulgation of a new final rulemaking. That some contractors issued NPRs before this instruction or contrary to the instruction does not demonstrate that the Secretary is being disingenuous. Where providers have challenged the treatment of Part C days in NPRs prior to this final action, the Secretary has sought to have these cases remanded for recalculation under the final action. While it is operationally possible to calculate DSH fractions in the absence of a new rulemaking, any such fractions must necessarily treat Part C enrollees as entitled to benefits under Part A or as not-so entitled. After the Supreme Court's ruling in *Allina II,* establishing or changing a policy concerning Part C days in the absence of rulemaking is impermissible, to the extent there is a gap to fill in the statute. Whether calculating DSH fractions is feasible as a practical matter and whether such calculations are legally permissible (either procedurally or as a matter of interpretation) are distinct questions.

Comment: Some commenters stated that CMS did not collect information about Part C days from non-teaching hospitals prior to October 1, 2006, and therefore cannot ''enforce'' the August 2020 proposed rule as written; some of these commenters refer to Transmittal 1311 issued July 29, 2007, which instructed providers to submit ''no-pay'' claims for Medicare Advantage days because Medicare Advantage plans would no longer be required to submit ''encounter days'' for inclusion in the Medicare Provider and Analysis Review (MedPAR) file. Some of these comments argue that because Transmittal 1311 was not itself promulgated by regulation it is invalid under the Supreme Court's decision in *Allina II.* Some commenters described various change requests relating to data for Part C days that CMS issued to hospitals over the years and speculated as to the significance of the timing of those requests. Some stated that, because CMS has different data for teaching hospitals than non-teaching hospitals it will necessarily apply

different ''methodologies'' to these different types of hospitals (teaching hospitals and other hospitals), whereas the statute does not provide for different treatment. A commenter suggested that CMS should choose a method of treating Part C days for which the Part C data is available for all hospitals for all discharges before the FY 2014 IPPS final rule became effective on October 1, 2013; this commenter stated that this would mean excluding Part C days from the Medicare fraction and including them (for individuals also eligible for Medicaid) in the Medicaid fraction numerator. A commenter stated that it would be arbitrary and capricious and contrary to the public interest for CMS to apply the August 2020 proposed rule to all hospitals for all discharges prior to October 1, 2013, when it does not have necessary data to include Part C days for all hospitals, and some hospitals will lack the ability to supply this data.

Response: Transmittal 1311 is outside the scope of this action. At least some of these commenters appear to believe, mistakenly, that CMS will require hospitals to submit information about their Part C days for periods prior to October 1, 2006. This action concerns the Secretary's interpretation of ''entitled to benefits under part A'' as it relates to the treatment of Part C days. That interpretation is logically distinct from any operational issues with whether or not CMS is able to include all such days in the Medicare fraction for any given hospital. We do not agree that if Part C days are not included in a hospital's Medicare fraction because CMS and the hospital do not have the necessary data that this means that CMS is applying a different methodology to that hospital than it applies to a hospital for which it does have such data. Nor do we agree that the Secretary's interpretation of the statute should be determined by what data is readily available for all or most hospitals.

After considering the comments received, we are finalizing our proposal that a patient enrolled in an MA plan remains entitled to benefits under Medicare Part A and will be counted in the Medicare fraction of the DPP and not counted in the numerator of the Medicaid fraction.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Analysis

A. Statement of Need

This final action is necessary to create a policy governing the treatment of days associated with beneficiaries enrolled in Medicare Part C for discharges occurring prior to October 1, 2013, for the purposes of determining additional Medicare payments to subsection (d) hospitals under section 1886(d)(5)(F) of the Act.

B. Overall Impact

We have examined the impact of this action as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) as amended by Executive Order 14094 (April 6, 2023), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866, as amended recently by Executive Order 14094, defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in Executive Order 12866.

The discussion accompanying our proposal along with this Regulatory Impact Analysis (RIA) demonstrate that this final action has been analyzed consistent with the regulatory philosophy and principles identified in Executive Orders 12866 and 13563, the RFA, and section 1102(b) of the Act. We note that Medicare DSH payments affect a substantial number of small rural hospitals, as well as other classes of hospitals, and the effect of Medicare DSH payments on some hospitals is significant.

An RIA must be prepared for major rules that are subject to Section 3(f)(1) of Executive Order 12866 (effect on economy of $200 million or more in any 1 year). This action is subject to Section 3(f)(1) of Executive Order 12866 and also meets the definition in 5 U.S.C. 804(2) (Congressional Review Act). Accordingly, we have prepared an RIA that to the best of our ability presents the costs and benefits of the action.

C. Detailed Economic Analysis

In the August 2020 proposed rule (85 FR 47726), we explained that DSH payments made under our proposed policy, which we are finalizing here, would not differ from hospitals' historical DSH payments. We also stated that Medicare DSH payments have already been made under the policy reflected in the proposal (prior to the previous rule which governed the treatment of these days having been vacated by the Court of Appeals, which was affirmed by the Supreme Court's decision). Therefore, the effect of the August 2020 proposed rule being finalized here would be to avoid the consequences of legal ambiguity created by the absence of any properly promulgated regulation that would otherwise continue into the future; the resulting costs, benefits, and transfer impacts are thus highly uncertain. In other words, given that there is currently no regulation governing the treatment of Part C days for the period before FY 2014, it is not clear what to compare an estimate of DSH payments under the policy we are finalizing in order to determine the effect of this policy on DSH payments during that time period.

In the August 2020 proposed rule (85 FR 47726 through 47727), we stated that there are multiple possible trajectories whereby agency actions could be made consistent with the Supreme Court's ruling requiring notice-and-comment rulemaking. The proposed (and now final) policy provides one such trajectory, and we stated that DSH payments made under the proposed policy would not differ from hospitals' historical DSH payments; as such, this comparison between DSH payments under our proposed policy and hospitals' historical DSH payments

quantifies one point within the relevant uncertainty range of potential costs, benefits, and transfer impacts. In order to explore another possible trajectory (and thus to quantify an additional point within the relevant uncertainty range), we also discussed our consideration of an alternative approach that excluded days associated with patients enrolled in Medicare Part C from the calculation of the Medicare fraction and included them in the numerator of the Medicaid fraction (for those patients who are dually eligible). In addition, we explained that we were not proposing such a policy because we continue to believe, as we stated in the preamble to the FY 2014 IPPS final rule (78 FR 50614 and 50615) and have consistently expressed since the issuance of the FY 2005 IPPS final rule, that individuals enrolled in MA plans are ''entitled to benefits under part A'' as the phrase is used in the DSH provisions at section 1886(d)(5)(F)(vi) of the Act. However, in conjunction with the August 2020 proposed rule, we created a public use data file in order to facilitate public comment and analysis of our proposal and the alternative approach. This file was made available in the Downloads section of the Disproportionate Share Hospital web page on the CMS website: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/dsh.* The file contained an illustrative model at the hospital level of the potential effect on the DSH adjustment of excluding days associated with patients enrolled in Medicare Part C from the Medicare fraction and including them in the numerator of the Medicaid fraction (for those patients who are dually eligible).

Based on this illustrative model, in the August 2020 proposed rule we stated that under the alternative approach, most hospitals' Medicare DSH payments would increase relative to their historical Medicare DSH payments; however, some hospitals' Medicare DSH payments would decrease or not change. As discussed in the proposed rule (87 FR 47727), in aggregate, the modelled Medicare DSH payments under the alternative approach would increase by 6 percent relative to the historical Medicare DSH payments, which for the hospitals represented in the model meant approximately a net $0.6 billion annualized increase for their longest cost reporting period ending between January 1, 2013, and December 31, 2013. In that same proposed rule, we stated that these estimates were for illustrative purposes and involved modelling assumptions (for example, use of a proxy for the Medicaid days associated with patients enrolled in Medicare Part C, as described previously), which may differ from actual calculations that would be done during cost report review and settlement processes by contractors if such a policy were adopted. These expenditures (or, as regards payments already made for past years, the avoidance of potentially necessary reimbursements from providers to the Trust Fund) would be classified as transfers to Medicare providers. In addition, we sought comments on this illustrative model of the alternative approach and the assumptions used in this analysis. For additional details on the illustrative model, we refer readers to the August 2020 proposed rule (85 FR 47726 through 47727).

Comment: We received many comments about the financial impact of the August 2020 proposed rule and the modeling of the alternative approach. Many commenters stated that the August 2020 proposed rule did not attempt to address what the loss in DSH payments associated with the agency's retroactive proposal would mean to safety net hospitals. Several commenters estimated that for 2004 to 2013 there would be a multibillion dollar difference under the proposed policy compared to the alternative approach.

Many commenters stated that the alternative approach underestimated the impact on hospitals. Many of these commenters used their own data to argue that the estimated impact of the proposed rule was higher than the amount reflected under the alternative approach. Some commenters stated that CMS's calculations under the alternative approach using the illustrative model (that is, removing Part C days from the Medicare fraction and including in the Medicaid fraction days associated with patients enrolled in Medicare Part C who were also eligible for SSI as a proxy for counting Medicaid eligible days) are ''suspect'' due to issues with the CMS's data file, such as the exclusion of Medicaid patients. These commenters suggested that CMS should have validated data by requesting from providers the patient eligibility information.

Some commenters disagreed with the August 2020 proposed rule's description of the summary of costs and benefits described as ''highly uncertain'' because the commenters stated CMS has actual hospital data for October 1, 2005, through September 30, 2013, and they believe that data should have been used by CMS to calculate ''more accurate'' estimates, at least for discharges after September 30, 2005, instead of using a proxy as CMS did with its alternative model of using days associated with patients enrolled in Medicare Part C who were also eligible for SSI benefits as a proxy to count Medicaid days for FY 2013. Commenters stated that over the years CMS has been inconsistent in its estimates of the financial impact of including Part C days in the Medicare fraction and excluding them from the numerator of the Medicaid fraction. Some commenters stated that CMS ought to have sought patient details concerning Part C days from its contractors to account in its alternative calculations for Part C beneficiaries who are eligible for Medicaid but who do not receive SSI benefits. In addition, some commenters stated that CMS's modeling of the alternative approach failed to account for the impact on capital DSH payments, and another commenter indicated that the model did not include hospitals that do not currently qualify for DSH payments, but would qualify for DSH under the alternative approach.

Some commenters faulted CMS's proxy modeling assumption because it did not account for beneficiaries enrolled in Part C who receive SSI but who are not eligible for Medicaid. Specifically, commenters expressed that CMS's estimates exclude the very large number of Medicaid patients who are not receiving SSI benefits, thereby understating the effect of the issue on the Medicaid fraction. In addition, some commenters stated that it was unreasonable for CMS to use only 2013 data or any proxy at all, and that providers did not have the information about financial impact they needed to comment meaningfully.

Response: We thank the commenters for their input. Regarding the comments on the financial impact of the proposal, we stated in the August 2020 proposed rule that the DSH payments under the proposed policy will not differ from historical payments for years after FY 2005 for most hospitals because CMS has made payments under the same interpretation, an interpretation which has never been substantively struck down. Many commenters compared the difference in the estimated DSH payments between the proposal and alternative approach using the hospitals' own estimates. Commenters' ability to do so overwhelmingly shows that many commenters were able to meaningfully engage with the August 2020 proposed rule's policy proposal and alternative approach model.

There has been more than a decade of litigation over the treatment of Part C days in DSH calculations, and it is widely understood by DSH hospitals,

and the Secretary has acknowledged, that the financial impact of the Secretary's interpretation of ''entitled to benefits under part A'' to include Part C days in the Medicare fraction as compared with excluding them, is significant. While hospitals may argue whether the Secretary has over- or under-stated that number in the proxy described in the August 2020 proposed rule's alternative approach, by the time the August 2020 proposed rule was published hospitals had years of experience of the financial impact of the Secretary's interpretation, as the Secretary has been applying his policy to DSH adjustments for years.[17]

Regarding the commenters who stated CMS should have used alternative data sources and/or hospitals' patient level data and/or different assumptions for the illustrative model of the alternative approach, in the August 2020 proposed rule we stated that these estimates are for illustrative purposes and involve modelling assumptions (for example, use of a proxy for the Medicaid days associated with patients enrolled in Medicare Part C, as described previously) which may differ from actual calculations that would be done during cost report review and settlement processes by contractors if such a policy were adopted (85 FR 47727). In other words, the proxy assumption and alternative approach model were intended to approximate the potential impact of the proposed interpretation and facilitate comment, rather than to reflect actual payment calculations.

We note that, under the Administrative Procedure Act, a proposed rule is required to include either the terms or substance of the proposal or a description of the subjects and issues involved. We disagree with the commenters' assertion the August 2020 proposed rule did not provide an opportunity to meaningfully comment on the financial impact of the proposed policy. The August 2020 proposed rule did include a detailed discussion of our proposed policy and alternative approach to facilitate comments. Furthermore, as discussed, many commenters were able to meaningfully engage with the policy proposal and alternative approach, as evidenced by the analyses they provided in their comments, including comparisons of the difference in estimated DSH payments between the proposal and alternative approach using hospitals' own estimates. Accordingly, we believe interested parties were able to meaningfully comment on our proposed policy and the alternative approach.

In addition, the financial impact of the interpretation of ''entitled to benefits under part A'' is not legally relevant to the substance of CMS's interpretation of that statutory clause in relation to the treatment of Part C days in the DPP calculation. Whether that clause is best interpreted to include Part C days has never turned on the financial impact of that interpretation in comparison with the impact of treating Part C enrollees as not entitled to benefits under Part A. That many hospitals would enjoy higher DSH payments if CMS adopted the interpretation that Part C enrollees are not ''entitled to benefits under part A'' does not show that Congress would have agreed with that interpretation.[18] Information from CMS contractors about Part C enrollees dually eligible for Medicaid would not resolve the interpretive question of whether Part C enrollees are or are not ''entitled to benefits under part A.''

Comment: A commenter stated that the August 2020 proposed rule would disproportionately affect rural hospitals because such hospitals are struggling more than urban hospitals due to the COVID–19 pandemic. The commenter considers the statement in the August 2020 proposed rule that there would not be additional costs or benefits for small rural hospitals to be arbitrary and capricious because, in the commenter's view, the DSH payments received by these hospitals were improperly calculated for these and other hospitals under a vacated rule.

Response: In the August 2020 proposed rule the Secretary acknowledged that Medicare DSH payments generally affect a substantial number of small rural hospitals, as well as other hospitals, and the effect of DSH payments on some hospitals is significant (85 FR 47726). (We note approximately 500 rural hospitals with less than 100 beds are eligible for Medicare DSH payments.) The August 2020 proposed rule stated that a regulatory impact analysis under section 1102(b) of the Act was nonetheless not necessary because the Secretary had determined that adoption of the August 2020 proposed rule would not impose ''additional costs or benefits'' for small rural hospitals ''relative to Medicare DSH payments that have already been made'' because the DSH payments for these hospitals (like others) have generally already been calculated according to the proposed interpretation. Nonetheless, we included a discussion with a regulatory impact analysis in the interest of public transparency.

We do not agree that the DSH payments already calculated for such hospitals reflect an unreasonable interpretation. In the August 2020 proposed rule, we proposed to adopt an interpretation of the statutory language ''entitled to benefits under part A'' in section 1886(d)(5)(F)(vi)(I) to include Part C enrollees. We do not agree that the financial impact of COVID–19 on hospitals generally or on rural hospitals specifically is relevant to the proper interpretation of that phrase as the statute long pre-dates the pandemic.

D. Alternative Considered

In the August 2020 proposed rule, we considered as an alternative to our proposal excluding days associated with patients enrolled in Medicare Part C from the calculation of the Medicare fraction and including them in the calculation of the Medicaid fraction for dually eligible beneficiaries. However, in the August 2020 proposed rule, we stated that we were not proposing such a policy because we continue to believe, as we stated in the preamble to the FY 2014 IPPS final rule (78 FR 50614 and 50615) and have consistently expressed since the issuance of the FY 2005 IPPS final rule, that individuals enrolled in MA plans are ''entitled to benefits under part A'' as the phrase is used in the DSH provisions at section 1886(d)(5)(F)(vi) of the Act.

In the August 2020 proposed rule, we sought comments on our proposed approach as well as on the alternative approach. After consideration of those comments, in this final action we are adopting the same policy of including MA patient days in the Medicare fraction that was prospectively adopted in the FY 2014 IPPS final rule and applying this policy retroactively to any cost reports that remain open for cost reporting periods starting before October 1, 2013. This final action also provides descriptions of the statutory provisions that are addressed, identifies the finalized policy, and presents rationales for our decisions and, where relevant, alternatives that were considered.

E. Accounting Statement

As required by OMB Circular A–4, in the following Table 1 we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this

[17] FY 2013 IPPS/LTCH PPS final rule (78 FR 50614) (explaining that the policy was adopted in 2004 and CMS regulations were amended in 2007); *id.* at 50620 (noting explicit instructions in 2007 and 2009 that hospitals submit information for Part C patients after the agency discovered that hospitals were not submitting the necessary information).

[18] *See Empire,* 142 S. Ct. at 2367 (''[T]he point of the DSH provisions is not to pay hospitals the most money possible; it is instead to compensate hospitals for serving a disproportionate share of low-income patients.'').

final action as they relate to hospitals receiving Medicare DSH payments. It is not clear what to compare an estimate of DSH payments under our final policy. Therefore, consistent with the proposed rule, this table provides our estimate of the change in Medicare DSH payments to hospitals as a result of the policy finalized in this action based on a range of potential expenditures. All expenditures are classified as transfers to Medicare providers.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED MEDICARE DSH EXPENDITURES PRIOR TO FY 2014

Category	Transfers
Annualized Monetized Transfers	$0–$0.6 billion.
From Whom to Whom	Federal Government to Hospitals Receiving Medicare DSH Payments.

F. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. We estimate that most hospitals and most other providers and suppliers are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities, either because they are nonprofit organizations or because they meet the Small Business Administration (SBA) definition of a small business (having revenues of less than $8.0 million to $41.5 million in any 1 year). (For details on the latest standards for health care providers, we refer readers to page 38 of the Table of Small Business Size Standards for NAIC 622 found on the SBA website at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.)*

For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that with the adoption of this policy there will not be any additional costs or benefits relative to Medicare DSH payments that have already been made. Therefore, this final action will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that with the adoption of this policy there will not be any additional costs or benefits for small rural hospitals relative to Medicare DSH payments that have already been made to these hospitals. Therefore, this final action would not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $165 million. This final action will have no unfunded mandate effect on state, local, or tribal governments or on the private sector.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this action does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

I. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final action was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on May 23, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–12308 Filed 6–7–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 217, and 224

[Docket DARS–2023–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) in order to make needed editorial changes.

DATES: Effective June 9, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to make needed editorial changes as follows:

- At 48 CFR part 209, updated the debarring and suspending official for the Defense Health Agency and reformatted the list at DFARS 209.403.
- At 48 CFR part 217, corrected a typographical error in the heading at subpart 217.1.
- At DFARS 224.103(b)(2), updated cross-references. Federal Acquisition Regulation 24.103(b)(2) requires agencies to make available regulations implementing the Privacy Act of 1974.

List of Subjects in 48 CFR Parts 209, 217, and 224

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 209, 217, and 224 are amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 209.403 in the definition of ''Debarring and suspending official'' by revising paragraph (1) to read as follows:

209.403 Definitions.

Debarring and suspending official. (1) For DoD, the designees are—

(i) Army—Director, Soldier & Family Legal Services.

(ii) Navy/Marine Corps—The Assistant General Counsel (Acquisition Integrity).

(iii) Air Force—Deputy General Counsel (Contractor Responsibility).

(iv) Defense Advanced Research Projects Agency—The Director.

(v) Defense Health Agency—The Principal Deputy General Counsel.

(vi) Defense Information Systems Agency—The General Counsel.

(vii) Defense Intelligence Agency—The Senior Procurement Executive.

(viii) Defense Logistics Agency—The Special Assistant for Contracting Integrity.

(ix) Defense Threat Reduction Agency—The Director.

(x) Missile Defense Agency—The General Counsel.

(xi) National Geospatial-Intelligence Agency—The General Counsel.

(xii) National Security Agency—The Senior Acquisition Executive.

(xiii) United States Cyber Command—The Staff Judge Advocate.

(xiv) Overseas installations—as designated by the agency head.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

■ 3. The authority citation for part 217 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 4. Revise the heading for subpart 217.1 to read as follows:

Subpart 217.1—Multiyear Contracting

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 5. The authority citation for part 224 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 6. Revise section 224.103 to read as follows:

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoDI 5400.11, DoD Privacy and Civil Liberties Programs; DoD 5400.11–R, Department of Defense Privacy Program; and DoDM 5400.11, DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan.

[FR Doc. 2023–12021 Filed 6–8–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2023–0022]

RIN 0750–AL88

Defense Federal Acquisition Regulation Supplement: Prohibition on Certain Procurements From the Xinjiang Uyghur Autonomous Region (DFARS Case 2023–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region.

DATES: Effective June 9, 2023.

Comment due date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 8, 2023, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2023–D015 using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for DFARS Case 2023–D015. Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''DFARS Case 2023–D015'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2023–D015 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 87 FR 76980 on December 16, 2022, to implement section 848 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) FY 2022 (Pub. L. 117–81). This interim rule implements section 855 of the NDAA for FY 2023 (Pub. L. 117–263), which repeals section 848 of the NDAA for FY 2022, including the requirement for a certification from offerors for contracts with DoD stating the offeror has made a good faith effort to determine that forced labor from Xinjiang Uyghur Autonomous Region of the People's Republic of China (XUAR) was not or will not be used in the performance of a contract.

Section 855 adds 10 U.S.C. 4661, which prohibits the use of DoD funds for any fiscal year to be obligated or expended to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR. Section 855 also requires offerors or awardees of a DoD contract to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract. This interim rule requires offerors to represent, by submission of an offer, that they have made, and requires contractors to make, a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract. The term ''forced labor'' is revised and is defined, along with ''XUAR'' at 10 U.S.C. 2496 (see section 651 of the NDAA for FY 2023). The definition of ''person'' is removed in its entirety.

II. Discussion and Analysis

Two respondents submitted public comments in response to the interim rule published at 87 FR 76980 on December 16, 2022. DoD reviewed the public comments in the development of this interim rule. A discussion of those comments and the changes made to the rule as a result of those comments is provided as follows:

A. Summary of Significant Changes From the Interim Rule

DoD made the following changes in this interim rule:

1. At DFARS 225.7022–1, revised the reference to implementation of section 855 of the NDAA for FY 2023 and 10 U.S.C. 4661 with conforming revisions throughout.

2. For consistency with the requirements of section 855 of the NDAA for FY 2023, at DFARS 225.7022–2 the definition of ''forced labor'' was revised to align with 10 U.S.C. 2496, with conforming changes throughout. The term ''XUAR'' is also defined at 10 U.S.C. 2496, and the cross-reference is added to the definition. References to the definition of ''person'' are removed for consistency with the repeal of section 848 of the NDAA for FY 2022 and the revised statutory requirement in section 855 of the NDAA for FY 2023.

3. The certification requirement for offerors is replaced with a representation.

B. Analysis of Public Comments

1. Strong Support for the Rule

Comment: A respondent strongly supported the interim rule. The respondent noted that this prohibition on the purchase of products from the Xinjiang Uyghur Autonomous Region is an important step in preserving the United States as the leader of the free world and protects our national security.

Response: DoD acknowledges the support for the rule.

2. Scope of the Prohibition

Comment: A respondent commented the scope and applicability of the rule should be clarified. The respondent questioned the applicability to products, or if the use of tools that could have been made of parts made with forced labor from XUAR, are to also be covered by the prohibition.

Response: The rule implements section 855 of the NDAA for FY 2023. Product, as defined at Federal Acquisition Regulation (FAR) 2.101, Definitions, has the same meaning as ''supplies''. The FAR definition of ''supplies'' means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. In accordance with the FAR definition of ''product'' the scope of the prohibition will include any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from any entity that has used labor from within or transferred from XUAR made with forced labor.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This DFARS rule implements section 855 of the NDAA for FY 2023. Section 855 prohibits the use of DoD funds for any fiscal year to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR and requires offerors or awardees of DoD contracts to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract.

This rule amends the solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region–Representation, and the contract clause at DFARS 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region. The clause at DFARS 252.225–7060 is prescribed for use in solicitations and contracts utilizing funds appropriated or otherwise made available for any fiscal year, including solicitations using FAR part 12 procedures for the acquisition of commercial services and commercial products including COTS items. DoD made the determination to apply the rule to contracts valued at or below the simplified acquisition threshold (SAT) and to the acquisition of commercial services and commercial products, including COTS items, as defined at FAR 2.101.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Services and Commercial Products, Including COTS Items.

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial services and commercial products (including COTS items) from provisions of law enacted after October 13, 1994, that, as determined by the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), set forth policies, procedures, requirements, or restrictions for the acquisition of property or services unless—

The provision of law—

—Provides for criminal or civil penalties;

—Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862 or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 4863; or

—Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial services and commercial products (including COTS items); or USD(A&S) determines in writing that it would not be in the best interest of the Government to exempt contracts or subcontracts for the acquisition of commercial products and services from the applicability of the provision. This authority has been delegated to the Principal Director, Defense Pricing and Contracting.

C. Determinations

Section 855 is silent on applicability to contracts and subcontracts in amounts at or below the SAT or for the acquisition of commercial products and commercial services. Also, the statute does not provide for civil or criminal penalties. Therefore, it does not apply to the acquisition of contracts or subcontracts in amounts not greater than the SAT or the acquisition of commercial services and commercial products (including COTS items), unless the Principal Director, Defense Pricing and Contracting, makes a written determination as provided for in 41 U.S.C. 1905 and 10 U.S.C. 3452.

The solicitation provision and contract clause provided are necessary to implement the statutory restrictions and to protect the contracting officer from violating the prohibition on the use of funds to knowingly procure any products mined, produced, or

manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of a forced labor program.

If the solicitation provision and contract clause are not included in solicitations and contracts valued at or below the SAT and for the acquisition of commercial services and commercial products (including COTS items), it becomes more likely that a contracting officer could procure a prohibited product, thereby undermining the overarching public policy purpose of the law. Subjecting FAR part 13 simplified acquisitions to section 855 will not impact simplified acquisitions conducted through the use of the Governmentwide commercial purchase card or the SF 44, as these acquisitions are excepted from section 855.

An exception for contracts for the acquisition of commercial services and commercial products, including COTS items, would exclude some high dollar value contracts, thereby undermining the overarching public policy purpose of the law. However, the prohibition in section 855 covers only ''knowingly'' procuring covered items. It would be unreasonable to expect the parties to a procurement through the use of the Governmentwide commercial purchase card or the SF 44 to know whether the commercial products or commercial services being procured are mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of a forced labor program.

Based on the findings above, it would not be in the best interest of the United States to exempt acquisitions not greater than the SAT (except for purchases made regardless of dollar value through the use of the Governmentwide commercial purchase card or the SF 44) and acquisitions of commercial services or commercial products, including COTS items, from the applicability of section 855 of the NDAA for FY 2023.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule replaces a burdensome certification requirement with a representation requirement. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is amending the DFARS to implement section 855 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 855 prohibits the use of DoD funds for any fiscal year to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region of the People's Republic of China (XUAR). Section 855 requires offerors or awardees of a DoD contract to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract. In addition, section 855 repeals section 848 of the NDAA for FY 2022 (Pub. L. 117–81), which required a certification from offerors that they had made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a DoD contract.

The objective of the rule is to implement the prohibition and the requirement for offerors or contractors to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract. The rule revises the solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation, to remove the certification requirement and include a representation requirement. The legal basis for this rule is section 855 of the NDAA for FY 2023.

DoD reviewed data obtained from the Federal Procurement Data System for FY 2020, 2021, and 2022 for DoD purchases of supplies or end products valued above the micro-purchase threshold, including commercial products and commercially available off-the-shelf items. DoD made an average of 374,735 awards to 16,122 unique entities, of which 154,515 awards were made to 12,187 unique small entities. In addition to the small entities that received awards, DoD estimates there were approximately 621,718 unsuccessful offerors. Note that the unsuccessful offerors are not unique entities; in other words, a single entity may have been counted more than once as an unsuccessful offeror. The rule will apply to successful offerors that receive awards and unsuccessful offerors.

The solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation, requires offerors to represent, by submission of an offer, that the offeror has made a good faith effort to determine that forced labor from XUAR will not be used in the performance of a contract resulting from a solicitation containing the provision. Small entities that sell products to DoD will be subject to this requirement when they submit offers for DoD contracts. The rule does not require any other reporting or recordkeeping.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

The section 855 prohibition will not apply to purchases under the micro-purchase threshold made using the Governmentwide commercial purchase card or to purchases using the SF 44, Purchase Order-Invoice-Voucher (see DFARS 213.306). DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute. Moreover, this interim rule removes the certification requirement that was required by section 848 of the NDAA for FY 2022, thereby removing the associated burden.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C 610 (DFARS Case 2023–D015), in correspondence.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB, under the prior interim rule for DFARS Case 2022–D008 that is superseded by this interim rule, assigned OMB Control Number 0750–0007, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Certification; DFARS Provision 252.225–70UU. Upon publication of this interim rule and removal of the certification reporting requirement, OMB Control Number 0750–0007 will be canceled, as it is no longer required.

VIII. Determination To Issue an Immediately Effective Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule effective immediately without prior opportunity for public comment (41 U.S.C. 1707(d)). This action is necessary to implement section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263; 10 U.S.C. 4661). Section 855 repeals section 848 of the NDAA for FY 2022 (Pub. L. 117–81), including the requirement to obtain a certification from offerors for contracts with DoD stating the offeror has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract. Section 855 prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from any entity that has used forced labor from within or transferred from XUAR as part of any forced labor program, thereby extending the prohibition initiated under section 848 of the NDAA for FY 2022. The section 855 prohibition requires the offeror to make a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract.

This interim rule must be effective immediately, in the interest of avoiding further genocide in XUAR (see the Joint Explanatory Statement To Accompany the National Defense Authorization Act for Fiscal Year 2022), to mitigate the risks associated with procuring products produced or manufactured using forced labor from XUAR, and to ensure contracting officers comply with the new statutory requirements in section 855. Public Law 117–263 containing section 855 was enacted on December 23, 2022, and section 855 is effective not later than 180 days after the date of the enactment, or June 21, 2023.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 2. Amend section 212.301 by revising paragraphs (f)(ix)(KK) and (LL) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f) * * *

(ix) * * *

(KK) Use the provision at 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation, as prescribed in 225.7022–5(a), to comply with section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263) and 10 U.S.C. 4661.

(LL) Use the clause at 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, as prescribed in 225.7022–5(b), to comply with section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263) and 10 U.S.C. 4661.

* * * * *

PART 225—FOREIGN ACQUISITION

■ 3. Revise section 225.7022–1 to read as follows:

225.7022–1 Scope.

This section implements section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263) and 10 U.S.C. 4661.

■ 4. Revise section 225.7022–2 to read as follows:

225.7022–2 Definitions.

As used in this section—

Forced labor means any work or service that is exacted from any person under the menace of any penalty for nonperformance and that the worker does not offer to perform (10 U.S.C. 2496).

XUAR means the Xinjiang Uyghur Autonomous Region of the People's Republic of China (10 U.S.C. 2496).

225.7022–3 [Amended]

■ 5. Amend section 225.7022–3 by removing ''for fiscal year 2022'' and adding ''for any fiscal year'' in its place.

225.7022–5 [Amended]

■ 6. Amend section 225.7022–5—
■ a. In paragraph (a) by—
■ i. Removing ''Certification'' and adding ''Representation'' in its place; and
■ ii. Removing ''commercial products and commercial services and COTS items'' and adding ''commercial products, commercial services, and COTS items'' in its place; and
■ b. In paragraph (b) by—
■ i. Removing ''for fiscal year 2022'' and adding ''for any fiscal year'' in its place; and
■ ii. Removing ''commercial products and commercial services and COTS items'' and adding ''commercial products, commercial services, and COTS items'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 252.225–7059—
■ a. By revising the clause heading, title, and date;
■ b. In paragraph (a) by removing '', *person,*''; and
■ c. By revising paragraph (c).

The revisions read as follows:

252.225–7059 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region–Representation.

* * * * *

Prohibition on Certain Procurements From the Xinjiang Uyghur Autonomous Region—Representation (Jun 2023)

* * * * *

(c) *Representation.* By submission of its offer, the Offeror represents that it has made a good faith effort to determine that forced labor from XUAR will not be used in the performance of a contract resulting from this solicitation.

■ 8. Amend section 252.225–7060:
■ a. By revising the clause date;
■ b. By revising paragraphs (a) and (b); and
■ d. In paragraph (c), by removing ''commercial products, commercially

available off-the-shelf items, and commercial services'' and adding ''commercial products, commercial services, and commercially available off-the-shelf items'' in its place.

The revisions read as follows:

252.225–7060 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.

* * * * *

Prohibition on Certain Procurements From the Xinjiang Uyghur Autonomous Region (Jun 2023)

(a) *Definitions.* As used in this clause—

Forced labor means any work or service that is exacted from any person under the menace of any penalty for nonperformance and that the worker does not offer to perform (10 U.S.C. 2496).

XUAR means the Xinjiang Uyghur Autonomous Region of the People's Republic of China (10 U.S.C. 2496).

(b) *Prohibition.* In accordance with 10 U.S.C. 4661, none of the funds appropriated or otherwise made available for DoD may be used to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR. The Contractor shall make a good faith effort to determine that forced labor from XUAR will not be used in the performance of this contract (section 855, Pub. L. 117–263).

* * * * *

[FR Doc. 2023–12020 Filed 6–8–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2023–0023]

RIN 0750–AL08

Defense Federal Acquisition Regulation Supplement: Management of the Procurement Technical Assistance Agreement Program (DFARS Case 2020–D022)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that transfers responsibilities for carrying out the procurement technical assistance cooperative agreement program from the Director of the Defense Logistics Agency to the Under Secretary of Defense for Acquisition and Sustainment.

DATES: Effective June 9, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

Section 852 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92) modifies 10 U.S.C. 2411(3) (redesignated 10 U.S.C. 4951) to transfer authority of the procurement technical assistance cooperative agreement (PTAC) program from the Director of the Defense Logistics Agency to the Under Secretary of Defense for Acquisition and Sustainment. This final rule revises a solicitation provision and a contract clause to reflect this statutory change, change the name of the of the entities providing assistance from PTACs to APEX Accelerators, update statutory references, and update the applicable website.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule merely reflects the transfer of responsibility for the PTAC program from the Director of the Defense Logistics Agency to the Under Secretary of Defense for Acquisition and Sustainment, changes the name of the of the entities providing assistance from PTACs to APEX Accelerators, and updates the applicable website. This final rule does not have a significant effect beyond the internal operating procedures of the Government and does not have a significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf Items

This rule does not create any new solicitation provisions or contract clauses. This rule merely updates information provided in the contract clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, and the solicitation provision at DFARS 252.219–7000, Advancing Small Business Growth. The rule does not impact the applicability of this clause or provision.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0286, Defense Federal Acquisition Regulation Supplement (DFARS), Part 205, Publicizing Contract Actions, and DFARS 252–205–7000, Provision of Information to Cooperative Agreement Holders.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 252.205–7000 by revising the clause heading and clause date and paragraph (a) to read as follows:

252.205–7000 Provision of Information to Cooperative Agreement Holders.

* * * * *

Provision of Information to Cooperative Agreement Holders (Jun 2023)

(a) *Definition. Cooperative agreement holder* means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Under Secretary of Defense for Acquisition and Sustainment to furnish procurement technical assistance to business entities.

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■ 3. Amend section 252.219–7000 by revising the clause date and paragraphs (b) and (c) to read as follows:

252.219–7000 Advancing Small Business Growth.

* * * * *

Advancing Small Business Growth (Jun 2023)

* * * * *

(b) The Offeror acknowledges by submission of its offer that by acceptance of the contract resulting from this solicitation, the Offeror may exceed the applicable small business size standard of the North American Industry Classification System (NAICS) code assigned to the contract and would no longer qualify as a small business concern for that NAICS code. Small business size standards matched to industry NAICS codes are published by the Small Business Administration and are available at 13 CFR 121.201 and *https://www.sba.gov/document/support-table-size-standards.* The Offeror is therefore encouraged to develop the capabilities and characteristics typically desired in contractors that are competitive as other-than-small contractors in this industry.

(c) For procurement technical assistance, the Offeror may contact the nearest APEX Accelerator. APEX Accelerator locations are available at *https://www.apexaccelerators.us.*

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[FR Doc. 2023–12018 Filed 6–8–23; 8:45 am]

BILLING CODE 5001–06–P

Proposed Rules

Federal Register
Vol. 88, No. 111
Friday, June 9, 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 VETERANS AFFAIRS

5 CFR Part 10501

RIN 3209–AA64

Supplemental Standards of Ethical Conduct for Employees of the Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (''VA'' or ''Department''), with the concurrence of the Office of Government Ethics (OGE), is issuing this proposed rule for Department of Veterans Affairs employees. This document supplements the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE and is necessary because it addresses ethical issues unique to the Department of Veterans Affairs. The proposed rule requires employees to seek prior approval for outside employment with a prohibited source, with or without compensation. Prior approval would also be required for serving, with or without compensation, as an officer, director, trustee, general partner, employee, consultant, or contractor for a Veteran-centric organization. Attorneys in the Department of Veterans Affairs Office of General Counsel (OGC) would be subject to additional requirements regarding the outside practice of law.

DATES: Comments must be received on or before August 8, 2023.

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

FOR FURTHER INFORMATION CONTACT: Bruce Barnett, Deputy Ethics Official/Staff Attorney, Ethics Specialty Team, VA Office of General Counsel, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 503–8435. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the OGE Standards. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. The Department of Veterans Affairs, with OGE's concurrence, has determined that the following supplemental regulations are necessary for successful implementation of its ethics program in light of the unique programs and operations of the Department.

II. Analysis of the Regulation

Pursuant to Section 2635.803 of the OGE Standards, where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall by supplemental regulation require employees or any category of employees to obtain approval before engaging in specific types of outside activities, including outside employment. Additionally, under Section 2635.403(a) of the OGE Standards, an agency may, by supplemental regulation, prohibit its employees from having outside employment or other financial interests when the agency determines such outside employment or financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Outside employment and activities prohibited by an agency's supplemental regulation would be considered ''conflicting outside employment'' or ''conflicting outside activities'' and therefore barred by 2635.802(a) of the OGE Standards.

VA has determined that it is necessary and desirable for the purposes of administering its ethics program to impose on its employees the prior approval requirements described below. VA also has determined that certain employment or activities by attorneys in the Office of General Counsel involving the outside practice of law would cause a reasonable person to question the impartiality and objectivity with which VA programs are administered, necessitating additional restrictions for those employees.

Proposed Section 10501.101 General

Section 10501.101 explains that these regulations apply to VA employees and supplement the OGE Standards.

Proposed Section 10501.102 Prior Approval for Certain Outside Employment and Other Outside Activities

Paragraph (a) requires a VA employee, other than a special Government employee, to obtain written approval before engaging in certain outside employment or other outside activities. The prior approval requirement will be an integral part of VA's ethics program. VA believes this requirement is necessary to ensure that an employee's participation in outside employment or other outside activities does not adversely affect VA operations or place the employee at risk of violating applicable statutes and regulations governing employee conduct.

Paragraph (a)(i) requires prior written approval before engaging, with or without compensation, in outside

employment, as defined in paragraph (b)(2) below, with a prohibited source (an entity that seeks official action by VA, does business or seeks to do business with VA, conducts activities regulated by VA, has interests that may be substantially affected by performance or nonperformance of the employee's official duties, or is an organization a majority of whose members fit into one or more of those categories). For example, VA spends millions of dollars on contracts with corporations and other entities for pharmaceuticals, medical devices, services, and other items in support of Veteran health care, engages in cooperative research and development agreements with pharmaceutical and medical device companies, and affiliates with medical schools whose physician and researcher employees also have appointments at VA. Requiring approval prior to engaging in outside employment with these and other prohibited sources is critical to protect against questions arising regarding the administration of VA programs and the impartiality and objectivity of VA employees. Because of the definition of outside employment in paragraph (b)(2), the prior approval requirement in paragraph (a)(i) does not attach to participation in activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless the participation involves the provision of professional services or advice for compensation.

Paragraph (a)(ii) captures activities with certain nonprofit organizations that would not be captured by paragraph (a)(i) because of the definition of employment under paragraph (b)(2). It requires prior written approval before serving, with or without compensation, as an officer, director, trustee, general partner, employee, consultant, or contractor for a Veteran-centric organization, such as a Veteran Service Organization or other organization, business, corporation, or charity with a mission focused on Veterans. Requiring prior approval for these activities is critical to protect against questions arising regarding the administration of VA programs and the impartiality and objectivity of VA employees. For example, some Veteran-centric organizations receive agency-provided office space and office facilities in accordance with 38 U.S.C. 5902, have representatives that prepare, present, and prosecute claims under laws administered by the VA, are engaged in public-private partnerships with VA, or have other ties to VA regulated by Department law, regulation, or policy. They are prohibited sources, yet they typically also are nonprofits with a mission that is charitable, public service, or civic in nature. As such, prior approval for activities with many Veteran-centric organizations would not generally be required under paragraph (a)(1) because the definition of ''employment'' under paragraph (b)(2) excludes participation in the activities of certain nonprofits., The additional prior approval requirement of paragraph (a)(ii) is intended to address potentially serious ethical issues stemming from personal capacity leadership in, or other activities with, these organizations. The smaller universe of activities with Veteran-centric organizations requiring prior approval compared to what is required in paragraph (a)(i) for prohibited sources reflects the Department's historical experience with ethical issues arising from Veteran-centric organizations and the types of positions that are more likely to be potentially problematic.

Paragraph (b) sets forth definitions of the terms used in this section. Proposed paragraph (b)(1) defines ''agency designee'' by reference to the definition provided in 5 CFR 2635.102(b) of the OGE Standards. Paragraph (b)(2) defines ''employment'' to include non-Federal employment or a business relationship involving the provision of personal services, whether or not for compensation. The definition excludes participation in outside activities with the types of nonprofit organizations that VA deems unlikely to be problematic, unless such participation involves the provision of professional services (compensated or not) or advice for compensation or actual expenses. Paragraph (b)(3) defines ''prohibited source'' in the same terms as that found in 5 CFR 2635.203(d) of the OGE Standards. Paragraph (b)(4) defines ''Veteran Service Organization'' to be an organization that is recognized by the Secretary of Veteran Affairs for the representation of Veterans under 38 U.S.C. 5902. Paragraph (b)(5) defines ''Veteran-centric organization'' broadly to be any organization with a stated purpose of providing services or assistance to Veterans or their families, or of soliciting donations for veterans or their families.

Paragraph (c) sets out the procedures for requesting prior approval to engage in covered outside employment or activities. Pursuant to these procedures, employees must make a written request directed to their supervisor no later than fourteen (14) calendar days before beginning the activity. The employee's supervisor is required to provide a statement addressing the extent to which the employee's duties are related to the proposed outside activity and forward both the request and the supervisor's statement to an agency designee for a determination on the request.

Paragraph (d) sets out the standard to be applied by the agency designee in acting on requests for prior approval of outside employment as broadly defined by paragraph (b)(2) and for prior approval of outside activities with Veteran-centric organizations as broadly defined by paragraph (b)(5). Approval will be granted unless it is determined that the outside employment or other activity is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

Under paragraph (e), the DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment and may exempt categories of employment from the prior approval requirement of this section based on a determination that the employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality. The DAEO may also in these instructions establish a grace period for new employees to file a request for approval.

Paragraph (f) provides that within 14 calendar days of a significant change in the nature or scope of the outside employment or activity or in the employee's official Department position or duties, the employee must submit a revised request for approval. Employment that began before the effective date of this part is also subject to this requirement.

Proposed Section 10501.103 Additional Rules for Attorneys in the Office of the General Counsel

Paragraph (a) requires OGC attorneys to obtain prior written approval before engaging in the ''outside practice of law,'' compensated or not, as it is defined in that paragraph. OGC attorneys must obtain the approval in accordance with the procedures in § 10501.102(c) and the standard for approval in paragraph (b).

Paragraph (b) sets out the standard to be applied in reviewing requests for prior approval for the outside practice of law. Approval will be granted unless it is determined that the outside practice of law is expected to involve conduct prohibited by statute, Federal regulations, including the OGE Standards, or paragraph (c) of this section. This standard is consistent with

the standard of approval in proposed § 10501.102(d).

Paragraph (c)(1) prohibits OGC attorneys from engaging in the outside practice of law where the activity, in fact or in appearance, may require the assertion of a legal position that conflicts with the interests of the Department. OGC attorneys are also prohibited from engaging in any outside law practice that might require the interpretation of a statute, regulation, or rule administered or issued by the Department. Attorneys in OGC are also prohibited from engaging in any outside practice of law where a supervisory attorney determines that such outside practice of law would conflict with the employee's official duties or create the appearance of a loss of the attorney's impartiality as prohibited by 5 CFR 2635.802. Further, as prohibited by 18 U.S.C. 205, OGC attorneys may not act as an agent or attorney in any matter in which the U.S. Government is a party or has a direct and substantial interest. Paragraph (c)(2) enunciates certain exceptions from the prohibitions listed in paragraph (c)(1). Paragraph (c)(3) outlines the procedures for the use of those exceptions.

Asserting Contrary Legal Positions

Paragraph (c)(1)(i) is consistent with the rules of professional conduct governing the attorney-client relationship. Precluding any outside law practice that may require the assertion of legal positions adverse to VA derives from the unique and sensitive relationship between an attorney and a client, which for an OGC attorney is VA.

Moreover, the Department has a legitimate interest in maintaining the consistency and credibility of the Department's positions before the Federal courts. For the most part, the representational bans contained in 18 U.S.C. 203 and 205 would preclude outside practice by OGC attorneys in the Federal courts because nondiversity cases within Federal court jurisdiction generally involve controversies in which the United States is a party or has a direct and substantial interest. However, cases may arise involving the interpretation or application of Federal statutes or regulations that do not necessarily implicate the direct and substantial interests of the United States.

Although very unlikely, OGC attorneys representing private clients might appear in front of the same judges before whom they appear in their official capacities and argue different interpretations of Federal statutes or regulations. Depending upon the visibility of the issues and any attendant controversy, asserting conflicting legal positions may diminish the persuasiveness of the advocate, erode judicial confidence in the integrity of the Department's attorneys, and undermine the credibility of both clients. Section 10501.103(c)(1)(i) is intended, therefore, to safeguard the interests of the Department as the primary client to which the attorney employee owes a professional responsibility.

Interpreting Department of Veterans Affairs Statutes

Paragraph (c)(1)(ii) is intended to effectuate the prohibition on the use of public office for private gain, to preclude inconsistent legal positions on core issues affecting the interests of VA, and to protect the public interest by preventing any public perception that an attorney's employment with VA signifies extraordinary competency on agency related issues, or that an OGC attorney's interpretation implicitly is sanctioned or approved by VA. For the most part, the outside practice of law involving agency statutes, rules, or regulations would be precluded as a conflicting activity. If the subject matter of proposed representation and the assigned duties of the attorney correlate, the outside activity potentially would require, under the standards set forth in 5 CFR 2635.402 and 2635.502, the employee's disqualification from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of the employee's position would be materially impaired. Similarly, representation on matters involving the application of agency statutes may implicate direct and substantial interests of the United States, thus contravening the representational bans in 18 U.S.C. 203 and 205.

Paragraph (c)(1)(ii) reaches situations not specifically addressed in proposed § 10501.102, although the regulation to some extent covers areas that would be subject to those requirements. Absent the prohibition contained in this section, an OGC attorney conceivably could obtain outside employment advising, as opposed to representing, a private client on areas of agency law to which the attorney is not assigned. In these circumstances, there is considerable risk that the outside legal employment position held by the individual may convey an impression of authoritativeness or access to non-public information or agency experts that may not necessarily be warranted. Moreover, private clients, and those aware of the OGC attorney's involvement, may assume incorrectly that the attorney's interpretation is effectively a VA interpretation as well. Rendering legal services that may require the interpretation of any statute, regulation, or rule administered or issued by VA creates an appearance that the employee has used the employee's official position to obtain an outside business opportunity. Further, if counsel were engaged in the outside law practice that involved Department statutes, the potential risk for asserting legal positions adverse to the interests of the Department would be heightened. Similarly, as established at 5 CFR 2635.802(b), it would undermine the effectiveness of the attorney and the attorney's duty of loyalty to the Department where an employee's supervisory attorney has determined that the outside practice of law would create a conflict of interest, or the appearance of a loss of impartiality, requiring the attorney's Department disqualification from matters central to the attorney's performance of official duties. In such situations, the attorney's duty of loyalty to the Department as the attorney's primary client must take first priority.

Acting as an Agent

Paragraph (c)(1)(iii) highlights the proscription in 18 U.S.C. 205 barring employees from acting as an agent or attorney in any matter in which the United States Government is a party or where the Government has a direct and substantial interest.

Exceptions

Paragraph (c)(2) provides exceptions to the prohibitions set forth in paragraph (c)(1). Consistent with the exceptions to the representational bans contained in 18 U.S.C. 203 and 205, nothing in this regulation precludes representation, if approved in advance by the appropriate official or supervisor, that is: (1) rendered, with or without compensation, to specified relatives or an estate for which an employee serves as a fiduciary; (2) provided, without compensation, to an employee subject to disciplinary, loyalty, or other personnel administration proceedings; or (3) rendered, without compensation to a voluntary employee nonprofit organization or group (such as child care centers, recreational associations, professional organizations, credit unions or other similar groups) before the U.S. Government under certain circumstances (18 U.S.C. 205 restricts employees from representing an employee organization or group in claims against the Government, in seeking grants, contracts or funds from

the Government, or in a judicial or administrative proceeding where the organization or group is a party). Moreover, paragraph (c)(2)(iv) makes explicit that neither the ban on asserting contrary positions nor the prohibition on interpreting agency statutes is intended to proscribe the giving of testimony under oath. In order to take advantage of the exceptions to 18 U.S.C. 203 and 205 for representing family members or an estate, both statutes expressly require the approval of the Government official responsible for the employee's appointment. *See* 18 U.S.C. 203(d) and 205(e). To take advantage of the other exceptions set forth in paragraph (c)(2), the employee's supervisor must determine that the representations are not ''inconsistent with the faithful performance of [the employee's] duties.'' *See* 18 U.S.C. 205(d). These approval procedures are detailed in paragraph (c)(3).

Pro Bono

Paragraph (d) permits attorneys in OGC, subject to the restrictions in paragraph (c)(2), to provide outside *pro bono* legal services through a non-profit organization, without obtaining prior written approval. For example, VA attorneys may provide legal services *pro bono publico* in areas such as drafting wills or powers of attorney, assisting the preparation of domestic violence protective orders, and landlord-tenant disputes. These *pro bono* activities can generally be undertaken without detriment to the Department's interests, provided that the employee adheres to the limitations of this rule. The Department encourages such volunteer legal activities, if not inconsistent with this supplemental regulation and the laws and regulations described above. Attorneys in the OGC who have questions about whether a specific *pro bono* legal service would comply with the limitations of this rule are encouraged to seek advance guidance from the Office of General Counsel's Ethics Specialty Team.

III. Matters of Regulatory Procedure

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The provisions in this proposed rule apply to internal matters of the agency, its employees and do not involve entities outside of VA. This rule will have no impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 5 CFR Part 10501

Conflict of interests, Government employees.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 16, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Veterans Affairs, with the concurrence of the Office of Government Ethics, proposes to amend title 5 of the Code of Federal Regulations by adding a new chapter CV, consisting of part 10501, to read as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

CHAPTER CV—DEPARTMENT OF VETERANS AFFAIRS

PART 10501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS

Sec.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. Ch. 131; 38 U.S.C. 501; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 5 CFR 2635.402(c), 5 CFR 2635.403(a), 5 CFR 2635.502, CFR 2635.604, 2635.802, 2635.803; 5 CFR 301; 5 CFR 512.

§ 10501.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Veterans Affairs (VA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

§ 10501.102 Prior approval for certain outside employment and other outside activities.

(a) *Prior approval requirement.* Except as provided in paragraph (e) of this section, an employee, other than a special Government employee, must obtain written approval prior to:

(i) Engaging, with or without compensation, in outside employment with a prohibited source;

(ii) Serving, with or without compensation, as an officer, director, trustee, general partner, employee, consultant, or contractor for a Veteran-centric organization, such as a Veteran Service Organization or other organization, business, corporation, or charity with a mission focused on Veterans.

(b) *Definitions.* For purposes of this section:

(1) *Agency designee* has the meaning set forth in 5 CFR 2635.102(b).

(2) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, including self-employed business activities, whether or not for compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services (compensated or not) or advice for compensation other than reimbursement for actual expenses.

(3) *Prohibited source* has the meaning described in 5 CFR 2635.203(d), and includes any person who:

(i) Is seeking official action by VA;

(ii) Does business or seeks to do business with VA;

(iii) Conducts activities regulated by VA;

(iv) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(v) Is an organization a majority of whose members are described in paragraphs (b)(3)(i) through (iv) of this section.

(4) *Veteran Service Organization* means an organization recognized by the Secretary of Veterans Affairs for the representation of Veterans under 38 U.S.C. 5902.

(5) *Veteran-centric organization* means an organization with a stated purpose of providing services or assistance to Veterans or their families, or of soliciting donations for Veterans or their families, as indicated by that organization's website, mission statement, charter, or other written material available to the public.

(c) *Submission of requests for approval.* An employee seeking to engage in any activity for which advance approval is required under paragraph (a) of this section must make a written request for approval no later than fourteen (14) calendar days before beginning the activity. The request shall be directed to the employee's supervisor. The supervisor shall submit the request and a statement addressing the extent to which the employee's duties are related to the proposed outside activity to an agency designee who shall make a final determination on the request. The agency designee may consult with an Office of General Counsel ethics attorney in making that determination.

(d) *Standard for approval.* Approval shall be granted unless it is determined that the outside employment or other outside activity is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

Note 1 to paragraph (d): The granting of approval for an outside activity does not relieve the employee of the obligation to abide by all applicable laws and regulations governing employee conduct, nor does approval constitute a sanction of any violation of any applicable law or regulation. Approval involves an assessment that the general activity as described on the submission does not appear likely to violate any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated, that, nevertheless, pose ethical concerns. Employees are encouraged to contact VA ethics officials for advice.

(e) *Issuance of instructions.* The designated agency ethics official (DAEO) may issue written instructions regarding the form, content, and manner of submission of requests under paragraph (c) of this section. The DAEO may include in these instructions examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR 2635. The instructions also may establish a grace period for new employees to file a request for approval. The instructions may exempt categories of employment from the prior approval requirement of paragraph (a) of this section based on a determination by the DAEO that employment within those categories of employment will generally be approved and is not likely to involve conduct prohibited by Federal law or regulation, including 5 CFR part 2635 and this part.

(f) *Requirement to submit revised request.* Upon a significant change in either the nature of the outside employment or activity or in the employee's official Department position or duties, the employee must, within fourteen (14) calendar days of the change, submit a revised request for approval using the procedure in paragraph (c) of this section. An employee, other than a special Government employee, who is engaged in outside employment or an outside activity described in paragraph (a) of this section that began before the effective date of this part is subject to this requirement.

§ 10501.103 Additional rules for attorneys in the Office of the General Counsel.

(a) *Additional rules for attorneys in the Office of the General Counsel regarding the outside practice of law.* Any attorney serving within the Office of the General Counsel shall obtain written approval, in accordance with the procedures set forth in § 10501.102(c) and the standard for approval set forth in paragraph (b) of this section, before engaging in the outside practice of law, whether compensated or not. For purposes of this section the ''outside practice of law'' means those activities requiring professional licensure by a state bar as an attorney and include, but are not limited to, providing legal advice to a client, drafting legal documents, and representing clients in legal negotiations or litigation.

(b) *Standard for approval.* Approval shall be granted by the agency designee unless it is determined that the outside practice of law is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, or paragraph (c) of this section.

(c) *Prohibited outside practice of law applicable to attorneys in the Office of the General Counsel.*

(1) *General prohibitions.* An employee who serves as an attorney within the Office of the General Counsel shall not engage in any outside practice of law that might require the attorney to:

(i) Assert a legal position that is or appears to be in conflict with the interests of the Department of Veterans Affairs, the client to which the attorney owes a professional responsibility; or

(ii) Interpret any statute, regulation, or rule administered or issued by the Department of Veterans Affairs, or where a supervisory attorney determines that the outside practice of law would conflict with the employee's official duties or create the appearance of a loss of the attorney's impartiality, as prohibited by 5 CFR 2635.802; or

(iii) Act as an agent or attorney in any matter in which the U.S. Government is a party or has a direct and substantial interest, as prohibited by 18 U.S.C. 205.

(2) *Exceptions.* Nothing in paragraph (c)(1) of this section prevents an

attorney in the Office of the General Counsel from:

(i) Acting, with or without compensation, as an agent or attorney for, or otherwise representing, the employee's parents, spouse, child, or any other person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary to the extent permitted by 18 U.S.C. 203(d) and 205(e), or from providing advice or counsel to such persons or estates; or

(ii) Acting, without compensation, as an agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings, or from providing uncompensated advice and counsel to such person to the extent permitted by 18 U.S.C. 205; or

(iii) Acting, without compensation, as an agent or attorney for, or otherwise representing any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or group's members are current employees of the United States or the District of Columbia, or their spouses or dependent children. As limited by 18 U.S.C. 205(d), this exception is not permitted for any representation with respect to a matter which involves prosecuting a claim against the United States under 18 U.S.C. 205(a)(1) or 18 U.S.C. 205(b)(1), or involves a judicial or administrative proceeding where the organization or group is a party, or involves a grant, contract, or other agreement providing for the disbursement of Federal funds to the organization or group; or

(iv) Giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(3) *Specific approval procedures for paragraph (c)(2) of this section.*

(i) The exceptions to 18 U.S.C. 203 and 205 described in paragraph (c)(2)(i) of this section do not apply unless the employee obtained the prior approval of the Government official responsible for the appointment of the employee to a Federal position.

(ii) The exceptions to 18 U.S.C. 205 described in paragraphs (c)(2)(ii) and (iii) of this section do not apply unless the employee has obtained the prior approval of a supervisory official who has authority to determine whether the employee's proposed representation is consistent with the faithful performance of the employee's duties.

(d) *Pro Bono activity.* Subject to compliance with paragraph (c) of this section, attorneys within the Office of the General Counsel are permitted to provide outside *pro bono* legal services (without compensation other than reimbursement of expenses) to organizations or individuals through a non-profit organization, without obtaining prior written approval in accordance with the procedures set forth in § 10501.102(c).

[FR Doc. 2023–11772 Filed 6–8–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2022–1726]

Airworthiness Criteria: Special Class Airworthiness Criteria for the AgustaWestland Philadelphia Corporation Model AW609 Powered-Lift

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of, and requests comments on, the proposed airworthiness criteria for the AgustaWestland Philadelphia Corporation (AWPC) Model AW609 powered-lift. This document proposes airworthiness criteria the FAA finds to be appropriate and applicable for the powered-lift design.

DATES: The FAA must receive comments by July 10, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1726 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://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 of 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: The FAA will post all comments it receives, without change, to *https://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go 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.

FOR FURTHER INFORMATION CONTACT: Clinton Jones, Strategic Policy Management Branch, AIR–613, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 S 216th St, Des Moines, WA 98198; telephone and fax 206–231–3181; email *Clinton.Jones@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of proposed airworthiness criteria for the AWPC Model AW609 powered-lift by sending written comments, data, or views. Please identify the AWPC Model AW609 and Docket No. FAA–2022–1726 on all submitted correspondence. The most helpful comments reference a specific portion of the airworthiness criteria, explain the reason for a recommended change, and include supporting data.

Except for Confidential Business Information as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these airworthiness criteria based on received comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this notice.

Background

The AWPC Model AW609 is a two-engine powered-lift with a maximum weight of 17,500 lbs., and two crew and nine passenger seats. The aircraft has two ''proprotors'' instead of propellers or rotors. The AW609 design is a direct descendant of the Bell Helicopter Model BA609 certification project, which had design origins from the experimental Bell XV–15 aircraft.

After several changes of applicants, on February 15, 2012, AgustaWestland Tilt-Rotor Company, now AWPC, applied for a type certificate for the Model AW609. Under 14 CFR 21.17(c), an application for type certification is effective for three years, unless the FAA approves a longer period. Section 21.17(d) provides that, where a type certificate has not been issued within the time limit established under section 21.17(c), the applicant may file for an extension and update the designated applicable regulations in the type certification basis. Since the project was not certificated within the established time limit, the FAA approved a series of requests for extension by AWPC. As a result, the date of the updated type certification basis is March 31, 2021.

Discussion

Powered-lift are type certificated as special class aircraft because the FAA has not yet established powered-lift airworthiness standards as a separate part of subchapter C of 14 CFR. Under the procedures in 14 CFR 21.17(b), the airworthiness requirements for special class aircraft are the portions of the requirements in parts 23, 25, 27, 29, 31, 33, and 35 found by the FAA to be appropriate and applicable to the specific type design and any other airworthiness criteria found by the FAA to provide an equivalent level of safety to the existing standards. This notice announces the applicable regulations and other airworthiness criteria developed for type certification of the Model AW609 powered-lift under § 21.17(b).

The powered-lift has characteristics of both a rotorcraft and an airplane. It is designed to function as a helicopter for takeoff and landing and as an airplane cruising at higher speeds than a helicopter during the enroute portion of flight operations. Accordingly, the proposed Model AW609 certification basis contains standards from parts 23, 25, and 29, as well as other airworthiness criteria specific for a powered-lift.

This certification basis includes part 23, part 25, and part 29 airworthiness standards. These are part 23 at amendment 23–62, part 25 at amendment 25–135 (except § 25.903(a) at amendment 25–140), and part 29 at amendment 29–55. The proposed certification basis incorporates by reference existing transport category airplane and rotorcraft standards, one normal category airplane standard, Category A rotorcraft standards, optional Category B rotorcraft standards, and criteria for operation under instrument flight rules. This certification basis is not established for flight into known icing conditions.

The proposed certification basis also includes new criteria unique to the powered-lift design, designated as Tiltrotor (TR) criteria. Many of these TR criteria consist of modified part 25 or part 29 standards. Some include criteria that combine existing parts 23, 25, and 29 standards, as the maximum weight of the Model AW609 exceeds the weight for normal category rotorcraft and most part 23 category airplanes, but its passenger seating is less than that of a transport category airplane or a transport category rotorcraft. The FAA also developed TR criteria because no existing standard captures the powered-lift's transitional flight modes (during flight, the powered-lift nacelle rotates the proprotor system from providing vertical lift to horizontal propulsion). The TR criteria also contain definitions specific for the powered-lift, such as flight modes, configurations, speeds, and terminology (''flaperon'' instead of ''aileron'' or ''flap;'' ''proprotor'' instead of ''rotor'' or ''propeller'').

For example, while existing part 25 and part 29 standards for passenger emergency exits include a size classification (types I, II, III, IV) depending on the passenger seating capacity and other factors, the proposed certification basis has a TR with criteria for the specific type of passenger emergency exit that is part of the design of the Model AW609. Another example involves fatigue evaluation. Part 25 contains requirements such as a limit of validity (LOV) on airframe fatigue for pressurized fuselages, which are not in part 29. Instead, fatigue evaluation in part 29 includes a composite structures fatigue rule, due to the more extreme fatigue environment of rotorcraft. For small airplanes, part 23, amendment 23–48, added a composite airframe evaluation requirement for bonded joints, which is included in agency compliance guidance for parts 25 and 29 but not required by a specific regulation (the safety requirement is complied with through other broad existing regulations in those parts). Since the Model AW609 has a pressurized fuselage, the FAA developed TR criteria to include the LOV requirement. The proposed certification basis incorporates by reference the part 29 composite rotorcraft structures fatigue rule, TR criteria to include the composite bonding requirements from part 23, as well as TR criteria to include fatigue requirements for elastomeric primary structural elements.

Applicability

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the AWPC Model AW609 powered-lift. Should AWPC wish to apply these airworthiness criteria to other powered-lift models, it must submit a new application for a type certificate.

Proposed Airworthiness Criteria

The FAA proposes airworthiness criteria for type certification of the AgustaWestland Philadelphia Corporation Model AW609 powered-lift. You may view the airworthiness criteria on the internet at *https://www.regulations.gov* in Docket No. FAA–2022–1726. You may also obtain a copy of the airworthiness criteria by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Issued in Washington, DC, on May 19, 2023.

Ian Lucas,

Manager, Certification Coordination Section, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–12310 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1054; Project Identifier MCAI–2022–01513–G]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Schempp-Hirth Flugzeugbau GmbH (Schempp-Hirth) Model Ventus–2a and Ventus–2b gliders. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as the uncommanded extraction of the airbrakes on one or both wings, possibly resulting in reduced control of the glider. This proposed AD would require repetitively inspecting airbrake bell cranks and airbrake drive funnels for cracking, repetitively inspecting the clearance of the airbrake control system, and taking corrective action as necessary. This proposed AD would also require modifying the airbrake system, which is terminating action for the repetitive inspections. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by July 24, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–1054; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference

- For service information identified in this NPRM, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Kirchheim unter Teck, Germany; phone: +49 7021 7298–0; email: *info@schempp-hirth.com;* website: *schempp-hirth.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1054; Project Identifier MCAI–2022–01513–G'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jim Rutherford, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0229, dated November 28, 2022 (referred to after this as ''the MCAI''), to correct an unsafe condition on all Schempp-Hirth Model Ventus–2a and Ventus–2b gliders. The MCAI states that permanent excessive loads on the automatic connections of the airbrake control system can cause damage to the drive funnels in the fuselage and to the airbrake bell cranks at the root ribs of the wings. The MCAI requires repetitively inspecting the airbrake bell cranks and drive funnels for damage, inspecting the airbrake control system for clearance, corrective actions if necessary, and modifying the airbrake control system by replacing the airbrake bell cranks with reinforced airbrake bell cranks and replacing airbrake drive funnels with reinforced drive funnels. The MCAI states that this modification is terminating action for the repetitive inspections.

This condition, if not detected and corrected, could lead to the uncommanded extraction of the airbrakes on one or both wings and result in reduced control of the glider.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–1054.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Schempp-Hirth Technical Note 349–43, dated August 9, 2022, which specifies procedures for inspecting the automatic airbrake

control connections, including the airbrake bell cranks, for any crack or damage at the welding seams, the airbrake drive funnels for any crack or damage at the welding seams, and the clearance of the airbrake control system, and modifying the airbrake control system by replacing airbrake bell cranks with reinforced airbrake bell cranks and replacing airbrake drive funnels with reinforced drive funnels.

The FAA also reviewed Schempp-Hirth Working Instruction for Technical Note 349–43, dated August 9, 2022 (Schempp-Hirth Working Instruction TN 349–43), which specifies procedures for inspecting the clearance of the airbrake control system in the wings, inspecting the airbrake bell crank and airbrake drive funnel to determine if a reinforced airbrake bell crank and a reinforced airbrake drive funnel are already installed, replacing any airbrake bell crank that is not reinforced with a mounting plate having a reinforced airbrake bell crank attached, replacing any airbrake drive funnel that is not reinforced with a reinforced airbrake drive funnel, checking the control system of the wings after installation of any reinforced parts, and adjusting the control system as necessary. This service information also specifies contacting the manufacturer if it is determined that there is interference among the components of the airbrake control system and adjustments to the airbrake control system are needed.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the MCAI, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Differences Between This Proposed AD and the Service Information

Schempp-Hirth Working Instruction TN 349–43 specifies to contact the manufacturer if it is determined that there is interference between the components of the airbrake control system and adjustments to the airbrake control system are needed. This proposed AD would require doing those adjustments in accordance with a method approved by the FAA; EASA; or Schempp-Hirth's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Schempp-Hirth Working Instruction TN 349–43 specifies to purchase a new mounting plate with a reinforced airbrake bell crank installed from the manufacturer or its international representative. This proposed AD would not specify the source from which new parts should be purchased.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 gliders of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
* Inspect airbrake bell cranks and drive funnels.	4 work-hours × $85 per hour = $340.	$0	$340 per inspection cycle	$10,880 per inspection cycle.
* Inspect clearance of airbrake control system.	4 work-hours × $85 per hour = $340.	0	$340 per inspection cycle	$10,880 per inspection cycle.
Replace airbrake bell cranks and drive funnels.	8 work-hours × $85 per hour = $680.	1,000	$1,680	$53,760.

* The cost estimates provided for the inspection of the airbrake bell cranks and drive funnels and the inspection of the airbrake control system clearance are for the first occurrence. If no cracks are found, then the inspection is repeated at intervals not to exceed 100 hours time-in-service. The replacement of the bell cranks and drive funnels occurs if any cracking is found during the inspection (on-condition) or within 12 months (required action), whichever occurs first.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace airbrake bell cranks and drive funnels	8 work-hours × $85 per hour = $680	$1,000	$1,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Schempp-Hirth Flugzeugbau GmbH: Docket No. FAA–2023–1054; Project Identifier MCAI–2022–01513–G.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Schempp-Hirth Flugzeugbau GmbH (Schempp-Hirth) Model Ventus–2a and Ventus–2b gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2760, Drag Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as the uncommanded extraction of the airbrakes on one or both wings, possibly resulting in reduced control of the glider. The FAA is issuing this AD to address this condition. The unsafe condition, if not addressed, could result in reduced control of the glider.

(f) Compliance

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

(g) Required Actions

(1) Within 40 days after the effective date of this AD and thereafter at intervals not to exceed 100 hours time-in-service (TIS), do the actions in paragraphs (g)(1)(i) and (ii) of this AD.

(i) Inspect the airbrake bell cranks and airbrake drive funnels for cracking at the welding seams, in accordance with Action paragraphs 1a) and 1b) in Schempp-Hirth Technical Note 349–43, dated August 9, 2022 (Schempp-Hirth TN 349–43).

(ii) Inspect the clearance of the airbrake control system, in accordance with Action paragraph 1c) in Schempp-Hirth TN 349–43; and Action paragraph 1.c) in Schempp-Hirth Working Instruction for Technical Note 349–43 dated August 9, 2022 (Schempp-Hirth Working Instruction TN 349–43). Where Schempp-Hirth Working Instruction TN 349–43 specifies ''if in doubt'' use plasticine lines, this AD requires using plasticine lines.

Note 1 to paragraph (g)(1): This service information contains German to English translation. The European Union Aviation Safety Agency (EASA) used the English translation in referencing the document from Schempp-Hirth. For enforceability purposes, the FAA will refer to the Schempp-Hirth service information in English as it appears on the document.

(2) If, during any inspection required by paragraph (g)(1)(i) of this AD, any cracking at the welding seams is detected, before next flight, do the applicable corrective actions in accordance with Action paragraph(s) 2a), 2b), 2c), and 2d), in Schempp-Hirth TN 349–43; and Action paragraph(s) 2.a), 2.b), 2.c), and 2.d), in Schempp-Hirth Working Instruction TN 349–43. Where Schempp-Hirth Working Instruction TN 349–43 specifies to purchase a new mounting plate with a reinforced airbrake bell crank installed from the manufacturer or its international representative, this AD does not specify the source from which new parts should be purchased.

(3) If, during any inspection required by paragraph (g)(1)(ii) of this AD, it is determined that there is interference among the components of the airbrake control system and adjustments to the airbrake control system are needed, do those adjustments in accordance with a method approved by the FAA; EASA; or Schempp-Hirth's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) Unless already accomplished as required by paragraph (g)(2) of this AD, within 12 months after the effective date of this AD, replace the airbrake bell cranks with reinforced airbrake bell cranks and replace the airbrake drive funnels with reinforced drive funnels, in accordance with Action paragraph 2d) in Schempp-Hirth TN 349–43; and Action paragraph(s) 2.a), 2.b), 2.c), and 2.d), in Schempp-Hirth Working Instruction TN 349–43. Where Schempp-Hirth Working Instruction TN 349–43 specifies to purchase a new mounting plate with a reinforced airbrake bell crank installed from the manufacturer or its international representative, this AD does not specify the source from which new parts should be purchased.

(5) Replacement on a glider of each airbrake bell crank and airbrake drive funnel with a reinforced airbrake bell crank and a reinforced airbrake drive funnel, as required by paragraph (g)(2) or paragraph (g)(4) of this AD, constitutes terminating action for the repetitive inspections required by paragraph (g)(1) of this AD for that glider. The initial inspection is required for all gliders.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov*. If mailing information, also submit information by email.

(i) Additional Information

(1) Refer to EASA AD 2022–0229, dated November 28, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1054.

(2) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Schempp-Hirth Flugzeugbau GmbH Technical Note 349–43, dated August 9, 2022.

(ii) Schempp-Hirth Flugzeugbau GmbH Working Instruction for Technical Note 349–43, dated August 9, 2022.

Note 1 to paragraph (j)(2): This service information contains German to English translation. EASA used the English translation in referencing the document from Schempp-Hirth Flugzeugbau GmbH. For enforceability purposes, the FAA will refer to the Schempp-Hirth Flugzeugbau GmbH

service information in English as it appears on the document.

(3) For service information identified in this AD, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Kirchheim unter Teck, Germany; phone: +49 7021 7298–0; email: *info@schempp-hirth.com;* website: *schempp-hirth.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on June 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–12302 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1207; Project Identifier MCAI–2022–00925–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.a. Model A119 and AW119 MKII helicopters. This proposed AD was prompted by a report of an electrical failure of a starter-generator caused by a ruptured drive shaft. This proposed AD would require visually inspecting the drive shaft of an affected starter-generator and depending on the results, performing a dye penetrant inspection. Depending on the results of the dye penetrant inspection, this proposed AD would require replacing the starter-generator, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 24, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1207; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2023–1207.

Other Related Service Information: For Leonardo Helicopters service information identified in this NPRM, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1207; Project Identifier MCAI–2022–00925–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hal Jensen, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *hal.jensen@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0148, dated July 14, 2022 (EASA AD 2022–0148), to correct an unsafe condition for Leonardo S.p.A. Helicopters Model A119 and AW119MKII helicopters.

This proposed AD was prompted by a report of an electrical failure of a starter-generator, caused by a ruptured drive shaft, which was not detected by the generator control unit and caused

partial loss of battery power. The FAA is proposing this AD to prevent electrical failure of the starter-generator, which could result in complete loss of electrical power and subsequent loss of control of the helicopter. See EASA AD 2022–0148 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0148 requires a one-time inspection of the drive shaft of the affected starter-generator and, depending on findings, replacing the affected part with a serviceable part as defined therein. EASA AD 2022–0148 also requires reporting the inspection results (including no findings) to Leonardo and implementing improved removal and reinstallation procedures for the starter-generator.

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

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No. 119–121, dated June 21, 2022. This service information specifies procedures for performing visual and dye penetrant inspections, and replacing a starter-generator.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0148, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0148 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0148 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0148 does not mean that operators need comply only with that section. For example, where the proposed AD requirement refers to ''all required actions and compliance times,'' compliance with this proposed AD requirement would not be limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0148. Service information referenced in EASA AD 2022–0148 for compliance will be available at regulations.gov under Docket No. FAA–2023–1207 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

Service information referenced in EASA AD 2022–0148 does not specify a compliance time to proceed with subsequent procedures if there is misalignment or if the alignment is not clear, whereas this proposed AD would require proceeding with those subsequent procedures before further flight.

Service information referenced in EASA AD 2022–0148 specifies contacting LH [Leonardo Helicopters] spare management to send a starter-generator directly to an authorized repair station for repair, and sending a starter-generator directly to an authorized repair station for repair, whereas this proposed AD would not require those actions.

EASA AD 2022–0148 specifies reporting inspection results to Leonardo, whereas this proposed AD would not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 136 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Visually inspecting a starter-generator drive shaft would take about 1 work-hour for an estimated cost of $85 per helicopter and $11,560 for the U.S. fleet.

If required, dye-penetrant inspecting a starter-generator drive shaft would take about 3 work-hours for an estimated cost of $255 per helicopter.

If required, replacing a starter-generator would take about 2 work-hours and parts would cost about $11,500 for an estimated cost of $11,670 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2023–1207; Project Identifier MCAI–2022–00925–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A119 and AW119 MKII helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2435, Starter-Generator.

(e) Unsafe Condition

This AD was prompted by a report of an electrical failure of a starter-generator that was caused by a ruptured drive shaft. The failure was not detected by the generator control unit and caused partial loss of battery power. The FAA is issuing this AD to prevent electrical failure of the starter-generator, possibly due to incorrect installation or removal. The unsafe condition, if not addressed, could result in complete loss of electrical power and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency EASA AD 2022–0148, dated July 14, 2022 (EASA AD 2022–0148).

(h) Exceptions to EASA AD 2022–0148

(1) Where EASA AD 2022–0148 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0148 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) Where paragraph (1) of EASA AD 2022–0148 states to, ''inspect the drive shaft;'' for this AD, replace that text with,'' inspect the drive shaft for misalignment and a crack.''

(4) Where the service information referenced in EASA AD 2022–0148 specifies to proceed with subsequent procedures if there is misalignment or if the alignment is not clear; for this AD, proceed with those subsequent procedures before further flight.

(5) Where the service information referenced in EASA AD 2022–0148 states, ''with reference to Annex A, perform a liquid penetrant inspection of the drive-shaft, in order to detect the presence of eventual cracks;'' for this AD, replace that text with ''With reference to Annex A, perform a dye penetrant inspection of the drive-shaft in order to detect any cracks.''

(6) Where the service information referenced in paragraph (1) of EASA AD 2022–0148 specifies contacting LH [Leonardo Helicopters] spare management to send a starter-generator directly to an authorized repair station for repair and sending the starter-generator to an authorized repair station for repair, this AD does not require those actions.

(7) Where paragraphs (2) and (4) of EASA AD 2022–0148 state, ''Part II of the ASB;'' for this AD, replace that text with, ''AMP Data Modules 19–A–24–30–04–00A–520A–A, Starter Generator—Remove Procedure and 19–A–24–30–04–00A–720A–A, Starter Generator—Install Procedure, each Issue 001 and dated May 24, 2021. Except where AMP Data Module 19–A–24–30–04–00A–520A–A Starter Generator—Remove Procedure specifies discarding parts; for this AD, remove those parts from service.''

(8) This AD does not require paragraph (3) of EASA AD 2022–0148.

(9) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0148.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0148 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided they are restricted to visual flight rules (VFR) with night operations prohibited and no passengers are onboard.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

For more information about this AD, contact Hal Jensen, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *hal.jensen@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0148, dated July 14, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0148, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on June 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–12335 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1208; Project Identifier AD–2023–00325–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) Model CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B engines. This proposed AD was prompted by a manufacturer investigation that revealed that a certain forward outer seal and certain high-pressure turbine rotor (HPTR) stage 1

disks and rotating seals were manufactured from material suspected to contain iron inclusion, which may cause reduced material properties and a lower fatigue life capability. This proposed AD would require the replacement of the affected forward outer seal, HPTR stage 1 disks, and rotating seals. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 24, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–1208; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1208; Project Identifier AD–2023–00325–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified by the manufacturer that a certain forward outer seal and certain HPTR stage 1 disks and rotating seals on Model CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B engines were made from billets manufactured from material that are suspected to contain iron inclusion. Such iron inclusion may cause premature fracture and subsequent uncontained failure. The FAA has determined that the operators with affected HPTR stage 1 disks have proactively removed these parts from service. As a result, the proposed compliance time for removal and replacement of the affected HPTR stage 1 disks is before further flight. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require the removal of a certain forward outer seal and certain HPTR stage 1 disks and rotating seals from service and replacement with parts eligible for installation.

Interim Action

The FAA considers that this proposed AD would be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1 engine installed on airplanes of U.S. registry. This engine would require replacement of the rotating seal. The FAA estimates that there are no engines installed on airplanes of U.S. registry that would require replacement of the forward outer seal or HPTR stage 1 disk.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPTR stage 1 disk	8 work-hours × $85 per hour = $680.	$1,479,623 (prorated)	$1,480,303	$0
Replace rotating seal	8 work-hours × $85 per hour = $680.	$732,517 (prorated)	733,197	733,197
Replace forward outer seal	8 work-hours × $85 per hour = $680.	$1,290,000 (prorated)	1,290,680	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2023–1208; Project Identifier AD–2023–00325–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company Model CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B engines with an installed forward outer seal, high-pressure turbine rotor (HPTR) stage 1 disk, or rotating seal having a part number (P/N) and serial number (S/N) identified in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (c)—AFFECTED FORWARD OUTER SEAL, HPTR STAGE 1 DISKS, AND ROTATING SEALS

Part name	P/N	Part S/N
Forward outer seal	1778M70P03	NCU65340.
HPTR stage 1 disk	1863M36G06	TMT5TD23. TMT5TD26. TMT5TD27.
Rotating seal	1778M69P06	BTB20610. BTB20611. BTB20612. BTB26650.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that a certain forward outer seal and certain HPTR stage 1 disks and rotating seals were manufactured from material suspected to contain iron inclusion, which may cause reduced material properties and a lower fatigue life capability. The FAA is issuing this AD to prevent fracture and subsequent uncontained failure of a certain forward outer seal and certain HPTR stage 1 disks and rotating seals. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) At the next piece-part exposure of the affected forward outer seal or before the affected forward outer seal exceeds 5,400 cycles since new (CSN), whichever occurs first after the effective date of this AD, remove the affected forward outer seal from service and replace with a part eligible for installation.

(2) At the next piece-part exposure of the affected rotating seal or before the affected rotating seal exceeds 5,200 CSN, whichever occurs first after the effective date of this AD, remove the affected rotating seal from service and replace with a part eligible for installation.

(3) Before further flight after the effective date of this AD, remove the affected HPTR stage 1 disk from service and replace with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is any forward outer seal, HPTR stage 1 disk, or rotating seal that does not have a P/N and S/N identified in Table 1 to paragraph (c) of this AD.

(2) For the purpose of this AD, ''piece-part exposure'' is when the affected part is removed from the engine and completely disassembled.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov*.

(k) Material Incorporated by Reference

None.

Issued on June 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–12286 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 230131–0033]

RIN 0625–AB22

Foreign-Trade Zones Board Proceedings

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The Foreign-Trade Zones Board (the Board) proposes to amend its regulations and invites public comment on these proposed revisions. These modifications, if adopted, would allow for additional electronic fee payment options and make other minor clarifications and corrections to the regulatory language. Sections of the Board's 2012 regulations regarding application formats contained information collection requirements and could not be effective until the Office of Management and Budget (OMB) approved the information collection requests, which occurred on March 25, 2013.

DATES: To be assured of consideration, written comments must be received no later than July 10, 2023.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov,* Docket No. ITA–230131–0033, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit the original and one electronic copy of each set of comments by mail or hand delivery/courier. All comments should be addressed to: Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 21013, Washington, DC 20230. Comments submitted to the Board will be uploaded to the eRulemaking Portal at *www.Regulations.gov.*

The Board will consider all comments received before the close of the comment period. All comments responding to this document will be a matter of public record and will be available on the Federal eRulemaking Portal at *www.Regulations.gov.* The Board will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance (E&C) Communications office at (202) 482–0063 or *ECCommunications@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov,* (202) 482–0473, or Ashlande Gelin at *Ashlande.Gelin@trade.gov,,* (240) 449–5911.

SUPPLEMENTARY INFORMATION:

Background

Foreign-Trade Zones (FTZs or zones) are restricted-access sites in or near U.S. Customs and Border Protection (CBP) ports of entry. Zones are licensed by the Board and operated under the supervision of CBP (see 19 CFR part 146). Specifically, zones are physical areas into which foreign and domestic merchandise may be moved for operations involving storage, exhibition, assembly, manufacture or other processing not otherwise prohibited by law. Zone areas ''activated'' by CBP are considered outside of U.S. customs territory for purposes of CBP entry procedures. Therefore, the usual formal CBP entry procedure and payment of duties is not required on the foreign merchandise in FTZs unless and until it enters U.S. customs territory for U.S. domestic consumption. In fact, U.S. duties can be avoided on foreign merchandise re-exported from a FTZ, including after incorporation into a downstream product through activity in the FTZ. Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for customs reasons, might otherwise have been carried on abroad.

Through this proposed action, the Board intends to update the rules for FTZs. The key revision in the proposed regulations pertains to providing flexibility on the method to submit application fees. The current regulations require that application fees be submitted by check. While the Board has begun accepting ''eChecks'', the revisions proposed here would allow for the submission of additional forms of electronic payment.

This proposed action will move the existing requirement to admit merchandise subject to AD/CVD actions in ''Privileged foreign'' status to the ''General conditions, prohibitions and restrictions applicable to authorized zones'' section. This move of the existing language is intended to clarify that the provision applies to all merchandise that is admitted to FTZs.

Other revisions in this proposed rulemaking will update the language used to provide clarification and to reflect current practices.

On February 28, 2012, a final rule was published revising the regulations of the Foreign-Trade Zones Board (77 FR 12112). That rule was published with an effective date of April 30, 2012, except for §§ 400.21 through 400.23, 400.25 and 400.43(f). These sections contained information collection requirements and could not become effective until the Office of Management and Budget (OMB) approved these information collection requests pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). On March 25, 2013, OMB approved the information collections under control number 0625–0139, and the FTZ Board then began to use the new applications under §§ 400.21 through 400.23, 400.25 and 400.43(f).

Expected Impact of the Proposed Rule

The proposed edits will allow for additional flexibility on the submission of application fees and otherwise clarify existing language and practices. The proposed edits are not expected to impact the number of requests submitted to the FTZ Board or the operation and management of existing zones.

Classifications

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

The Chief Counsel for Regulation proposes to certify to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of and legal basis for this rule is provided in the preamble and is not repeated here.

The types of small entities using the FTZ program include miscellaneous manufacturing and ocean freight companies. Under the Small Business Administration Regulations implementing the RFA, these types of businesses are considered small entities when they have fewer than 500 employees. Using this criterion, of the approximately 1000 business entities operating in zones and impacted by this proposed rule, approximately 350 are likely considered small entities under the RFA. The edits proposed will not have a significant economic impact on any such entities.

The proposed action includes minor edits to existing regulations and does not create additional burden on any parties. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small business entities. For this reason, an Initial Regulatory Flexibility Analysis is not required, and one has not been prepared.

List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

Dated: June 1, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

For the reasons stated, the Board proposes to amend 15 CFR part 400 as follows:

PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

■ 1. The authority citation for part 400 continues to read as follows:

Authority: Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 73–397, 48 Stat. 998–1003 (19 U.S.C. 81a–81u)).

■ 2. In § 400.2:
■ a. Revise paragraphs (h) and (t);
■ b. Remove paragraph (u); and
■ c. Redesignate paragraphs (v) through (aa) as paragraphs (u) through (z).

The revisions read as follows:

§ 400.2 Definitions.

* * * * *

(h) *Foreign-trade zone* (FTZ or zone) includes all sites/subzones designated under the sponsorship of a zone grantee, in or adjacent (as defined by § 400.11(b)(2)) to a CBP port of entry, operated as a public utility (within the meaning of § 400.42), with zone operations under the supervision of CBP.

* * * * *

(t) *Usage-driven site* means a site established for a single operator or user under the ASF.

* * * * *

■ 3. In § 400.4, revise paragraphs (m) and (t) to read as follows:

§ 400.4 Authority and responsibilities of the Executive Secretary.

* * * * *

(m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications, notifications, application fees and zone schedules in various sections of this part, including §§ 400.21(b), 400.29, 400.43(f), and 400.44;

* * * * *

(t) Review zone schedules and determine their sufficiency under § 400.44(c);

* * * * *

■ 4. In § 400.11, revise paragraph (b)(2)(i) to read as follows:

§ 400.11 Number and location of zones and subzones.

* * * * *

(b) * * *

(2) * * *

(i) A zone site is located within 60 statute miles or 90 minutes' driving time (as determined or concurred upon by CBP) from the outer limits of a port of entry boundary as defined in 19 CFR 101.3.

* * * * *

■ 5. In § 400.13:
■ a. Revise paragraph (a)(8);
■ b. Redesignate paragraph (c) as paragraph (d); and
■ c. Add a new paragraph (c).

The revision and addition read as follows:

§ 400.13 General conditions, prohibitions and restrictions applicable to authorized zones.

(a) * * *

(8) Private ownership of zone land and facilities is permitted, provided the zone grantee retains the control necessary to implement the approved zone. Such permission shall not constitute a vested right to zone designation, nor interfere with the Board's regulation of the grantee or the permittee, nor interfere with or complicate the revocation of the grant by the Board. Grantees shall retain a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of zone-designated land/facility for more than its fair market value without zone designation could, depending on the circumstances, be subject to the prohibitions set forth in section 17 of the Act (19 U.S.C. 81q).

* * * * *

(c) *Restrictions on items subject to antidumping and countervailing duty actions*—(1) *Board policy.* Zone procedures shall not be used to circumvent antidumping duty (AD) and countervailing duty (CVD) actions under 19 CFR part 351.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR part 351.

* * * * *

■ 6. In § 400.14:
■ a. Revise the section heading and paragraph (a); and
■ b. Remove paragraph (e).

The revisions read as follows:

§ 400.14 Production—requirement for prior authorization.

(a) *In general.* Production activity in zones shall not be conducted without prior authorization from the Board. To obtain authorization, the notification process provided for in §§ 400.22 and 400.37 shall be used. If Board review of a notification under § 400.37 results in a determination that further review is warranted for all or part of the notified activity, the application process pursuant to §§ 400.23, 400.31 through 400.32, 400.34, and 400.36 shall apply to the activity. Notifications and applications requesting production authority may be submitted by the zone's grantee or by the operator that proposes to undertake the activity (provided the operator at the same time furnishes a copy of the notification or application to the grantee and that submissions by the operator are

consistent with the grantee's zone schedule).

* * * * *

■ 7. Revise § 400.16 to read as follows:

§ 400.16 Exemption from state and local *ad valorem* taxation of tangible personal property.

Tangible personal property imported from outside the United States and held in foreign status in the activated area of a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in the activated area of a zone for exportation, either in its original form or as altered by any of the processes set out in this section, shall be exempt from state and local *ad valorem* taxation.

■ 8. In § 400.21:

■ a. Revise paragraphs (a) and (c)(1);

■ b. In paragraph (c)(5), add the word ''and'' following the semicolon;

■ c. Remove paragraph (c)(6);

■ d. Redesignate paragraph (c)(7) as paragraph (c)(6);

■ e. Remove paragraph (d)(2)(vi);

■ f. Redesignate paragraphs (d)(2)(vii) and (ix) as paragraphs (d)(2)(vi) through (viii);

■ g. Revise paragraphs (e)(3), (h), and (i); and

■ h. Remove paragraph (j).

The revisions read as follows:

§ 400.21 Application to establish a zone.

(a) *In general.* An application for a grant of authority to establish a zone (including pursuant to the ASF procedures adopted by the Board (§ 400.2(c)) shall consist of an application letter and detailed contents to meet the requirements of this part.

* * * * *

(c) * * *

(1) The relationship of the proposal to the state enabling legislation and the applicant's charter;

* * * * *

(e) * * *

(3) Appropriate information regarding usage-driven sites or ASF subzones.

* * * * *

(h) *Drafts.* Applicants are encouraged to submit a draft application to the Executive Secretary for review. A draft application must be complete with the possible exception of the application letter and/or resolution from the applicant.

(i) *Submission of completed application.* The applicant shall submit the complete application, including all attachments, via email or by the method prescribed by the Executive Secretary pursuant to § 400.4(m).

■ 9. In § 400.24, revise paragraphs (a)(1), (c), and (d) to read as follows:

§ 400.24 Application for expansion or other modification to zone.

(a) * * *

(1) A grantee may apply to the Board for authority to expand or otherwise modify its zone (including pursuant to the ASF procedures adopted by the Board (§ 400.2(c)).

* * * * *

(c) *Minor modification to zone.* Other applications or requests under this subpart shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) instead of paragraph (b) of this section (see, § 400.38). Such applications or requests include those for minor revisions of zone or subzone boundaries based on immediate need, as well as for designation as a subzone of all or part of an existing zone site(s) (or site(s) that qualifies for usage-driven status), where warranted by the circumstances and so long as the subzone remains subject to the activation limit (see § 400.2(b)) for the zone in question.

(d) *Applications for other revisions to authority.* Applications or requests for other revisions to authority, such as for Board action to establish or modify an activation limit for a zone, modification of a restriction, reissuance of a grant of authority or request for a voluntary termination shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves the removal or significant modification of a restriction included by the Board in its approval of authority or the reissuance of a grant of authority, the review procedures of §§ 400.31 through 400.34 and 400.36 shall be followed, where relevant. If not, the procedure set forth in § 400.38 shall generally apply (although the Executive Secretary may elect to follow the procedures of §§ 400.31 through 400.34 and 400.36 when warranted).

■ 10. In § 400.26:

■ a. Revise the section heading;

■ b. In paragraph (d), add the word ''and'' following the semicolon;

■ c. In paragraph (e), remove ''; and'' and add a period in its place; and

■ d. Remove paragraph (f).

The revision reads as follows:

§ 400.26 Criteria for evaluation of proposals, including for zones, expansions, subzones, or other modifications of zones.

* * * * *

■ 11. In § 400.27, revise the introductory text to read as follows:

§ 400.27 Criteria applicable to evaluation of applications for production authority.

The Board shall apply the criteria set forth in this section in determining whether to approve an application for authority to conduct production activity pursuant to § 400.23. The Board's evaluation shall take into account information such as pertains to market conditions, price sensitivity, degree and nature of foreign competition, intra-industry and intra-firm trade, effect on exports and imports, ability to conduct the proposed activity outside the United States with the same U.S. tariff impact, analyses conducted in connection with prior Board actions, and net effect on U.S. employment and the U.S. economy:

* * * * *

■ 12. In § 400.29:

■ a. Revise paragraphs (b) and (c); and

■ b. Remove paragraph (d).

The revisions read as follows:

§ 400.29 Application fees.

* * * * *

(b) *Uniform system of user fee charges.* The following fee schedule establishes fees for certain types of applications and requests for authority on the basis of their estimated average processing time.

(1) Additional zones (§ 400.21; § 400.11(a)(2))—$3,200.

(2) Subzones (§ 400.25):

(i) Not involving production activity or involving production activity with fewer than three products—$4,000.

(ii) Production activity with three or more products—$6,500.

(3) Expansions (§ 400.24(b))—$1,600.

(c) *Timing and manner of payment.* Application fees shall be paid prior to the FTZ Board docketing an application and in a manner specified by the Executive Secretary.

■ 13. In § 400.31, revise paragraph (b) to read as follows:

§ 400.31 General application provisions and pre-docketing review.

* * * * *

(b) *Pre-docketing review.* The applicant shall submit a complete copy of an application for pre-docketing review. The Executive Secretary shall determine whether the application satisfies the requirements of §§ 400.12, 400.21, and 400.23 through 400.25 and other applicable provisions of this part such that the application is sufficient for docketing. The applicant shall be

notified within 30 days whether the pre-docketing copy of the application is sufficient. If the application is not sufficient, the applicant will be notified of the specific deficiencies. An affected zone participant may also be contacted regarding relevant application elements requiring additional information or clarification. If the applicant does not correct the deficiencies and submit a corrected pre-docketing application copy within 30 days of notification, the pre-docketing application shall be discarded. For applications subject to § 400.29, the fees shall be paid in accordance with § 400.29 once the application is determined to be sufficient.

■ 14. Revise § 400.32 to read as follows:

§ 400.32 Procedures for docketing applications and commencement of case review.

(a) Once the pre-docketing copy of the application is determined to be sufficient and any fees under § 400.29 have been paid, the Executive Secretary shall within 15 days:

(1) Formally docket the application, thereby initiating the proceeding or review;

(2) Assign a case-docket number; and

(3) Notify the applicant of the formal docketing action.

(b) After initiating a proceeding based on an application under §§ 400.21 and 400.23 through 400.25, the Executive Secretary shall:

(1) Designate an examiner to conduct a review and prepare a report or memorandum with recommendations for the Board;

(2) Publish in the **Federal Register** a notice of the formal docketing of the application and initiation of the review. The notice shall include the name of the applicant, a description of the proposal, and an invitation for public comment. If the application requests authority for production activity and indicates that a component to be used in the activity is subject to a trade-related measure or proceeding (*e.g.,* AD/CVD order or proceeding, suspension of liquidation under AD/CVD procedures), the notice shall include that information. For applications to establish or expand a zone or for production authority, the comment period shall normally close 60 days after the date the notice appears. For applications for subzone designation, the comment period shall normally close 40 days after the date the notice appears. However, if a hearing is held (see § 400.52), the comment period shall not close prior to 15 days after the date of the hearing. The closing date for general comments shall ordinarily be followed by an additional 15-day period for rebuttal comments. Requests for extensions of a comment period will be considered, subject to the standards of § 400.28(c). Submissions must meet the requirements of § 400.28(b). With the exception of submissions by the applicant, any new evidence or new factual information and any written arguments submitted after the deadlines for comments shall not be considered by the examiner or the Board. Submission by the applicant of new evidence or new factual information may result in the (re)opening of a comment period. A comment period may otherwise be opened or reopened for cause;

(3) Transmit or otherwise make available copies of the docketing notice and the application to CBP;

(4) Arrange for hearings, as appropriate;

(5) Transmit the report and recommendations of the examiner and any comments by CBP to the Board for appropriate action; and

(6) Notify the applicant in writing (via electronic means, where appropriate) and publish notice in the **Federal Register** of the Board's determination.

(c) Any comments by CBP pertaining to the application shall be submitted to the Executive Secretary by the conclusion of the public comment period described in paragraph (b)(2) of this section.

■ 15. In § 400.33, revise paragraph (e)(3) to read as follows:

§ 400.33 Examiner's review—application to establish or modify a zone.

* * * * *

(e) * * *

(3) If the factors considered for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of paragraphs (e)(1) and (2) of this section shall be followed.

* * * * *

■ 16. In § 400.34, revise paragraph (a)(5)(iv)(C) to read as follows:

§ 400.34 Examiner's review—application for production authority.

(a) * * *

(5) * * *

(iv) * * *

(C) If the factors considered for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of paragraphs (a)(5)(iv)(A) and (B) of this section shall be followed.

* * * * *

■ 17. In § 400.35, revise paragraph (c) to read as follows:

§ 400.35 Examiner's review—application for subzone designation.

* * * * *

(c) If the factors considered for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of paragraphs (a) and (b) of this section shall be followed.

* * * * *

■ 18. In § 400.36:

■ a. Revise paragraphs (b) and (e); and

■ b. Remove the paragraph heading from paragraph (f).

The revisions read as follows:

§ 400.36 Completion of case review.

* * * * *

(b) In its advisory role to the Board, CBP headquarters staff shall provide any comments within 15 days for applications under § 400.25 and within 30 days for all other applications.

* * * * *

(e) If the Board is unable to reach a unanimous decision, the applicant shall be notified and provided an opportunity to meet with the Board members or their delegates.

* * * * *

■ 19. In § 400.37, revise paragraph (a) to read as follows:

§ 400.37 Procedure for notification of proposed production activity.

(a) *Submission of notification.* A notification for production authority pursuant to §§ 400.14(a) and 400.22 shall be submitted simultaneously to the Board's Executive Secretary and to CBP.

* * * * *

■ 20. Revise § 400.38 to read as follows:

§ 400.38 Procedure for request for minor modification of zone.

(a) The Executive Secretary shall make a determination in cases under § 400.24(c) involving minor modifications of zones that do not require Board action, such as boundary modifications, including certain relocations, and shall notify the requestor in writing of the decision on the request within 30 days of the Executive Secretary's receipt of the complete request and the CBP comments under paragraph (b) of this section. Depending on the specific request, the decision could be that the request cannot be processed under § 400.24(c)). The requestor shall submit a copy of its request to CBP no later than the time of the requestor's submission of the request to the Executive Secretary.

(b) If not previously provided to the requestor for inclusion with the requestor's submission of the request to the Executive Secretary, any CBP comments on the request shall be provided to the Executive Secretary within 20 days of the requestor's submission of the request to the Executive Secretary.

§ 400.42 [Amended]

■ 21. In § 400.42, remove and reserve paragraph (b).

§ 400.43 [Amended]

■ 22. In § 400.43, remove paragraph (i).
■ 23. In § 400.44:
■ a. Revise paragraphs (a), (b)(5), and (e); and
■ b. Remove paragraph (f).
The revisions read as follows:

§ 400.44 Zone schedule.

(a) The zone grantee shall submit to the Executive Secretary (electronic copy or as specified by the Executive Secretary) a zone schedule which sets forth the elements required in this section. No element of a zone schedule (including any amendment to the zone schedule) may be considered to be in effect until such submission has occurred. If warranted, the Board may subsequently amend the requirements of this section by Board Order.

(b) * * *

(5) Information identifying any operator which offers services to the public and which has requested that its information be included in the zone schedule; and

* * * * *

(e) A complete copy of the zone schedule shall be freely available for public inspection at the offices of the zone grantee. The Board shall make copies of zone schedules available on its website.

■ 24. In § 400.45, revise paragraph (b) to read as follows:

§ 400.45 Complaints related to public utility and uniform treatment.

* * * * *

(b) *Objections to rates and charges.* A zone participant showing good cause may object to any rate or charge related to the zone on the basis that it is not fair and reasonable by submitting to the Executive Secretary a complaint in writing with supporting information. If necessary, such a complaint may be made on a confidential basis pursuant to paragraph (a) of this section. The Executive Secretary shall review the complaint and issue a report and decision, which shall be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The primary factor considered in reviewing fairness and reasonableness is the cost of the specific services rendered. Where those costs incorporate charges to the grantee by one or more parties undertaking functions on behalf of the grantee, the Board may consider the costs incurred by those parties or evidence regarding market rates for the undertaking of those functions. The Board may rely on best estimates, as necessary. The Board will also give consideration to any extra costs incurred relative to non-zone operations, including return on investment and reasonable out-of-pocket expenses.

■ 25. In § 400.52, revise paragraph (b)(2) to read as follows:

§ 400.52 Notices and hearings.

* * * * *

(b) * * *

(2) The request must be made within 30 days of the beginning of the initial period for public comment (see § 400.32) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

* * * * *

■ 26. In § 400.61, revise paragraphs (a) and (c) to read as follows:

§ 400.61 Revocation of authority.

(a) *In general.* As provided in this section, the Board can revoke in whole or in part authority for a zone (see § 400.2(h)) whenever it determines that the zone grantee has violated, repeatedly and willfully, the provisions of the Act.

* * * * *

(c) *Appeals.* As provided in section 18 of the Act (19 U.S.C. 81r(c)), the grantee of the zone in question may appeal an order of the Board revoking authority.

[FR Doc. 2023–12123 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–DS–P

FEDERAL TRADE COMMISSION

16 CFR Part 318

Health Breach Notification Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') proposes to amend the Commission's Health Breach Notification Rule (the ''HBN Rule'' or the ''Rule'') and requests public comment on the proposed changes. The HBN Rule requires vendors of personal health records (''PHRs'') and related entities that are not covered by the Health Insurance Portability and Accountability Act (''HIPAA'') to notify individuals, the FTC, and, in some cases, the media of a breach of unsecured personally identifiable health data.

DATES: Written comments must be received on or before August 8, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Health Breach Notification Rule, Project No. P205405'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex H), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ryan Mehm (202) 326–2918, Elisa Jillson, (202) 326–3001, Ronnie Solomon, (202) 326–2098, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The amendments would: (1) clarify the Rule's scope, including its coverage of developers of many health applications (''apps''); (2) amend the definition of breach of security to clarify that a breach of security includes data security breaches and unauthorized disclosures; (3) revise the definition of PHR related entity; (4) clarify what it means for a vendor of personal health records to draw PHR identifiable health information from multiple sources; (5) modernize the method of notice; (6) expand the content of the notice; and (7) improve the Rule's readability by clarifying cross-references and adding statutory citations, consolidating notice and timing requirements, and articulating the penalties for non-compliance.

I. Background

Congress enacted the American Recovery and Reinvestment Act of 2009 (''Recovery Act'' or ''the Act''),[1] in part, to advance the use of health information technology and, at the same time, strengthen privacy and security protections for health information. Recognizing that certain entities that hold or interact with consumers' personal health records were not subject to the privacy and security requirements of HIPAA,[2] Congress created requirements for such entities to notify individuals, the Commission, and, in some cases, the media of the breach of

[1] American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

[2] Health Insurance Portability and Accountability Act, Public Law 104–191, 110 Stat. 1936 (1996).

unsecured identifiable health information from those records.

Specifically, section 13407 of the Recovery Act created certain protections for ''personal health records'' or ''PHRs,'' [3] electronic records of PHR identifiable health information on an individual that can be drawn from multiple sources and that are managed, shared, and controlled by or primarily for the individual.[4] Congress recognized that vendors of personal health records and PHR related entities (*i.e.,* companies that offer products and services through PHR websites or access information in or send information to personal health records) were collecting consumers' health information but were not subject to the privacy and security requirements of HIPAA. Accordingly, the Recovery Act directed the FTC to issue a rule requiring these non-HIPAA covered entities, and their third party service providers, to provide notification of any breach of unsecured PHR identifiable health information. The Commission issued its Rule implementing these provisions in 2009.[5] FTC enforcement of the Rule began on February 22, 2010.

The Rule requires vendors of personal health records and PHR related entities to provide: (1) notice to consumers whose unsecured PHR identifiable health information has been breached; (2) notice to the Commission; and (3) notice to prominent media outlets [6] serving a State or jurisdiction, in cases where 500 or more residents are confirmed or reasonably believed to have been affected by a breach.[7] The Rule also requires third party service providers (*i.e.,* those companies that provide services such as billing, data storage, attribution, or analytics) to vendors of personal health records and PHR related entities to provide notification to such vendors and entities following the discovery of a breach.[8]

The Rule requires notice to individuals ''without unreasonable delay and in no case later than 60 calendar days'' after discovery of a data breach.[9] If the breach affects 500 or more individuals, notice to the FTC must be provided ''as soon as possible and in no case later than ten business days'' after discovery of the breach.[10] The FTC makes available a standard form for companies to use to notify the Commission of a breach,[11] and posts a list of breaches involving 500 or more individuals on its website.[12]

The Rule applies only to breaches of ''unsecured'' health information, which the Rule defines as health information that is not secured through technologies or methodologies specified by the Department of Health and Human Services (''HHS'') and it does not apply to businesses or organizations covered by HIPAA.[13] HIPAA-covered entities and their ''business associates'' must instead comply with HHS's breach notification rule.[14]

Since the Rule's issuance, apps and other direct-to-consumer health technologies, such as fitness trackers and wearable blood pressure monitors, have become commonplace.[15] Further, as an outgrowth of the COVID–19 pandemic, consumer use of such health-related technologies has increased significantly.[16]

In May 2020, the Commission announced its regular, ten-year review of the Rule and requested public comments about potential Rule changes.[17] The Commission requested comment on, among other things, whether changes should be made to the Rule in light of technological changes, such as the proliferation of apps and similar technologies. The Commission received 26 public comments.

Many of the commenters encouraged the Commission to clarify that the Rule applies to apps and similar technologies.[18] In fact, no commenter opposed this type of clarification regarding the Rule's coverage of health apps. Several commenters pointed out examples of health apps that have abused users' privacy, such as by disclosing sensitive health information without consent.[19] Several commenters noted the urgency of this issue, as consumers have further embraced digital health technologies during the COVID–19 pandemic.[20] Commenters argued that the Commission should take additional steps to protect unsecured PHR identifiable health information that is not covered by HIPAA, both to prevent harm to consumers [21] and to

[3] 42 U.S.C. 17937.

[4] 42 U.S.C. 17921(11).

[5] 74 FR 42962 (Aug. 25, 2009) (''2009 Final Rule'').

[6] The Recovery Act does not limit this notice to particular types of media. Thus, an entity can satisfy the requirement to notify ''prominent media outlets'' by, for example, disseminating press releases to a number of media outlets, including internet media in appropriate circumstances, where most of the residents of the relevant state or jurisdiction get their news. This will be a fact-specific inquiry that will depend upon what media outlets are ''prominent'' in the relevant jurisdiction. 74 FR 42974.

[7] 16 CFR 318.3, 318.5.

[8] *Id.* 318.3.

[9] *Id.* 318.4.

[10] *Id.* 318.5(c).

[11] Fed. Trade Comm'n, Notice of Breach of Health Information, *https://www.ftc.gov/system/files/documents/rules/health-breach-notification-rule/health_breach_form.pdf.*

[12] Fed. Trade Comm'n, Notices Received by the FTC Pursuant to the Health Breach Notification Rule, Breach Notices Received by the FTC, *https://www.ftc.gov/system/files/ftc_gov/pdf/Health%20Breach%20Notices%20Received%20by%20the%20FTC.pdf* (last visited Dec. 2, 2022).

[13] Per HHS guidance, electronic health information is ''secured'' if it has been encrypted according to certain specifications set forth by HHS, or if the media on which electronic health information has been stored or recorded is destroyed according to HHS specifications. *See* 74 FR 19006; *see also* U.S. Dep't of Health & Human Servs., *Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals* (July 26, 2013), *https://www.hhs.gov/hipaa/for-professionals/breach-notification/guidance/index.html.* PHR identifiable health information would be considered ''secured'' if such information is disclosed by, for example, a vendor of personal health records, to a PHR related entity or a third party service provider, in an encrypted format meeting HHS specifications, and the PHR related entity or third party service provider stores the data in an encrypted format that meets HHS specifications and also stores the encryption and/or decryption tools on a device or at a location separate from the data.

[14] 45 CFR 164.400–414.

[15] *See, e.g.,* Tehseen Kiani, *App Development in Healthcare: 12 Exciting Facts,* TechnoChops (Jan. 27, 2022), *https://www.technochops.com/programming/4329/app-development-in-healthcare/;* Elad Natanson, *Healthcare Apps: A Boon, Today and Tomorrow,* Forbes (July 21, 2020), *https://www.forbes.com/sites/eladnatanson/2020/07/21/healthcare-apps-a-boon-today-and-tomorrow/?sh=21df01ac1bb9;* Emily Olsen, *Digital health apps balloon to more than 350,000 available on the market, according to IQVIA report,* MobiHealthNews (Aug. 4, 2021), *https://www.mobihealthnews.com/news/digital-health-apps-balloon-more-350000-available-market-according-iqvia-report.*

[16] *See id.; see also* Lis Evenstad, *Covid-19 has led to a 25% increase in health app downloads, research shows,* ComputerWeekly.com (Jan. 12, 2021), *https://www.computerweekly.com/news/252494669/Covid-19-has-led-to-a-25-increase-in-health-app-downloads-research-shows* (finding that COVID–19 has led to a 25% increase in health app downloads); Jasmine Pennic, *U.S. Telemedicine App Downloads Spikes During COVID–19 Pandemic,* HIT Consultant (Sept. 8, 2020), *https://hitconsultant.net/2020/09/08/u-s-telemedicine-app-downloads-spikes-during-covid-19-pandemic/* (''US telemedicine app downloads see dramatic increases during the COVID–19 pandemic, with some seeing an 8,270% rise YoY.'').

[17] 85 FR 31085 (May 22, 2020).

[18] *E.g.,* Amer. Health Info. Mgmt. Ass'n (''AHIMA'') at 2; Kaiser Permanente at 3; Allscripts at 3; Amer. Acad. of Ophthalmology at 2; All. for Nursing Informatics at 2; Amer. Med. Ass'n (''AMA'') at 4; Amer. College of Surgeons at 6; Physicians' Elec. Health Record Coal. (''PEHRC'') at 4 (''Apps that collect health information, regardless of whether or not they connect to an EHR, must be regulated by the FTC Health Breach Notification Rule to ensure the safety and security of personal health information.''); America's Health Ins. Plans (''AHIP'') and Blue Cross Blue Shield Ass'n (''BCBS'') at 2; The App Ass'n's Connected Health Initiative (''CHI'') at 3.

[19] Kaiser Permanente at 7; The Light Collective at 2; Amer. Acad. of Ophthalmology at 2; Healthcare Info. and Mgmt. Sys. Soc'y (''HIMSS'') and the Personal Connected Health All. (''PCH Alliance'') at 3; PEHRC at 2–3.

[20] Lisa McKeen at 2–3; Kaiser Permanente at 7–8; AMA at 3; Off. of the Att'y Gen. for the State of Cal. (''OAG–CA'') at 4.

[21] Georgia Morgan; Amer. Acad. of Ophthalmology at 2–3 (arguing that the breach of health information held by a non-HIPAA-covered

level the competitive playing field among companies dealing with the same health information.[22] To that end, commenters not only urged the Commission to revise the Rule, but also to increase its enforcement efforts.[23]

1. The Commission's 2021 Policy Statement

On September 15, 2021, the Commission issued a Policy Statement providing guidance on the scope of the Rule. The Policy Statement clarified that the Rule covers most health apps and similar technologies that are not covered by HIPAA.[24] The Rule defines a ''personal health record'' as ''an electronic record of PHR identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.'' [25] As the Commission explained in the Policy Statement, many makers and purveyors of health apps and other connected devices are vendors of personal health records covered by the Rule because their products are electronic records of PHR identifiable health information.

The Commission explained that PHR identifiable health information includes individually identifiable health information created or received by a health care provider,[26] and that ''health care providers'' include any entities that ''furnish[] health care services or supplies.'' [27] Because these health app purveyors furnish health care services to their users through the mobile applications they provide, the information held in the app is PHR identifiable health information, and therefore many app makers likely qualify as vendors of personal health records.[28]

The Policy Statement further explained that the statute directing the FTC to promulgate the Rule requires that a ''personal health record'' be an electronic record that can be drawn from multiple sources.[29] Accordingly, health apps and similar technologies likely qualify as personal health records covered by the Rule if they are capable of drawing information from multiple sources. The Commission further clarified that health apps and other products experience a ''breach of security'' under the Rule when they disclose users' sensitive health information without authorization; [30] a breach is ''not limited to cybersecurity intrusions or nefarious behavior.'' [31]

2. Enforcement History

In 2023, the Commission has brought its first enforcement actions under the Rule against vendors of personal health records. In February 2023, the Commission brought its first enforcement action alleging a violation of the Rule against GoodRx Holdings, Inc. (''GoodRx''), a digital health company that sells health-related products and services directly to consumers, including prescription medication discount products and telehealth services through its website and mobile applications.[32]

In its complaint, the Commission alleged that between 2017 and 2020, GoodRx as a vendor of personal health records, disclosed more than 500 consumers' unsecured PHR identifiable health information to third party advertising platforms like Facebook and Google, without the authorization of those consumers. As charged in the complaint, these disclosures violated explicit privacy promises the company made to its users about its data sharing practices (including about its sharing of PHR identifiable health information). The Commission alleged that GoodRx broke these promises and disclosed its users' prescription medications and personal health conditions, personal contact information, and unique advertising and persistent identifiers. The Commission charged GoodRx with violating the Rule by failing to provide the required notifications, as prescribed by the Rule, to (1) individuals whose unsecured PHR identifiable health information was acquired by an unauthorized person, (2) to the Federal Trade Commission, or (3) to media outlets. 16 CFR 318.3–6. The Commission entered into a settlement that, among other injunctive relief, required GoodRx to pay a $1.5 million civil penalty for its violation of the Rule.[33]

Similarly, on May 17, 2023, the Commission brought its second enforcement action under the Rule against Easy Healthcare Corporation (''Easy Healthcare''), a company that publishes an ovulation and period tracking mobile application called Premom, which allows its users to input and track various types of health and other sensitive data. Similar to the conduct alleged against GoodRx, Easy Healthcare disclosed PHR identifiable health information to third party companies such as Google and AppsFlyer, contrary to its privacy promises, and did not comply with the Rule's notification requirements. The

app, for example, harms the patient-provider relationship, because the patient erroneously believes that the provider is the source of the breach); CHIME at 3 (arguing that apps' privacy practices impact the patient-provider relationship because providers do not know what technologies are sufficiently trustworthy for their patients); AMA at 2–3 (expressing concern that patients share less health data with health care providers, perhaps because of ''spillover from privacy and security breaches'').

[22] Kaiser Permanente at 2, 4; Workgroup for Electronic Data Interchange (''WEDI'') at 2; AHIP & BCBS at 3 (''[HIPAA] covered entities, such as health plans, that use or disclose protected health information should not be subject to stricter notification requirements than those imposed on vendors of personal health records or other such entities. Otherwise, the Federal government will be providing market advantages to particular industry segments with the effect of dampening competition and harming consumers.'').

[23] Kaiser Permanente at 3, 4; Fred Trotter at 1; Casey Quinlan at 1; CARIN All. at 2. At the time of this Notice, the Commission has brought two enforcement actions under the Rule; the first against digital health company GoodRx Holdings, Inc., and the second against an ovulation-tracking mobile app marketed under the name ''Premom'' and developed by Easy Healthcare, Inc. *U.S.* v. *GoodRx Holdings, Inc.,* Case No. 23–cv–460 (N.D. Cal. 2023), *https://www.ftc.gov/legal-library/browse/cases-proceedings/2023090-goodrx-holdings-inc; U.S.* v. *Easy Healthcare Corporation,* Case No. 1:23-cv-3107 (N.D. Ill. 2023), *https://www.ftc.gov/legal-library/browse/cases-proceedings/202-3186-easy-healthcare-corporation-us-v.*

[24] Statement of the Commission on Breaches by Health Apps and Other Connected Devices, Fed. Trade Comm'n (Sept. 15, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1596364/statement_of_the_commission_on_breaches_by_health_apps_and_other_connected_devices.pdf* (''Policy Statement'').

[25] 16 CFR 318.2(d).

[26] *Id.* 318.2(e).

[27] *Id.* 318.2(e); 42 U.S.C. 1320d(6), d(3).

[28] *See* Policy Statement at 1.

[29] The Policy Statement provided this example: ''[I]f a blood sugar monitoring app draws health information only from one source (*e.g.,* a consumer's inputted blood sugar levels), but also takes non-health information from another source (*e.g.,* dates from your phone's calendar), it is covered under the Rule.'' *Id.* at 2.

[30] 16 CFR 318.2(a).

[31] Policy Statement at 2; 74 FR 42967 (Commentary to 2009 Final Rule) (''On a related issue, the final rule provides that a breach of security means acquisition of information without the authorization 'of the individual.' Some commenters raised questions about how the extent of individual authorization should be determined. For example, if a privacy policy contains buried disclosures describing extensive dissemination of consumers' data, could consumers be said to have authorized such dissemination?

The Commission believes that an entity's use of information to enhance individuals' experience with their PHR would be within the scope of the individuals' authorization, as long as such use is consistent with the entity's disclosures and individuals' reasonable expectations. Such authorized uses could include communication of information to the consumer, data processing, or Web design, either in-house or through the use of service providers. Beyond such uses, the Commission expects that vendors of personal health records and PHR related entities would limit the sharing of consumers' information, unless the consumers exercise meaningful choice in consenting to such sharing.'') (citations omitted).

[32] *U.S.* v. *GoodRx Holdings, Inc.,* Case No. 23–cv–460 (N.D. Cal. 2023), *https://www.ftc.gov/legal-library/browse/cases-proceedings/2023090-goodrx-holdings-inc.*

[33] In addition, the Commission alleged that GoodRx's data sharing practices were deceptive and unfair, in violation of Section 5 of the FTC Act.

Commission entered into a settlement that, among other injunctive relief, required Easy Healthcare to pay a $100,000 civil penalty for its violation of the Rule.[34]

3. Summary of Proposed Rule Changes

Having considered the public comments, described in further detail below, and its Policy Statement, the Commission now proposes to revise the Rule, 16 CFR part 318, in seven ways.

- First, the Commission proposes to revise several definitions in order to clarify the Rule and better explain its application to health apps and similar technologies not covered by HIPAA. Consistent with this objective, the proposed Rule would modify the definition of ''PHR identifiable health information'' and add two new definitions (''health care provider'' and ''health care services or supplies''). These changes are consistent with a number of public comments supporting the Rule's coverage of these technologies.
- Second, the Commission proposes to revise the definition of breach of security to clarify that a breach of security includes an unauthorized acquisition of PHR identifiable health information in a personal health record that occurs as a result of a data security breach or an unauthorized disclosure.
- Third, the Commission proposes to revise the definition of PHR related entity in two ways. Consistent with its clarification that the Rule applies to health apps, the Commission first proposes clarifying the definition of ''PHR related entity'' to make clear that the Rule covers entities that offer products and services through the online services, including mobile applications, of vendors of personal health records. In addition, the Commission proposes revising the definition of ''PHR related entity'' to provide that entities that access or send unsecured PHR identifiable health information to a personal health record—rather than entities that access or send *any* information to a personal health record—are PHR related entities.
- Fourth, the Commission proposes to clarify what it means for a personal health record to draw PHR identifiable health information from multiple sources.
- Fifth, in response to public comments expressing concern that mailed notice is costly and not consistent with how consumers interact with online technologies like health apps, the Commission proposes to revise the Rule to authorize electronic notice in additional circumstances. Specifically, the proposed Rule would adjust the language in the ''method of notice section'' and add a new definition of the term ''electronic mail.'' The proposed Rule also requires that any notice delivered by electronic mail be ''clear and conspicuous,'' a newly defined term, which aligns closely with the definition of ''clear and conspicuous'' codified in the FTC's Financial Privacy Rule.[35]
- Sixth, the proposed Rule would expand the required content of the notice to individuals, to require that consumers whose unsecured PHR identifiable information has been breached receive additional important information, including information regarding the potential for harm from the breach and protections that the notifying entity is making available to affected consumers. In addition, the proposed Rule would include exemplar notices, which entities subject to the Rule could use to notify consumers in terms that are easy to understand.
- Seventh, in response to public comments, the Commission proposes to make a number of changes to improve the Rule's readability. Specifically, the Commission proposes to include explanatory parentheticals for internal cross-references, add statutory citations in relevant places, consolidate notice and timing requirements in single sections, respectively, of the Rule, and add a new section that plainly states the penalties for non-compliance.

Finally, this Notice also includes a section discussing several alternatives the Commission considered but is not proposing. Although the Commission has not put forth any proposed modifications on those issues, the Commission nonetheless seeks public comment on them.

The Commission believes that the proposed changes are consistent with the language and intent of the Recovery Act, will address the concerns raised by the public comments, and will ensure that the Rule remains relevant in the face of changing business practices and technological developments. The Commission invites comment on the proposed rule revisions generally and on the specific issues outlined through section III. Written comments must be received on or before August 8, 2023.

II. Analysis of the Proposed Rule

The following discussion analyzes the proposed changes to the Rule.

1. Clarification of Entities Covered

The Commission proposes revisions to clarify the Rule's treatment of health apps and similar technologies not covered by HIPAA. As the Commission's Policy Statement makes clear, many health apps and similar technologies not covered by HIPAA are covered by the FTC's existing Rule. To ensure that entities covered by the Rule understand their obligations under the Rule, the Commission is proposing changes to clarify that mobile health applications are covered by the Rule, giving important guidance to the marketplace on the Rule's scope. To accomplish this objective, the Commission proposes several changes to § 318.2, which defines key terms in the Rule. Commenters broadly support the Rule covering health apps and similar technologies.[36]

First, consistent with one commenter's recommendation,[37] the Commission proposes revising ''PHR identifiable information'' to import language from section 1171(6) of the Social Security Act, 42 U.S.C. 1320d(6), which is included in the current Rule only by cross-reference to that statute.[38] This revision is not substantive and is being proposed to improve readability.

As revised, ''PHR identifiable information'' would be defined as information (1) that is provided by or on behalf of the individual; (2) that

[34] *U.S.* v. *Easy Healthcare Corporation,* Case No. 1:23–cv–3107 (N.D. Ill. 2023), *https://www.ftc.gov/legal-library/browse/cases-proceedings/202-3186-easy-healthcare-corporation-us-v.*

[35] 16 CFR 313.3(b). The FTC's Financial Privacy Rule requires financial institutions to provide particular notices and to comply with certain limitations on disclosure of nonpublic personal information. Using a comprehensive definition of ''clear and conspicuous'' that is based on the Financial Privacy Rule definition aims to ensure consistency across the Commission's privacy-related rules.

[36] *See supra* note 18.

[37] *See* Lisa McKeen at 5.

[38] The HBN Rule, as currently drafted, defines ''PHR identifiable health information ''as'' individually identifiable health information,'' as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), and, with respect to an individual, information: (1) That is provided by or on behalf of the individual; and (2) That identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. *See* 16 CFR 318.2(e). Section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)) states: ''The term 'individually identifiable health information' means any information, including demographic information collected from an individual, that—

(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and—

(i) identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.''

identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual; (3) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and (4) is created or received by a health care provider, health plan (as defined in 42 U.S.C. 1320d(5)), employer, or health care clearinghouse (as defined in 42 U.S.C. 1320d(2)).

The Commission believes that this definition covers traditional health information (such as diagnoses or medications), health information derived from consumers' interactions with apps and other online services (such as health information generated from tracking technologies employed on websites or mobile applications or from customized records of website or mobile application interactions),[39] as well as emergent health data (such as health information inferred from non-health-related data points, such as location and recent purchases).[40] The Commission requests comment as to whether any further amendment of the definition is needed to clarify the scope of data covered.

The proposed Rule also defines a new term, ''health care provider,'' in a manner similar to the definition of ''health care provider'' found in 42 U.S.C. 1320d(3) (and referenced in 1320d(6)). Specifically, the proposed Rule defines ''health care provider'' to mean a provider of services (as defined in 42 U.S.C. 1395x(u)[41]), a provider of medical or other health services (as defined in 42 U.S.C. 1395x(s)), or any other entity furnishing health care services or supplies.

The proposed Rule adds a new definition for the term ''health care services or supplies'' to include any online service, such as a website, mobile application, or internet-connected device that provides mechanisms to track diseases, health conditions, diagnoses or diagnostic testing, treatment, medications, vital signs, symptoms, bodily functions, fitness, fertility, sexual health, sleep, mental health, genetic information, diet, or that provides other health-related services or tools.[42] The Commission's proposed definition of ''health care services and supplies'' is based on a number of factors, including the Commission's institutional knowledge, expertise, and law enforcement experience in health data technology. This definition is designed to reflect the current state of technology for health apps and connected devices, as well as emerging technological capabilities that the Commission has observed through its investigatory, enforcement, and policy work.

These changes clarify that developers of health apps and similar technologies providing these types of ''health care services or supplies'' qualify as ''health care providers'' under the Rule. Accordingly, any individually identifiable health information these products collect or use would constitute ''PHR identifiable health information'' covered by the Rule. These changes also clarify that mobile health applications, therefore, are a ''personal health record'' covered by the Rule (as long as other conditions set forth in the definition of ''personal health record'' are met) and accordingly the developers of such applications are ''vendors of personal health records.''[43] The proposed definition of ''health care services or supplies'' clarifies the Rule's scope in two ways. First, it makes clear that the Rule applies generally to online services, including websites, apps, and internet-connected devices that provide health care services or supplies. Second, it illustrates that the Rule covers online services related not only to medical issues (by including in the definition terms such as ''diseases, diagnoses, treatment, medications'') but also wellness issues (by including in the definition terms such as fitness, sleep, and diet). The Commission intends to ensure app developers understand their notice obligations, even if an app is positioned as a ''wellness'' product rather than a ''health'' product.

The Commission's proposed changes are consistent with the public comments, which recommended the Rule cover health apps and similar technologies.[44] In revising and adding these definitions, Commission staff also sought informal input from staff at the Federal agencies that interpret or enforce the referenced statutory provision, 42 U.S.C. 1320d, including staff at HHS. The Commission's definition of ''health care provider'' differs from, but does not contradict, the definitions or interpretations adopted by HHS.[45] The Commission's proposed definition is consistent with the statutory scheme established by Congress to regulate non-HIPAA covered entities and within the agency's discretion in administering the Rule.

Topics on Which the Commission Seeks Public Comment

The Commission seeks comment as to whether these changes sufficiently clarify the Rule's application to

[39] *In the Matter of Flo Health, Inc.,* FTC File No. 1923133 (June 22, 2021), *https://www.ftc.gov/system/files/documents/cases/192_3133_flo_health_complaint.pdf; U.S.* v. *GoodRx Holdings, Inc.,* Case No. 23–cv–460 (N.D. Cal. 2023), *https://www.ftc.gov/legal-library/browse/cases-proceedings/2023090-goodrx-holdings-inc.; In the Matter of BetterHelp, Inc.,* FTC File No. 2023169 (March 2, 2023), *https://www.ftc.gov/legal-library/browse/cases-proceedings/2023169-betterhelp-inc-matter* (proposed complaint and order); *U.S.* v. *Easy Healthcare Corporation,* Case No. 1:23–cv–3107 (N.D. Ill. 2023), *https://www.ftc.gov/legal-library/browse/cases-proceedings/202-3186-easy-healthcare-corporation-us-v.; See also* U.S. Dep't of Health & Human Servs., *Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates* (Dec. 1, 2022), *https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-online-tracking/index.html.*

[40] *See e.g.,* Mason Marks, *Emergent Medical Data: Health Information Inferred by Artificial Intelligence,* 11 UC Irvine L. Rev. 995 (2021), *https://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1501&context=ucilr.*

[41] Under 42 U.S.C. 1395x(u), the term ''provider of services'' means a hospital, critical access hospital, rural emergency hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund.

[42] *See* Joint Statement of Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter, Concurring in Part, Dissenting in Part, *In the Matter of Flo Health, Inc.,* FTC File No. 1923133 (Jan. 13, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1586018/20210112_final_joint_rcrks_statement_on_flo.pdf* (''The FTC's Health Breach Notification Rule covers (a) health care providers that (b) store unsecured, personally identifiable health information that (c) can be drawn from multiple sources, and the rule is triggered when such entities experience a 'breach of security.' *See* 16 CFR 318. Under the definitions cross-referenced by the Rule, Flo—which markets itself as a 'health assistant'—is a 'health care provider,' in that it 'furnish[es] health care services and supplies.' *See* 16 CFR 318.2(e); 42 U.S.C. 1320d(6), d(3).'').

[43] The mobile health applications covered as ''vendors of personal health records'' under the Rule are distinct from the ''online applications'' referenced in footnote 78 of the 2009 Statement of Basis and Purpose as ''PHR related entities.'' Footnote 78 from the 2009 Statement of Basis and Purpose states that PHR related entities include ''online applications through which individuals connect their blood pressure cuffs, blood glucose monitors, or other devices'' so they can track the results through their personal health records. *See* 74 FR 42962, 42969 n.78 (2009). Footnote 78 refers narrowly to online applications that collect health information from a single source and transfer it to a personal health record maintained separate and apart from the PHR related entity by the PHR vendor. In other words, a PHR related entity sends health information to a personal health record which the PHR related entity does not itself maintain.

[44] *See supra* note 18.

[45] Although in other contexts HHS has defined the term ''health care provider'' based upon a more limited understanding of that term (*e.g.,* referring primarily to persons and entities such as doctors, clinics, psychologists, dentists, chiropractors, nursing homes, and pharmacies), its definition does not contradict or preclude an interpretation of the referenced statutory provision, 42 U.S.C. 1320d, that encompasses developers of health applications and similar technologies.

purveyors of health apps and similar technologies that are not covered by HIPAA. The Commission also seeks comment as to whether the proposed rule, as explained here, makes clear to the market which entities are covered by the Rule and under what circumstances. As the Commission has explained, the Rule is intended to cover developers and purveyors of health apps and internet-connected health devices, such as fitness trackers, that are not covered by HIPAA. The Commission seeks comment as to whether the proposed changes and added definitions would apply to entities that offer other technologies and, if so, whether these definitions include appropriate distinctions. If the scope should be limited, the Commission seeks comment as to how that limitation could be effected through the Rule's language, consistent with the language and purpose of the Recovery Act. The Commission seeks comment on defining ''health care provider'' in a manner that is broader than a more limited definition of that term used in other contexts (*e.g.,* referring primarily to persons and entities such as doctors, clinics, psychologists, dentists, chiropractors, nursing homes, and pharmacies [46]). And, finally, the Commission seeks comment on the definition of ''healthcare services or supplies,'' including whether any modifications should be made to this definition.

2. Clarification Regarding Types of Breaches Subject to the Rule

The Commission proposes a definitional change to clarify that a breach of security under the Rule encompasses unauthorized acquisitions that occur as a result of a data breach or an unauthorized disclosure. The current Rule defines ''breach of security'' as the acquisition of unsecured PHR identifiable health information of an individual in a personal health record without the authorization of the individual.[47] This language mirrors the definition of ''breach of security'' in section 13407(f)(1) of the Recovery Act. The current Rule also includes a rebuttable presumption for unauthorized access to an individual's data. It states that when there is unauthorized access to data, unauthorized acquisition will be presumed unless the entity that experienced the breach ''has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of such information.'' [48]

The Commission's proposed changes are consistent with the plain language of the current Rule and the Recovery Act definition of ''breach of security.'' [49] Additionally, the Commission's Policy Statement makes clear that ''[i]ncidents of unauthorized access, including sharing of covered information without an individual's authorization, triggers notification obligations under the Rule,'' and that a breach ''is not limited to cybersecurity intrusions or nefarious behavior.'' [50] Further, recent Commission enforcement actions against GoodRx and Easy Healthcare also make clear that the Rule covers unauthorized disclosures of consumers' PHR identifiable health information to third party companies. The Commission's proposed changes also are consistent with public comments, which urged the Commission to clarify what constitutes an unauthorized acquisition under the Rule.[51]

Accordingly, consistent with the Recovery Act definition, the Policy Statement, FTC enforcement actions under the Rule, and public comments received, the Commission proposes amending the definition of ''breach of security'' in § 318.2(a) by adding the following sentence to the end of the existing definition: ''A breach of security includes an unauthorized acquisition of unsecured PHR identifiable health information in a personal health record that occurs as a result of a data breach or an unauthorized disclosure.'' The proposed definition is intended to make clear to the marketplace that a breach includes an unauthorized acquisition of identifiable health information that occurs as a result of a data breach or an unauthorized disclosure, such as a voluntary disclosure made by the PHR vendor or PHR related entity where such disclosure was not authorized by the consumer.

Topics on Which the Commission Seeks Public Comment

The Commission seeks comment on (1) whether this addition to the definition of ''breach of security'' is necessary, given that the definition in the current Rule already encompasses unauthorized acquisitions beyond security breaches, and (2) whether the proposed definitional change sufficiently clarifies for the marketplace the Rule's coverage.

3. Revised Scope of PHR Related Entity

The Commission also proposes revising the definition of ''PHR related entity'' in two ways that pertain to the Rule's scope. Currently, the Rule defines ''PHR related entity'' to mean an entity, other than a HIPAA-covered entity or a business associate of a HIPAA-covered entity, that: (1) offers products or services through the website of a vendor of personal health records; (2) offers products or services through the websites of HIPAA-covered entities that offer individuals personal health records; or (3) accesses information in a personal health record or sends information to a personal health record.[52]

First, the Commission proposes language to clarify that PHR related entities include entities offering products and services not only through the websites of vendors of personal health records, but also through any online service, including mobile applications. Commenters urged this change because websites are no longer the only means through which consumers access health information online.[53] To the contrary, online

[46] *See, e.g.,* U.S. Dep't of Human Servs., Guidance on Covered Entities and Business Associates (June 16, 2017), *https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html* (listing these persons/entities as examples of health care providers).

[47] 16 CFR 318.2(a).

[48] 16 CFR 318.2(a).

[49] The commentary to the current Rule already provides guidance on the types of disclosures that the Commission considers to be ''unauthorized.'' For instance, it states: ''Given the highly personal nature of health information, the Commission believes that consumers would want to know if such information was read or shared without authorization.'' It further states that data sharing to enhance consumers' experience with a PHR is authorized only ''as long as such use is consistent with the entity's disclosures and individuals' reasonable expectations'' and that ''[b]eyond such uses, the Commission expects that vendors of personal health records and PHR related entities would limit the sharing of consumers' information, unless the consumers exercise meaningful choice in consenting to such sharing. Buried disclosures in lengthy privacy policies do not satisfy the standard of 'meaningful choice.' '' 74 FR 42967.

[50] Policy Statement at 2.

[51] *See* AMA at 5–6 (''The FTC should define 'unauthorized access' as presumed when entities fail to disclose to individuals how they access, use, process, and disclose their data and for how long data are retained. Specifically, an entity should disclose to individuals exactly what data elements it is collecting and the purpose for their collection''; ''[T]he FTC should define 'unauthorized access' as presumed when an entity fails to disclose to an individual the specific secondary recipients of the individual's data.''); Amer. Med. Informatics Ass'n (''AMIA'') at 2 (recommending that the FTC ''[e]xpand on the concept of 'unauthorized access' under the definition of 'Breach of security,' to be presumed when a PHR or PHR related entity fails to adequately disclose to individuals how user data is accessed, processed, used, reused, and disclosed.''); OAG–CA at 5–6 (urging the FTC to include ''impermissible acquisition, access, use, disclosure'' under the definition of breach.).

[52] 16 CFR 318.2(f).

[53] *See, e.g.,* AHIMA at 2 (''[W]e also recommend that the Commission consider updating the existing definition of a 'PHR-related entity' [sic] at 318.2(f)

services such as apps are equally relevant to consumers' online experiences with health information.

Second, the Commission proposes to revise the third prong of the definition so that only entities that access or send *unsecured PHR identifiable health information* to a personal health record—rather than entities that access or send any information to a personal health record—qualify as PHR related entities. This change—from any information to *unsecured PHR identifiable health information*—is intended to eliminate potential confusion about the Rule's breadth and promote compliance by narrowing the scope of entities that qualify as PHR related entities.[54]

As the Rule is currently drafted, for example, a grocery delivery service that integrates with a diet and fitness app could arguably be considered a PHR related entity when the grocery delivery service sends information about food purchases to the diet and fitness app. This expansive reading of the Rule is not consistent with the purposes of the statute or the Commission's intent when it drafted the Rule. The Commission believes that a more appropriate interpretation of the term PHR related entity encompasses entities that access unsecured *PHR identifiable health information* in a personal health record or send unsecured *PHR identifiable health information* to a personal health record. Remote blood pressure cuffs, connected blood glucose monitors, and fitness trackers are all examples of devices that could qualify as a PHR related entity when individuals sync them with a personal health record (*i.e.,* mobile health application).[55]

As a result of this proposed change, a firm that performs attribution and analytics services for a health app might be considered both a PHR related entity (to the extent it accesses unsecured PHR identifiable health information in a personal health record) *and* a third party service provider. This overlap could create competing notice obligations, where, in the event of a breach, the firm would be required to notify individuals and the FTC (per § 318.3's notice requirements for PHR related entities) *and* notify the vendor of the personal health record (per § 318.3's notice requirements for third party service providers).

The Commission does not intend this result. Instead, the Commission considers firms that perform services such as attribution and analytics for apps and technologies providing healthcare services and supplies to be third party service providers. Such service providers must notify the health app developers for whom they provide services, who in turn would notify affected individuals.[56] Otherwise, treating such service providers as PHR related entities would create a problematic result for the consumer, who would receive notice from an unfamiliar company. To clarify this issue, the Commission proposes to revise § 318.3(b) by adding that a third party service provider is not rendered a PHR related entity when it accesses unsecured PHR identifiable health information in the course of providing services.

Moreover, this result will create incentives for responsible data stewardship and for de-identification. Specifically, PHR vendors will have incentives to select and retain service providers, such as those that perform services such as attribution or analytics for apps, capable of treating data responsibly (*e.g.,* not engaging in any onward disclosures of data that could result in a reportable breach) and incentives to oversee their service providers to ensure ongoing responsible data stewardship (which would avoid a breach). Further, it will create incentives for PHR vendors to avoid breaches by service providers by de-identifying health information *before* sharing it with any service provider, as de-identification would render the data no longer PHR identifiable health information subject to the Rule.

a. Topics on Which the Commission Seeks Public Comment

The Commission seeks comment on whether additional changes to the Rule would be necessary or helpful to clarify this result. The Commission also requests comment on the following scenario: a third party service provider, such as an analytics firm, receives PHR identifiable health info (*e.g.,* device identifier and geolocation data from which health information about an individual can be inferred) and then sells it to another entity without the consumer's authorization. The Commission considers this to be a reportable breach, even if the consumer consented to the original collection. In such a scenario, the third party service provider would be required to notify the vendor of personal health records or PHR related entity, who in turn would notify affected individuals. The Commission requests comment on this approach, including whether as a policy matter it is advisable under the Rule to require a vendor of personal health records or PHR related entity to notify its customers about such onward disclosures.

The Commission also seeks comment on the definition of ''PHR related entity,'' including the scope. Conversely, the Commission seeks comment as to whether, by limiting the third prong of the definition to entities that access or send unsecured PHR identifiable health information, the proposed definition is too narrow and would exclude entities that should be required to notify consumers of breaches, consistent with the Recovery Act. To assess this question of breadth, the Commission requests comment on

as 318.2(f)(1) and 318.2(f)(2) appear to focus primarily on products and services offered through a vendor's website and may not be entirely reflective of today's environment as new platforms and related services are increasingly deployed and adopted.''; Amer. Acad. of Ophthalmology at 3–4 (recommending that the definition cover apps); PEHRC at 4 (same).

[54] The revised definition would state that a PHR related entity is an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that (1) offers products or services through the website, including any online service, of a vendor of personal health records; (2) offers products or services through the websites, including any online services, of HIPAA-covered entities that offer individuals personal health records; or (3) accesses unsecured PHR identifiable health information in a personal health record or sends unsecured PHR identifiable health information to a personal health record. Although the Rule is only triggered when there is a breach of security involving unsecured PHR identifiable health information, the Commission nevertheless believes there is a benefit to revising the third prong of PHR related entity to make clear that only entities that access or send unsecured PHR identifiable health information to a personal health record—rather than entities that access or send any information to a personal health record—are PHR related entities. Otherwise, under the Rule's current formulation, many entities could be a PHR related entity under the definition's third prong and such entities would then, in the event of a breach, need to analyze whether they experienced a reportable breach under the Rule. If an entity, per this proposed revision, does not qualify as a PHR related entity in the first place, there is no need to consider whether it experienced a reportable breach.

[55] For example, the maker of a wearable fitness tracker may be both a vendor of personal health records (to the extent that its tracker interfaces with its own app, which also accepts consumer inputs) *and* a PHR related entity (to the extent that it sends information to another company's health app). Regardless of whether the maker of the fitness tracker is a vendor of personal health records or a PHR related entity, its notice obligations are the same: it must notify individuals, the FTC, and in some case, the media, of a breach. 16 CFR 318.3(a), 318.5(b).

[56] In attempting to help distinguish between PHR related entities and third party service providers, the Commission offers the following observation: in most cases, third party service providers are likely to be non-consumer facing. Thus, examples of PHR related entities include, as noted above, fitness trackers and health monitors when consumers sync them with a mobile health app. Examples of third party service providers include entities that provide support or administrative functions to vendors of personal health records and PHR related entities.

what entities are (1) offering products or services through personal health records such as apps; or (2) sending or accessing information, including but not limited to identifiable health information, in health apps and other personal health records. Finally, the Commission requests comment on the potential overlap between the definitions of ''PHR related entity'' and ''third party service provider,'' and how to sufficiently distinguish between them.

4. Clarification of What it Means for a Personal Health Record To Draw Information From Multiple Sources

The Commission proposes revising the definition of ''personal health record'' to clarify what it means for a personal health record to draw information from multiple sources. Under the current Rule, a personal health record is defined as an electronic record of PHR identifiable health information that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

Under the revised definition, a ''personal health record'' would be defined as an electronic record of PHR identifiable health information on an individual that has the technical capacity to draw information from multiple sources and that is managed, shared, and controlled by or primarily for the individual.[57]

This change clarifies the application of the statutory definition of a personal health record that can draw information from multiple sources. Adding the phrase ''technical capacity to draw information'' serves several purposes. First, it clarifies that a product is a personal health record if it can draw information from multiple sources, even if the consumer elects to limit information from a single source only, in a particular instance. For example, a depression management app that accepts consumer inputs of mental health states and has the technical capacity to sync with a wearable sleep monitor is a personal health record, even if some customers choose not to sync a sleep monitor with the app. Thus, whether an app qualifies as a personal health record would not depend on the prevalence of consumers' *use* of a particular app feature, like sleep monitor-syncing. Instead, the analysis of the Rule's application would be straightforward: either the app has the technical means (*e.g.,* the application programming interface or API) to draw information from multiple sources, or it does not. Next, adding the phrase ''technical capacity to draw information'' would clarify that a product is a personal health record if it can draw *any* information from multiple sources, even if it only draws *health* information from one source. This change further clarifies the Commission's interpretation of the Recovery Act, as explained in the Policy Statement.[58]

To illustrate the intended meaning of the proposed revisions to the term ''personal health record,'' the Commission offers the example of two non-HIPAA covered diet and fitness apps available for consumer download in an app store. The proposed Rule makes clear that each is a personal health record.

- Diet and Fitness App Y allows users to sync their app with third-party wearable fitness trackers with the app. Diet and Fitness App Y has the technical capacity to draw identifiable health information both from the user (name, weight, height, age) and the fitness tracker (user's name, miles run, heart rate), even if some users elect not to connect the fitness tracker.
- Diet and Fitness App Y has the ability to pull information from the user's phone calendar via the calendar API to suggest personalized healthy eating options. Diet and Fitness App Y has the technical capacity to draw identifiable health information from the user (name, weight, height, age) and non-health information (calendar entry info, location, and time zone) from the user's calendar.

a. Topics on Which the Commission Seeks Public Comment

The Commission seeks comment as to whether the proposed changes sufficiently clarify the Rule's application to developers and purveyors of products that have the technical capacity to draw information from more than one source. In particular, the Commission invites comment on its interpretation that an app is a personal health record because it has the technical capacity to draw information from multiple sources, even if particular users of the app choose not to enable the syncing features. The Commission also requests comment about whether an app (or other product) should be considered a personal health record even if it only draws *health* information from one place (in addition to non-health information drawn elsewhere); or only draws *identifiable* health information from one place (in addition to non-identifiable health information drawn elsewhere). The Commission also requests comment about whether the Commission's bright-line rule (apps with the ''technical capacity to draw information'' are covered) should be adjusted to take into account consumer use, such as where no consumers (or only a de minimis number) use a feature. For example, an app might have the technical capacity to draw information from multiple sources, but its API is entirely or mostly unused, either because it remains a Beta feature, has not been publicized, or is not popular. The Commission also requests comment on the likelihood of such scenarios.

5. Facilitating Greater Opportunity for Electronic Notice

Fourth, the Commission proposes to authorize expanded use of email and other electronic means of providing clear and effective notice of a breach to consumers. Increasingly, consumers interact with vendors of personal health records (and vice versa) solely online and communicate primarily or exclusively through electronic means.

Currently, the Rule permits notice by either postal mail or, in limited circumstances, email. The Rule provides that vendors of personal health records or PHR related entities that discover a breach of security must provide ''[w]ritten notice, by first-class mail to the individual at the last known address of the individual, or by email, if the individual is given a clear, conspicuous, and reasonable opportunity to receive notification by first-class mail, and the individual does not exercise that choice.'' [59]

Several commenters noted the cost and inconvenience associated with postal mail notice to companies and consumers alike.[60] Several commenters encouraged the Commission to update the methods of notice to permit notice by electronic means.[61] Commenters suggested that the Commission revise the Rule to encourage different kinds of electronic notice, including email, in-app messaging, and QR codes.[62] For example, one commenter stated that the Rule's notice requirement should be

[57] One commenter specifically recommended that the definition of PHR be broadened to ''to explicitly include any website, mobile application, or other electronic record system that collects and stores individually identifiable information, including health information, even if it draws that information from a single source.'' Kaiser Permanente at 3.

[58] Policy Statement at 2.

[59] 16 CFR 318.5(a)(1).

[60] Allscripts at 2; Bruce Grimm at 1; All. for Nursing Informatics at 2; Anonymous, No. FTC–2020–0045–0005 at 1; CHI at 3; CARIN All. at 2.

[61] The App Ass'n's Connected Health Initiative (''CHI'') at 3; CARIN All. at 2; Allscripts at 2; Bruce Grimm at 1; All. for Nursing Informatics at 2.

[62] *Id.*

updated to permit notification by email or within an application, including through such means as banner, ''pop-up,'' and clickthrough notifications.[63] This commenter also noted that an electronic communication is more likely to be read by an individual who is using an application, and is more cost effective.[64] Another commenter urged the Commission to increase the options for breach notification to include email rather than certified mail as the only option.[65] And another commenter noted that in-app messaging, text messages, and platform messaging are widely used tools and should be allowed to be utilized to more effectively communicate with consumers that consent to them.[66] This commenter added that it is common sense that consumers should be able to consent to receiving communications under the Rule via these modalities as well as via email.[67]

The Commission recognizes that, as commenters noted, the relationship between vendors of personal health records and PHR related entities, on the one hand, and individuals takes place online and increasingly via applications present on devices such as mobile phones and tablets. These applications communicate with individuals by various electronic means, including text, within-application message, and email.

a. Notice via Electronic Mail

Accordingly, the Commission proposes to update this provision to specify that vendors of personal health records or PHR related entities that discover a breach of security must provide written notice at the last known contact information of the individual and such written notice may be sent by electronic mail, if an individual has specified electronic mail as the primary contact method, or by first-class mail.

Authorizing entities to provide notice about a breach of security by electronic mail is consistent with how consumers often receive other communications from these entities and will align with consumers' expectations. As a result, they are less likely to be ignored or viewed as suspicious by individuals.

Consistent with this objective, the Commission proposes defining ''electronic mail'' to mean email in combination with one or more of the following: text message, within-application messaging, or electronic banner. The proposed Rule would facilitate more notice by electronic mail. This new definition of electronic mail would ensure that the notice is both (1) convenient and low-cost (because it is electronic) and (2) unavoidable and consistent with the consumer's relationship with the product. For example, if an app developer is providing notice, it could send written notice by email and in-app message, ensuring that the consumer receives notice in a manner consistent with her experience with the app. Similarly, a website operator could send written notice by email and an electronic banner on the home page of its website. The two prongs of the definition would ensure that a notifying entity cannot select a single form of electronic notice that is unlikely to reach consumers—for example, sending an in-app message alone to app users who do not frequently check in-app notifications.

The goal of structuring the notice in two parts is to increase the likelihood that consumers encounter the notice. Many individuals routinely check email messages, making email a useful vehicle to communicate a breach notification. However, some individuals do not read email often, and these consumers under the proposed definition would also receive notice via text, in-app, or banner notice, thereby increasing the likelihood that they will encounter the breach notification.

The Commission believes any notification delivered via electronic mail should be clear and conspicuous. The proposed Rule defines ''clear and conspicuous.'' Among other things, for a notice to be clear and conspicuous, the notice must be reasonably understandable and designed to call attention to the nature and significance of the information in the notice. The proposed definition of ''clear and conspicuous'' closely tracks the definition of clear and conspicuous in the FTC's Financial Privacy Rule.[68]

Vendors of personal health records and PHR related entities must obtain consumer consent prior to adopting ''electronic mail'' as their notification method for affected individuals. The proposed Rule would require that entities covered by the Rule may provide ''electronic mail'' notifications if the individual user has specified electronic mail as their primary method of communication with the entity. This is consistent with section 13402 of the Recovery Act, which requires that entities can only send notice by electronic mail ''if specified as a preference by the individual.'' The Commission interprets this phrase as allowing entities to send an email or in-app alert notifying their users that they will receive breach notices by electronic mail and offering them the opportunity to opt out of electronic mail notification and instead receive notice by first class mail. The proposed Rule also allows for notification by first-class mail where electronic mail is not available.

b. Model Notice

To assist entities that are required to provide notice to individuals under the Rule, the Commission has developed a model notice that entities may use, in their discretion, to notify individuals. This model notice is attached as Exhibit A to this Notice of Proposed Rulemaking. The Commission invites comment on this model notice, including: (1) whether the model notice should be mandatory and any advantages or disadvantages of mandating use of the model notice; (2) whether and how the model notice could be compatible with the methods of notice contemplated by the proposed definition of electronic mail, such as text, banner and within-application messaging, including whether and how entities could suitably link to model notice language from a text message,[69] electronic banner, or in-application message; (3) and recommended changes to the substance and format of the model notice.

c. Topics on Which the Commission Seeks Public Comment

The Commission also requests comment on the proposed changes, including whether the definition of ''electronic mail'' would achieve the Commission's goal to make notice unavoidable and consistent with the consumer's relationship with the product. The Commission also requests comment as to whether this definition would result in over-notification from ''duplicate'' notices, including the extent to which the proposed two-pronged approach could confuse consumers or reduce the impact that a single notice might have. And the Commission requests comment as to whether this definition is consistent with principles of data minimization, *i.e.,* whether an entity might collect more data (*e.g.,* email or text) than it otherwise would have simply to obtain

[63] Allscripts at 2.

[64] *Id.*

[65] All. for Nursing Informatics at 2.

[66] CHI at 3.

[67] *Id.*

[68] 16 CFR 313.3(b)(1).

[69] The proposed text message and in-app language in the exemplar notice invites consumers to ''Visit [add non-clickable URL] to learn what happened, how it affects you, and what you can do to protect your information.'' The exemplar proposes a non-clickable URL due to the risk that a clickable URL could expose consumers to, for example, malware or scams.

sufficient information to send notice via ''electronic mail'' in the event of a breach.

6. Expanded Content of Notice

The Commission proposes several modifications to the content of the required notice to individuals. Currently, the Rule requires that the notice include a description of what happened; a description of the types of unsecured PHR identifiable health information that were involved in the breach; the steps individuals should take to protect themselves from potential harm; a description of what the vendor of personal health records or PHR related entity involved is doing to investigate the breach, to mitigate any losses, and to protect against any further breaches; and contact procedures for individuals to ask questions or learn additional information.[70] The Commission proposes five changes to the content of the notice.

a. Summary of Changes to Content of the Notice

First, in § 318.6(a), as part of relaying what happened regarding the breach, the Commission proposes that the notice to individuals also include a brief description of the potential harm that may result from the breach, such as medical or other identity theft.

The Commission proposes adding this provision so that individuals better understand the nexus between the information breached and the potential harms that could result from the breach of such information. In some cases, it is unclear to individuals what harms may flow from the breach of their information. The Commission believes it is important to equip individuals with information about the harms they may experience so that they can better understand the potential risks from a breach and determine what steps or measures to take following a breach. The Commission invites comment on this proposed provision, including (1) whether the requirement that the notice describe potential harms would serve the public interest and benefit consumers, (2) whether notifying entities typically possess information following a breach to assess the potential harms to individuals, (3) whether, in the absence of such information, notifying entities may minimize the potential risks by informing individuals that they are unaware of any harms that may result from the breach, (4) how notifying entities, in the absence of known, actionable harm resulting from a breach, should best describe to individuals the potential harms they may experience, and (5) whether additional and more specific data elements may overwhelm or confuse recipients of the notice.

Second, the Commission also proposes to amend the requirements for the notice under § 318.6(a) to include the full name, website, and contact information (such as a public email address or phone number) of any third parties that acquired unsecured PHR identifiable health information as a result of a breach of security, if this information is known to the vendor of personal health records or PHR related entity (such as where the breach resulted from disclosures of users' sensitive health information without authorization). No such requirement exists in the current Rule.

Third, the Commission proposes modifications to § 318.6(b), which requires that the notice include a description of the types of unsecured PHR identifiable health information that were involved in the breach. The Rule currently sets forth examples of different types of PHR identifiable health information, such as full name, date of birth, Social Security number, account number, or disability code, that could have been involved in the breach.

The Commission proposes that this exemplar list be expanded to include additional types of PHR identifiable health information, such as health diagnosis or condition, lab results, medications, other treatment information, the individual's use of a health-related mobile application, and device identifier. The Commission believes it is important for individuals to receive notice of the specific types of PHR identifiable health information involved in a breach, given that the exposure of health information can lead to a wide spectrum of harms.[71] For example, even the disclosure of an individual's use of a health-related mobile application (*e.g.,* a HIV management app, mental health app, or addiction recovery app) could, depending on the type of health app at issue, lead to a number of potential injuries, including embarrassment, social stigma, more expensive health insurance premiums, or even loss of employment.

Fourth, § 318.6(d) of the Rule currently requires that a vendor of personal health records or PHR related entity describe what the entity is doing to investigate the breach, to mitigate any losses, and to protect against any further breaches. The Commission proposes to revise this provision to require that the notice to individuals include additional information providing a brief description of what the entity that experienced the breach is doing to protect affected individuals, such as offering credit monitoring or other services. The Commission believes it is important that notifying entities explain to individuals not only the steps individuals should take to protect themselves from potential harm resulting from the breach, but also what steps the notifying entity is taking to protect affected individuals following the breach. Any protections offered by notifying entities likely will be tailored to the facts and circumstances of each breach and could, in certain circumstances, include credit monitoring or other support such as identity theft protection or identity restoration services.

Fifth, the Commission proposes to modify § 318.6(e). Currently, this section requires that the notice to individuals include contact procedures for individuals to ask questions or learn additional information about the breach, and the contact procedure must include one of the following: a toll-free telephone number; an email address; website; or postal address. The Commission proposes to modify § 318.6(e) to specify that the contact procedures specified by the notifying entity must include two or more of the following: toll-free telephone number; email address; website; within-application; or postal address. The Commission proposes this change to encourage and facilitate communication between the notifying entities and affected individuals. This modification is intended to avoid a scenario where, for example, a notifying entity regularly communicates with most of its customers via email and the notifying entity establishes a postal address as the only contact procedure for individuals to employ following a breach.

7. Proposed Changes To Improve Rule's Readability

The Commission proposes several changes to improve the Rule's readability. Specifically, the Commission proposes to include explanatory parentheticals for internal cross-references, add statutory citations

[70] 16 CFR 318.6.

[71] *See, e.g.,* Fed. Trade Comm'n, FTC Informational Injury Workshop: BE and BCP Staff Perspective (Oct. 2018), *https://www.ftc.gov/system/files/documents/reports/ftc-informational-injury-workshop-be-bcp-staff-perspective/informational_injury_workshop_staff_report_-_oct_2018_0.pdf;* Fed. Trade Comm'n, Former Acting Chairwoman Maureen K. Ohlhausen, *Painting the Privacy Landscape: Informational Injury in FTC Privacy and Data Security Cases* (Sept. 19, 2017), *https://www.ftc.gov/system/files/documents/public_statements/1255113/privacy_speech_mkohlhausen.pdf.*

in relevant places, consolidate notice and timing requirements in single sections, and revise the Enforcement section to state more plainly the penalties for non-compliance.

a. Explanatory Parentheticals and Statutory References

Throughout the Rule, the Commission proposes to include explanatory parentheticals for each internal cross-reference and add statutory citations to help orient the reader.[72] The Commission invites comment on whether the inclusion of explanatory parentheticals and statutory citations improves the Rule's readability and promotes comprehension.

(1) Consolidated Notice and Timing Requirements

To facilitate reader understanding, the Commission proposes consolidating into single sections, respectively, the Rule's breach notification and timing requirements. Currently, the breach notification requirements are located in sections 318.3 and 318.5 and the timing requirements are located in sections 318.4 and 318.5.

To consolidate the Rule's notice requirements, the Commission proposes to move the provision in § 318.5 (Methods of notice) requiring notice to the media (§ 318.5(b)) to § 318.3. The Commission does not intend to make any substantive change to the breach notification requirements; this change is merely intended to consolidate breach notification requirements in a single section to improve readability and promote compliance.

New § 318.3(a)(3) would set forth the requirement to notify prominent media[73] outlets serving a State or jurisdiction, following the discovery of a breach of security, if the unsecured PHR identifiable health information of 500 or more residents of such State or jurisdiction is, or is reasonably believed to have been, acquired during such breach. The Commission requests comment as to whether the consolidation of breach notification requirements improves the Rule's readability and will promote compliance.[74]

Second, to consolidate requirements regarding the timing of notification, the Commission proposes moving timing requirements for notice to the FTC that appear in § 318.5(c) of the current Rule to a new paragraph (b) in § 318.4 of the proposed Rule. Accordingly, proposed § 318.4(b) would now require vendors of personal health records and PHR related entities to notify the Commission as soon as possible and in no case later than ten business days following the date of discovery of the breach if the breach involves the unsecured PHR identifiable health information of 500 or more individuals. If the breach involves the unsecured PHR identifiable health information of fewer than 500 individuals, this section permits vendors of personal health records and PHR related entities, in lieu of immediate notice, to maintain a breach log and submit this log annually to the Federal Trade Commission no later than 60 calendar days following the end of the calendar year.[75]

Importantly, the Commission does not intend to make any substantive change to the timing requirements; this change is merely intended to consolidate timing requirements in a single section to improve readability and promote compliance. The Commission requests comment as to whether the inclusion of explanatory parentheticals and the proposed consolidation of timing requirements improves the Rule's readability and will promote compliance.

(2) Revised Enforcement Provision

Commenters suggested that the Rule be revised to specify the penalties for non-compliance.[76] Currently, the Rule provides that a violation of § 318.3 shall be treated as an unfair or deceptive act or practice in violation of a regulation under section 18 of the FTC Act. The Commission proposes modifying § 318.7 to make plain that a violation of the Rule constitutes a violation of a rule promulgated under section 18 of the FTC Act and is subject to civil penalties.

Under section 18 of the FTC Act, 15 U.S.C. 57a, the Commission is authorized to prescribe ''rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce'' within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). Once the Commission has promulgated a trade regulation rule, anyone who violates the rule with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such act is unfair or deceptive and is prohibited by such rule is liable for civil penalties for each violation. 15 U.S.C. 45(m)(1)(A). Entities that fail to comply with the Rule are subject to penalties of up to $50,120 per violation per day, and this amount is increased annually per the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.[77] The Commission seeks comment on these proposed modifications to § 318.7.

III. Changes Considered but Not Proposed and on Which the Commission Seeks Public Comment

1. Defining Authorization and Affirmative Express Consent

As previously noted above, when a health app or other device discloses sensitive health information without users' authorization, this is a ''breach of

[72] For example, the Commission proposes to add a statutory citation for the Recovery Act section referenced in the definition of ''unsecured,'' to improve the clarity and readability of this defined term. The revised definition would provide that ''unsecured'' means PHR identifiable health information that is not protected through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued under section 13402(h)(2) of the American Reinvestment and Recovery Act of 2009, 42 U.S.C. 17932(h)(2).

[73] *See supra* note 6.

[74] As noted above, the Commission does not intend this consolidation of timing requirements to have any effect on the substantive requirements of the Rule. In making this proposed change, minor revisions are required to § 318.5(b). Section 318.5(b) of the proposed Rule would provide: ''*Notice to media.* As described in § 318.3(a)(3), a vendor of personal health records or PHR related entity shall provide notice to prominent media outlets serving a State or jurisdiction, following the discovery of a breach of security, if the unsecured PHR identifiable health information of 500 or more residents of such State or jurisdiction is, or is reasonably believed to have been, acquired during such breach.''

[75] As noted above, the Commission does not intend this consolidation of timing requirements to have any effect on the substantive requirements of these sections. Section 318.5(c) of the proposed Rule would provide: ''(c) *Notice to FTC.* Vendors of personal health records and PHR related entities shall provide notice to the Federal Trade Commission following the discovery of a breach of security, as described in 318.4(b) (Timing of notice to FTC). If the breach involves the unsecured PHR identifiable health information of fewer than 500 individuals, the vendor of personal health records or PHR related entity may maintain a log of any such breach and submit such a log to the Federal Trade Commission as described in 318.4(b) (Timing of notice to FTC), documenting breaches from the preceding calendar year. All notices pursuant to this paragraph shall be provided according to instructions at the Federal Trade Commission's website.''

[76] *See* Bruce Grimm at 1 (''Areas of 16 CFR [p]art 318.5 method of notice could be enhanced by adding an option for consumers to text or use a quick response (QR) code generator to obtain data breach information that is on file. This coupled with a modification of 16 CFR [p]art 318.7 enforcement where the actual potential penalty for practice in violation of regulation is noted would act as a deterrent to non-compliance.''); All. for Nursing Informatics at 2 (''We offer the following additional considerations to update and improve the HBN Rule, including. . . . Identify sufficiently stringent penalties and monitoring for responsible management of identifiable PHI.'').

[77] 16 CFR 1.98; *see also* Federal Trade Commission, *FTC Publishes Inflation-Adjusted Civil Penalty Amounts for 2022* (Jan. 6, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-publishes-inflation-adjusted-civil-penalty-amounts-2023.*

security'' under the Rule. The Commission considered defining the term ''authorization,'' which appears in § 318.2(a)'s definition of ''breach of security.'' Specifically, § 318.2(a) defines ''breach of security,'' in relevant part, to mean the acquisition of unsecured PHR identifiable information of an individual in a personal health record without the ''authorization'' of the individual. The Commission considered defining ''authorization'' to mean the affirmative express consent of the individual, and then defining ''affirmative express consent,'' consistent with state laws that define consent, such as the California Consumer Privacy Rights Act, Cal. Civ. Code 1798.140(h).[78] Such changes would ensure that notification is required anytime there is acquisition of unsecured PHR identifiable information without the individual's affirmative express consent for that acquisition—such as when an app discloses unsecured PHR identifiable information to another company, having obtained nominal ''consent'' from the individual by using a small, greyed-out, pre-selected checkbox following a page of dense legalese.

In considering whether to define ''authorization'' and ''affirmative express consent,'' the Commission considered public comments that argued the Rule should do more to prevent data collection and use without the individual's consent.[79] Defining these terms to emphasize the importance of meaningful consent would partially address the concerns of some commenters that privacy compliance obligations for entities not covered by HIPAA should be similar to obligations for HIPAA covered entities, both to ensure consistent protections for consumers' health information and to level the competitive playing field among companies holding that information.[80]

The Commission is not, however, proposing to make those changes at this time, because the commentary to the current Rule already provides guidance on the types of disclosures that the Commission considers to be ''unauthorized.'' [81] Further, recent Commission orders, such as GoodRx, also make clear that the use of ''dark patterns,'' which have the effect of manipulating or deceiving consumers, including through use of user interfaces designed with the substantial effect of subverting or impairing user autonomy and decision-making, do not satisfy the standard of ''meaningful choice.'' Finally, Commission settlements establish important guidelines involving authorization. For example, the Commission's recent settlement with GoodRx, alleging violations of the Rule, highlights that disclosures of PHR identifiable information inconsistent with a company's privacy promises constitute an unauthorized disclosure.

The Commission seeks public comment about whether the commentary above and FTC enforcement actions provide sufficient guidance to put companies on notice about their obligations for obtaining consumer authorization for disclosures, or whether defining the term ''authorization'' would better inform companies of their compliance obligations.

To the extent that including such definitions would be appropriate, the Commission seeks comment on the definitions of ''authorization'' and ''affirmative express consent,'' as described above, and the extent to which such definitions are consistent with the language and purpose of the Recovery Act. The Commission also seeks comment on what constitutes acceptable methods of authorization, particularly when unauthorized sharing is occurring. For example, the Commission seeks comment on the following: when a vendor of personal health records or a PHR-related entity is sharing information covered by the Rule, is it acceptable for that entity to obtain the individual's authorization to share that information when an individual clicks ''agree'' or ''accept'' in connection with a pre-checked box disclosing such sharing? Is it sufficient if an individual agrees to terms and conditions disclosing such sharing but that individual is not required to review the terms and conditions? Or is it sufficient if an individual uses a health app that discloses in its privacy policy that such sharing occurs, but the app knows via technical means that the individual never interacts with the privacy policy?

Relatedly, the Commission seeks comment on whether there are certain types of sharing for which authorization by consumers is implied, because such sharing is expected and/or necessary to provide a service to consumers. Finally, the Commission emphasizes that its decision to not define ''authorization'' or ''affirmative express consent'' does not mean that a ''breach of security'' is limited only to cybersecurity events.

2. Modifying Definition of Third Party Service Provider

The Commission also considered modifying the definition of ''third party service provider.'' Under the Rule, a ''third party service provider'' means an entity that ''(1) [p]rovides services to a vendor of personal health records in connection with the offering or maintenance of a personal health record or to a PHR related entity in connection with a product or service offered by that entity; and (2) [a]ccesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information as a result of such services.'' [82] The 2009 Notice of Proposed Rulemaking notes that third party service providers include, for example, entities that provide billing or data storage services to vendors of personal health records or PHR related entities.[83] Although the Commission is not proposing to modify the definition of ''third party service provider'' at this time, the Commission requests comment on certain issues related to the definition. Given technological changes and the proliferation of new business models that have occurred since the Rule's issuance, the Commission invites comments on the scope of entities that should be considered third party service providers under the Rule. While the

[78] The Commission considered defining ''affirmative express consent'' as follows:

Affirmative express consent means any freely given, specific, informed, and unambiguous indication of an individual's wishes demonstrating agreement by the individual, such as by a clear affirmative action, following a clear and conspicuous disclosure to the individual, apart from any ''privacy policy,'' ''terms of service,'' ''terms of use,'' or other similar document, of all information material to the provision of consent. Acceptance of a general or broad terms of use or similar document that contains descriptions of agreement by the individual along with other, unrelated information, does not constitute affirmative express consent. Hovering over, muting, pausing, or closing a given piece of content does not constitute affirmative consent. Likewise, agreement obtained through use of user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice, does not constitute affirmative express consent.

[79] Lisa McKeen at 1 (recommending that the Rule require ''express written acknowledgement and consent of the consumer/person(s) to which this information is personally owned''); Kaiser Permanente at 3 (''[T]he HBN Rule should require all [covered] entities to establish and follow notices of privacy and security practices [and] inform consumers about those notices in a prominent manner[.]''; AMA at 4–5 (identifying problems with consent structure and urging the Commission to presume ''unauthorized access'' ''when an entity fails to disclose to an individual the specific secondary recipients of the individual's data.''); AMIA at 2 (urging the Commission to presume that unauthorized access has occurred where an entity ''fails to adequately disclose to individuals how user data is accessed, processed, used, reused, and disclosed.'').

[80] *E.g.,* OAG–CA at 5.

[81] *See supra* note 49.

[82] 16 CFR 318.2(h).

[83] 74 FR 17917 (Apr. 17, 2009) (''2009 Notice of Proposed Rulemaking'').

2009 Notice of Proposed Rulemaking provides examples of third party service providers, the examples are illustrative. For example, under the Rule, should all advertising and analytics providers and platforms be considered third party service providers anytime they access, maintain, retain, modify, record, store, destroy, or otherwise hold, use, or disclose unsecured PHR identifiable health information when providing services to vendors of personal health records and PHR related entities? Relatedly, the Commission requests comment on what it means to ''provide services'' under the Rule's definition.

3. Changing Timing Requirements

The Commission also weighed whether to propose changing the Rule's timing requirements. Specifically, the Commission considered public comments about whether the timing requirements were appropriate,[84] introduced unnecessary delay,[85] or did not give notifying entities sufficient time to investigate the facts of a breach.[86] One commenter expressed concern that the timing requirements do not provide consumers with important information as soon as would be valuable to them and there is no compelling reason for delaying notice.[87] Other commenters, however, expressed concern that entities experiencing a breach may not have sufficient information to be able to give the Commission a meaningful notification within 10 days.[88] These commenters recommended that the Commission extend the 10-day requirement for the notice to the FTC, consistent with the HIPAA Health Breach Notification Rule, which requires notification to the Secretary of HHS without unreasonable delay and in no case later than 60 calendar days following a breach.[89] Commission staff also consulted staff at HHS about its experience enforcing the HIPAA Health Breach Notification Rule regarding the timing requirements in that rule.

Although the Commission has not proposed any timing changes, the Commission requests comments on several issues related to timing. First, the Commission requests comment about the timing of notifications to consumers. In particular, the Commission requests comment regarding whether earlier notification of consumers would better protect them or whether it would lead to partial notifications, because the entity experiencing the breach may not have had time to identify all the relevant facts. Second, the Commission also requests additional comment on the timing of the notification to the FTC: whether it should extend the timeline to give entities more time to investigate breaches and better ascertain the number of affected individuals or whether an extension would simply facilitate dilatory action and minimize the opportunity for an important dialogue with Commission staff during the fact-gathering stage immediately following a breach.

IV. Paperwork Reduction Act

The Commission is submitting this Notice of Proposed Rulemaking and a Supporting Statement to the Office of Management and Budget (''OMB'') for review under the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3521). The breach notification requirements discussed above constitute ''collections of information'' for purposes of the PRA. *See* 5 CFR 1320.3(c). OMB has approved the Rule's existing information collection requirements through July 31, 2025 (OMB Control No. 3084–0150).

The proposed amendments to 16 CFR part 318 would likely result in more reportable breaches by covered entities to the FTC. In the event of a breach of security, the proposed Rule would require covered firms to investigate and, if certain conditions are met, notify consumers and the Commission.[90]

Accordingly, staff has estimated the burdens associated with these proposed information collection requirements as set forth below.

Based on industry reports, staff estimates that the Commission's proposed information collection requirements will cover approximately 170,000 entities, which, in the event that they experience a breach, may be required to notify consumers and the Commission. While there are approximately 1.8 million apps in the Apple App Store[91] and 2.7 million apps in the Google Play Store,[92] as of November 2022 it appears that roughly 170,000 of the apps offered in either store are categorized as ''Health and Fitness.''[93] This figure for apps is a rough proxy for all covered PHRs, because most websites and connected health devices that would be subject to the Rule act in conjunction with an app.

Staff estimates that these entities will, cumulatively, experience 71 breaches per year for which notification may be required. With the proviso that there is insufficient data at this time about the number and incidence rate of breaches at entities covered by the Commission's Rule (due to underreporting prior to issuance of the Policy Statement), staff determined the number of estimated breaches by calculating the breach incidence rate for HIPAA-covered entities, and then applied this rate to the estimated total number of entities that will be subject to the proposed Rule.[94] Additionally, as the number of breaches per year grew significantly in the recent years,[95] and staff expects this trend to continue, staff relied on the average number of breaches in 2021 and 2022 to estimate the annual breach incidence rate for HIPAA-covered entities.

Specifically, the HHS Office for Civil Rights (''OCR'') reported 715 breaches in

[84] Lisa McKeen at 5; CHIME at 3; WEDI at 2.

[85] Hilal Johnson at 1.

[86] CARIN All. at 2; Allscripts at 2; Kaiser at 10.

[87] Hilal Johnson at 1.

[88] CARIN All. at 2; Allscripts at 2; Kaiser at 10.

[89] 45 CFR 164.408 (referencing timing requirement in 404).

[90] Third party service providers who experience a breach are required to notify the vendor of personal health records or PHR related entity, and then this firm would be required to notify consumers. The Commission expects that the cost of notification to third party service providers would be small, relative to the entities who have to notify consumers. The Commission invites comment on this issue and data that may be used to quantify the costs to third party service providers.

[91] *See* App Store—Apple, *https://www.apple.com/app-store/* and App Store Data (2023)—Business of Apps, *https://www.businessofapps.com/data/app-stores/.*

[92] App Store Data (2023)—Business of Apps, *https://www.businessofapps.com/data/app-stores/.*

[93] *See* App Store Data (2023), *supra* note 91, which reports 78,764 apps in the Apple App Store and 91,743 apps in the Google Play Store were categorized as ''Health and Fitness'' apps as of November 2022. This figure is likely both under- and over-inclusive. For example, this figure does not include apps categorized elsewhere (*i.e.,* outside ''Health and Fitness'') that may be PHRs. However, at the same time, this figure also overestimates the number of covered entities, since many developers make more than one app.

[94] Staff used information publicly available from HHS on HIPAA related breaches because the HIPAA Breach Notification Rule is similarly constructed. However, while there are similarities between HIPAA-covered entities and HBNR-covered entities, it is not necessarily the case that rates of breaches would follow the same pattern. For instance, HIPAA-covered entities are generally subject to stronger data security requirements under HIPAA, but also may be more likely targets for security incidents (*e.g.,* ransomware attacks on hospitals and other medical treatment centers covered by HIPAA have increased dramatically in recent years); thus, this number could be an under- or overestimate of the number of potential breaches per year.

[95] According to the HHS Office for Civil Rights (''OCR''), the number of breaches per year grew from 358 in 2017 to 715 breaches in 2021 and 717 breaches in 2022. *See Breach Portal,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf* (visited on March 2, 2023). The data was downloaded on March 2, 2023, resulting in limited data for 2023. Thus, breaches from 2023 were not considered. However, breach investigations that remain open (under investigation) are included in the count of yearly breaches.

2021 and 717 breaches in 2022,[96] which results in an average of 716 of breaches for 2021 and 2022. Based on the 1.7 million entities that are covered by the HIPAA Breach Notification Rule [97] and the average number of breaches for 2021 and 2022, staff determined an annual breach incidence rate of 0.00042 (716/1.7 million). Accordingly, multiplying the breach incidence rate (0.00042) by the estimated number of entities covered by the proposed information collection requirements (170,000) results in an estimated 71 breaches per year.

Costs

To determine the costs for purposes of this analysis, staff has developed estimates for two categories of potential costs: (1) the estimated annual burden hours and labor cost of determining what information has been breached, identifying the affected customers, preparing the breach notice, and making the required report to the Commission; and (2) the estimated capital and other non-labor costs associated with notifying consumers.

Estimated Annual Burden Hours: 10,650.

Estimated Annual Labor Cost: $720,579.

First, to determine what information has been breached, identify the affected customers, prepare the breach notice, and make the required report to the Commission, staff estimates that covered firms will require per breach, on average, 150 hours of employee labor at a cost of $10,149.[98] This estimate does not include the cost of equipment or other tangible assets of the breached firms because they likely will use the equipment and other assets they have for ordinary business purposes. Based on the estimate that there will be 71 breaches per year the annual hours of burden for affected entities will be 10,650 hours (150 hours x 71 breaches) with an associated labor cost of $720,579 (71 breaches × $10,149).

Estimated Capital and Other Non-Labor Costs: $49,463,046.

The capital and non-labor costs associated with breach notifications depends upon the number of consumers contacted and whether covered firms are likely to retain the services of a forensic expert. For breaches affecting large numbers of consumers, covered firms are likely to retain the services of a forensic expert. FTC staff estimates that, for each breach requiring the services of forensic experts, forensic experts may spend approximately 40 hours to assist in the response to the cybersecurity intrusion, at an estimated cost of $20,000.[99] FTC staff estimates that the services of forensic experts will be required in 60% of the 71 breaches. Based on the estimate that there will be 43 breaches per year requiring forensic experts (60% × 71 breaches), the annual hours burden for affected entities will be 1,720 hours (43 breaches requiring forensic experts × 40 hours) with an associated cost of $860,000 (43 breaches requiring forensic experts × $20,000).

Using the data on HIPAA-covered breach notices available from HHS for the years 2021–2022, FTC staff estimates that the average number of individuals affected per breach is 62,402.[100] Given an estimated 71 breaches per year, FTC staff estimates an average of 4,430,542 consumers per year will receive a breach notification (71 breaches × 62,402 individuals per breach).

Based on a recent study of data breach costs, staff estimates the cost of providing notice to consumers to be $10.97 per breached record.[101] This estimate includes the costs of electronic notice, letters, outbound calls or general notice to data subjects; and engagement of outside experts.[102] Applied to the above-stated estimate of 4,430,542 consumers per year receiving breach notification yields an estimated total annual cost for all forms of notice to consumers of $48,603,046 (4,430,542 consumers × $10.97 per record). The estimated capital and non-labor costs total $49,463,046 ($860,000 + $48,603,046).

Staff notes that these estimates likely overstate the costs imposed by the proposed Rule because: (1) it assumes that all entities covered by the Rule will be required to take all the steps required above; and (2) staff made conservative assumptions in developing many of the underlying estimates. Moreover, many entities covered by the Rule already have similar notification obligations under state data breach laws.[103] In addition, the Commission has taken several steps designed to limit the potential burden on covered entities that are required to provide notice, including by providing exemplar notices that entities may choose to use if they are required to provide notifications and proposing expanded use of electronic notifications.

The Commission invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC'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 collecting information on those who respond.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this document to *https://www.reginfo.gov/public/do/PRAMain.*

[96] *See Breach Portal,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf* (visited on March 2, 2023).

[97] In a recent **Federal Register** Notice (''FRN'') on Proposed Modifications to the HIPAA Privacy Rule to Support, and Remove Barriers to, Coordinated Care and Individual Engagement, OCR proposes increasing the number of covered entities from 700,000 to 774,331. 86 FR 6446, 6497 (Jan. 21, 2021). The FRN also lists the number of covered Business Associates as 1,000,000 (Table 2).

[98] This estimate is the sum of 40 hours of marketing managerial time (at an average wage of $73.77), 40 hours of computer programmer time ($46.46), 20 hours of legal staff ($71.17), 50 hours of computer and information systems managerial time ($78.33). *See* Occupational Employment and Wage Statistics, U.S. Bureau of Labor Statistics (May 2021), *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

[99] This estimate is the sum of 40 hours of forensic expert time at a cost of $500 per hour, which yields a total cost of $20,000 (40 hours × $500/hour).

[100] HHS Breach Data, *supra* note 96 (mean of Individuals Affected during breaches 2017–2022). This analysis uses the last six years of HHS breach data to generate the average, in order to account for the variation in number of individuals affected by breaches observed in the HHS data over time.

[101] *See* IBM Security, Costs of a Data Breach Report 2022 (2022), *https://www.ibm.com/reports/data-breach* (''2022 IBM Security Report''). The research for the 2022 IBM Security Report is conducted independently by the Ponemon Institute, and the results are reported and published by IBM Security. Figure 2 of the 2022 IBM Security Report shows that cost per record of a breach was $164 per record in 2022 and $161 in 2021, resulting in an average cost of $162.50. Figure 5 of the 2022 IBM Security Report shows that 7.1% ($0.31m/$4.35m) of the average cost of a data breach are due to ''Notification'' costs. The fraction of average breach costs due to ''Notification'' were 6.4% the previous year (IBM Security, Costs of a Data Breach Report 2021). Using the average of these numbers, staff estimates that notification costs per record across the two years are 6.75% × $162.50 = $10.97 per record.

[102] *See* 2022 IBM Security Report at 54.

[103] Many state data breach notification statutes require notification when a breach occurs involving certain health or medical information of individuals in that state. *See, e.g.,* Ala. Code 8–38–1 *et seq.;* Alaska Stat. 45.48.010 *et seq.;* Ariz. Rev. Stat. 18–551 *et seq.;* Ark. Code 4–110–101 *et seq.;* Cal. Civ. Code 1798.80 *et seq.;* Cal. Health & Safety Code 1280.15; Colo. Rev. Stat. 6–1–716; Del. Code Ann. tit. 6 12B–101 *et seq.;* DC Code 28–3851 *et seq.;* Fla. Stat. 501.171; 815 Ill. Comp. Stat. 530/5 *et seq.;* Md. Code Com. Law 14–3501 et seq; Mo. Rev. Stat. 407.1500; Nev. Rev. Stat. 603A.010 *et seq.;* N.H. Rev. Stat. 359–C:19–C:21; N.H. Rev. Stat. 332–I:5; N.D. Cent. Code 51–30–01–07; Or. Rev. Stat. 646A.600–646A.628; R.I. Gen. Laws 11–49.3–1–11–49.3–6; SDCL 22–40–19–22–40–26; Tex. Bus. & Com. Code 521.002, 521.053, 521.151–152; 9 V.S.A. 2430, 2435; Va. Code 18.2–186.6; Va. Code 32.1–127.1:05; Va. Code 58.1–341.2; Wash. Rev. Code 19.255.010 *et seq.*

Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (''GSA''). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (''OIRA'') reviews Federal information collections.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers potential impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with a final rule, if any, unless the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

The Commission believes that the proposed amendment would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. Among other things, the proposed amendments clarify certain definitions, revise the disclosures that must accompany notice of a breach under the Rule, and modernize the methods of notice to allow additional use of electronic notice such as email by entities affected by a breach. In addition, the proposed amendments improve the Rule's readability by clarifying cross-references and adding statutory citations. The Commission does not anticipate these changes will add significant additional costs to entities covered by the Rule and the revisions to allow additional use of electronic notice may reduce costs for many entities covered by the Rule. Therefore, based on available information, the Commission certifies that amending the Rule as proposed will not have a significant economic impact on a substantial number of small entities. Although the Commission certifies under the RFA that the proposed amendment would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

1. Description of the Reasons That Action by the Agency Is Being Considered

The Commission conducts a review of each of its rules ten years after issuance. In May 2020, the Commission requested public comment on whether technological and business changes warranted any changes to the Rule. After careful review of the comments received, the Commission concludes that there is a need to update certain Rule provisions. Therefore, it proposes modifications to the Rule as described in sections I and II.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed changes is to clarify existing notice obligations for entities covered by the Rule. The legal basis for the proposed Rule is section 13407 of the Recovery Act.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed amendments, like the current Rule, will apply to vendors of personal health records, PHR related entities, and third party service providers, including developers and purveyors of health apps, connected health devices, and similar technologies. As discussed in the Commission's PRA estimates above, FTC staff estimates that the proposed Rule will apply to approximately 170,000 entities. The Commission estimates that a substantial number of these entities likely qualify as small businesses. According to the Statistics on Small Businesses Census data, approximately 94% of ''Software Publishers'' (the category to which health and fitness apps belong) are small businesses.[104] The Commission invites comment and information on this issue.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Recovery Act and the proposed Rule impose certain reporting requirements within the meaning of the PRA. The proposed Rule will clarify which entities are subject to those reporting requirements. The Commission is seeking clearance from OMB for these requirements. Specifically, the Act and proposed Rule require vendors of personal health records and PHR related entities to provide notice to consumers, the Commission, and in some cases the media in the event of a breach of unsecured PHR identifiable health information. The Act and proposed Rule also require third party service providers to provide notice to vendors of personal health records and PHR related entities in the event of such a breach. If a breach occurs, each entity covered by Act and proposed Rule will expend costs to determine the extent of the breach and the individuals affected. If the entity is a vendor of personal health records or PHR related entity, additional costs will include the costs of preparing a breach notice, notifying the Commission, compiling a list of consumers to whom a breach notice must be sent, and sending a breach notice. Such entities may incur additional costs in locating consumers who cannot be reached, and in certain cases, posting a breach notice on a website, notifying consumers through media advertisements, or sending breach notices through press releases to media outlets.

In-house costs may include technical costs to determine the extent of breaches; investigative costs of conducting interviews and gathering information; administrative costs of compiling address lists; professional/legal costs of drafting the notice; and potentially, costs for postage, web posting, and/or advertising. Costs may also include the purchase of services of a forensic expert. The Commission seeks further comment on the costs and burdens of small entities in complying with the requirements of the proposed Rule.

5. Other Duplicative, Overlapping, or Conflicting Federal Rules

The FTC has not identified any other Federal statutes, rules, or policies currently in effect that would conflict with the proposed Rule. The HIPAA Breach Notification Rule applies to HIPAA-covered entities; the proposed Rule does not. The Commission invites comment and information about any potentially duplicative, overlapping, or conflicting Federal statutes, rules, or policies.

[104] *2017 SUSB Annual Data Tables by Establishment Industry,* U.S. Census Bureau (May 2021), *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* The U.S. Small Business Administration (''SBA'') categorizes Software Publishers as a small business if the annual receipts are less than $41.5 million.

6. Description of Any Significant Alternatives to the Proposed Rule

In drafting the proposed Rule, the Commission has made every effort to avoid unduly burdensome requirements for entities. In particular, the Commission believes that the proposed changes to facilitate electronic notice will assist small entities by significantly reducing the costs of sending breach notices. In addition, the Commission is also proposing exemplar notices that entities covered by the Rule may use, in their discretion, to notify individuals. The Commission anticipates that these exemplar notices will further reduce the potential burden on entities that are required to provide notice under the Rule. The Commission is not aware of alternative methods of compliance that will reduce the impact of the proposed Rule on small entities, while also comporting with the Recovery Act. The statutory requirements are specific as to the timing, method, and content of notice. Accordingly, the Commission seeks comment and information on ways in which the Rule could be modified to reduce any costs or burdens for small entities consistent with the Recovery Act's mandated requirements.

VI. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 8, 2023. Write ''Health Breach Notification Rule, Project No. P205405'' on the comment. Your comment–including your name and your state–will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission is subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To make sure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Health Breach Notification Rule, Project No. P205405'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex H), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. Your comment will be kept confidential only if the FTC's General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the FTC's General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 8, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

List of Subjects in 16 CFR Part 318

Breach, Consumer protection, Health, Privacy, Reporting and recordkeeping requirements, Trade practices.

For the reasons set out in this document, the Commission proposes to amend part 318 of title 16 of the Code of Federal Regulations as follows:

■ 1. Revise part 318 to read as follows:

PART 318—HEALTH BREACH NOTIFICATION RULE

Sec.

Authority: 42 U.S.C. 17937 and 17953.

318.1 Purpose and scope.

(a) This part, which shall be called the ''Health Breach Notification Rule,'' implements section 13407 of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. 17937. It applies to foreign and domestic vendors of personal health records, PHR related entities, and third party service providers, irrespective of any jurisdictional tests in the Federal Trade Commission (FTC) Act, that maintain information of U.S. citizens or residents. It does not apply to HIPAA-covered entities, or to any other entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity.

(b) This part preempts state law as set forth in section 13421 of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. 17951.

318.2 Definitions.

(a) *Breach of security* means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual. Unauthorized acquisition will be presumed to include unauthorized access to unsecured PHR identifiable health information unless the vendor of personal health records, PHR related entity, or third party service provider that experienced the breach has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of such information. A breach of security includes an unauthorized acquisition of unsecured PHR identifiable health information in a personal health record

that occurs as a result of a data breach or an unauthorized disclosure.

(b) *Business associate* means a business associate under the Health Insurance Portability and Accountability Act, Public Law 104–191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(c) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(1) *Reasonably Understandable:* You make your notice reasonably understandable if you:

(i) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(ii) Use short explanatory sentences or bullet lists whenever possible;

(iii) Use definite, concrete, everyday words and active voice whenever possible;

(iv) Avoid multiple negatives;

(v) Avoid legal and highly technical business terminology whenever possible; and

(vi) Avoid explanations that are imprecise and readily subject to different interpretations.

(2) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(i) Use a plain-language heading to call attention to the notice;

(ii) Use a typeface and type size that are easy to read;

(iii) Provide wide margins and ample line spacing;

(iv) Use boldface or italics for key words; and

(v) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information. The notice should stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) *Notices on websites or within-application messaging.* If you provide a notice on a web page or using within-application messaging, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the website or software application (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(i) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(ii) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(d) *Electronic mail* means (1) email in combination with one or more of the following: (2) text message, within-application messaging, or electronic banner.

(e) *Health care services or supplies* includes any online service such as a website, mobile application, or internet-connected device that provides mechanisms to track diseases, health conditions, diagnoses or diagnostic testing, treatment, medications, vital signs, symptoms, bodily functions, fitness, fertility, sexual health, sleep, mental health, genetic information, diet, or that provides other health-related services or tools.

(f) *Health care provider* means a provider of services (as defined in 42 U.S.C. 1395x(u)), a provider of medical or other health services (as defined in 42 U.S.C. 1395x(s)), or any other entity furnishing health care services or supplies.

(g) *HIPAA-covered entity* means a covered entity under the Health Insurance Portability and Accountability Act, Public Law 104–191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(h) *Personal health record* means an electronic record of PHR identifiable health information on an individual that has the technical capacity to draw information from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

(i) *PHR identifiable health information* means information:

(1) That is provided by or on behalf of the individual;

(2) That identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual;

(3) Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

(4) Is created or received by a:

(i) health care provider;

(ii) health plan (as defined in 42 U.S.C. 1320d(5));

(iii) employer; or

(iv) health care clearinghouse (as defined in 42 U.S.C. 1320d(2)).

(j) *PHR related entity* means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that:

(1) Offers products or services through the website, including any online service, of a vendor of personal health records;

(2) Offers products or services through the websites, including any online service, of HIPAA-covered entities that offer individuals personal health records; or

(3) Accesses unsecured PHR identifiable health information in a personal health record or sends unsecured PHR identifiable health information to a personal health record.

(k) *State* means any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(l) *Third party service provider* means an entity that:

(1) Provides services to a vendor of personal health records in connection with the offering or maintenance of a personal health record or to a PHR related entity in connection with a product or service offered by that entity; and

(2) Accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information as a result of such services.

(m) *Unsecured* means PHR identifiable information that is not protected through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued under section 13402(h)(2) of the American Reinvestment and Recovery Act of 2009, 42 U.S.C. 17932(h)(2).

(n) *Vendor of personal health records* means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that offers or maintains a personal health record.

318.3 Breach notification requirement.

(a) *In general.* In accordance with § 318.4 (Timeliness of notification), § 318.5 (Notice to FTC), and § 318.6 (Content of notice), each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each PHR related entity, following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall:

(1) Notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such breach of security;

(2) Notify the Federal Trade Commission; and

(3) Notify prominent media outlets serving a State or jurisdiction, following the discovery of a breach of security, if the unsecured PHR identifiable health information of 500 or more residents of such State or jurisdiction is, or is reasonably believed to have been, acquired during such breach.

(b) *Third party service providers.* A third party service provider shall, following the discovery of a breach of security, provide notice of the breach to an official designated in a written contract by the vendor of personal health records or the PHR related entity to receive such notices or, if such a designation is not made, to a senior official at the vendor of personal health records or PHR related entity to which it provides services, and obtain acknowledgment from such official that such notice was received. Such notification shall include the identification of each customer of the vendor of personal health records or PHR related entity whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, acquired during such breach. For purposes of ensuring implementation of this requirement, vendors of personal health records and PHR related entities shall notify third party service providers of their status as vendors of personal health records or PHR related entities subject to this part. While some third party service providers may access unsecured PHR identifiable health information in the course of providing services, this does not render the third party service provider a PHR related entity.

(c) *Breaches treated as discovered.* A breach of security shall be treated as discovered as of the first day on which such breach is known or reasonably should have been known to the vendor of personal health records, PHR related entity, or third party service provider, respectively. Such vendor, entity, or third party service provider shall be deemed to have knowledge of a breach if such breach is known, or reasonably should have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of such vendor of personal health records, PHR related entity, or third party service provider.

318.4 Timeliness of notification.

(a) *In general.* Except as provided in paragraphs (b) (Timing of notice to FTC) and (d) of this section (Law enforcement exception), all notifications required under § 318.3(a)(1) (required notice to individuals), § 318.3(b) (required notice by third party service providers), and § 318.3(a)(3) (required notice to media) shall be sent without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach of security.

(b) *Timing of notice to FTC.* All notifications required under § 318.5(c) (Notice to FTC) involving the unsecured PHR identifiable health information of 500 or more individuals shall be provided as soon as possible and in no case later than ten business days following the date of discovery of the breach. All logged notifications required under § 318.5(c) (Notice to FTC) involving the unsecured PHR identifiable health information of fewer than 500 individuals may be sent annually to the Federal Trade Commission no later than 60 calendar days following the end of the calendar year.

(c) *Burden of proof.* The vendor of personal health records, PHR related entity, and third party service provider involved shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

(d) *Law enforcement exception.* If a law enforcement official determines that a notification, notice, or posting required under this part would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed. This paragraph shall be implemented in the same manner as provided under 45 CFR 164.528(a)(2), in the case of a disclosure covered under such section.

318.5 Methods of notice.

(a) *Individual notice.* A vendor of personal health records or PHR related entity that discovers a breach of security shall provide notice of such breach to an individual promptly, as described in § 318.4 (Timeliness of notification), and in the following form:

(1) Written notice at the last known address of the individual. Written notice may be sent by electronic mail if the individual has specified electronic mail as the primary method of communication. Any written notice sent by electronic mail must be Clear and Conspicuous. Where notice via electronic mail is not available or the individual has not specified electronic mail as the primary method of communication, a vendor of personal health records or PHR related entity may provide notice by first-class mail at the last known address of the individual. If the individual is deceased, the vendor of personal health records or PHR related entity that discovered the breach must provide such notice to the next of kin of the individual if the individual had provided contact information for his or her next of kin, along with authorization to contact them. The notice may be provided in one or more mailings as information is available. Exemplar notices that vendors of personal health records or PHR related entities may use to notify individuals pursuant to this paragraph are attached as Appendix A.

(2) If, after making reasonable efforts to contact all individuals to whom notice is required under § 318.3(a), through the means provided in paragraph (a)(1) of this section, the vendor of personal health records or PHR related entity finds that contact information for ten or more individuals is insufficient or out-of-date, the vendor of personal health records or PHR related entity shall provide substitute notice, which shall be reasonably calculated to reach the individuals affected by the breach, in the following form:

(i) Through a conspicuous posting for a period of 90 days on the home page of its website; or

(ii) In major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting shall include a toll-free phone number, which shall remain active for at least 90 days, where an individual can learn whether the individual's unsecured PHR identifiable health information may be included in the breach.

(3) In any case deemed by the vendor of personal health records or PHR related entity to require urgency because of possible imminent misuse of unsecured PHR identifiable health information, that entity may provide information to individuals by telephone or other means, as appropriate, in addition to notice provided under paragraph (a)(1) of this section.

(b) *Notice to media.* As described in § 318.3(a)(3), a vendor of personal health records or PHR related entity shall provide notice to prominent media outlets serving a State or jurisdiction, following the discovery of a breach of security, if the unsecured PHR identifiable health information of 500 or more residents of such State or jurisdiction is, or is reasonably believed

to have been, acquired during such breach.

(c) *Notice to FTC.* Vendors of personal health records and PHR related entities shall provide notice to the Federal Trade Commission following the discovery of a breach of security, as described in § 318.4(b) (Timing of notice to FTC). If the breach involves the unsecured PHR identifiable health information of fewer than 500 individuals, the vendor of personal health records or PHR related entity may maintain a log of any such breach and submit such a log annually to the Federal Trade Commission as described in § 318.4(b) (Timing of notice to FTC), documenting breaches from the preceding calendar year. All notices pursuant to this paragraph shall be provided according to instructions at the Federal Trade Commission's website.

318.6 Content of notice.

Regardless of the method by which notice is provided to individuals under § 318.5 (Methods of notice) of this part, notice of a breach of security shall be in plain language and include, to the extent possible, the following:

(a) A brief description of what happened, including: the date of the breach and the date of the discovery of the breach, if known; the potential harm that may result from the breach, such as medical or other identity theft; and the full name, website, and contact information (such as a public email address or phone number) of any third parties that acquired unsecured PHR identifiable health information as a result of a breach of security, if this information is known to the vendor of personal health records or PHR related entity;

(b) A description of the types of unsecured PHR identifiable health information that were involved in the breach (such as but not limited to full name, Social Security number, date of birth, home address, account number, health diagnosis or condition, lab results, medications, other treatment information, the individual's use of a health-related mobile application, or device identifier (in combination with another data element));

(c) Steps individuals should take to protect themselves from potential harm resulting from the breach;

(d) A brief description of what the entity that experienced the breach is doing to investigate the breach, to mitigate harm, to protect against any further breaches, and to protect affected individuals, such as offering credit monitoring or other services; and

(e) Contact procedures for individuals to ask questions or learn additional information, which must include two or more of the following: toll-free telephone number; email address; website; within-application; or postal address.

318.7 Enforcement.

Any violation of this part shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices, and thus subject to civil penalties (as adjusted for inflation pursuant to § 1.98 of this chapter), and the Commission will enforce this Rule in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

318.8 Effective date.

This part shall apply to breaches of security that are discovered on or after September 24, 2009.

318.9 Sunset.

If new legislation is enacted establishing requirements for notification in the case of a breach of security that apply to entities covered by this part, the provisions of this part shall not apply to breaches of security discovered on or after the effective date of regulations implementing such legislation.

By direction of the Commission.

April J. Tabor,

Secretary.

Appendix A: Health Breach Notification Rule Exemplar Notices

The notices below are intended to be examples of notifications that entities may use, in their discretion, to notify individuals of a breach of security pursuant to the Health Breach Notification Rule. The examples below are for illustrative purposes only. You should tailor any notices to the particular facts and circumstances of your breach. While your notice must comply with the Health Breach Notification Rule, you are not required to use the notices below.

Mobile Text Message and In-App Message Exemplars

Text Message Notification Exemplar 1

Due to a security breach on our system, the health information you shared with us through [name of product] is now in the hands of unknown attackers. Visit [add non-clickable URL] to learn what happened, how it affects you, and what you can do to protect your information. We also sent you an email with additional information.

Text Message Notification Exemplar 2

You shared health information with us when you used [product name]. We discovered that we shared your health information with third parties for [describe why the company shared the info] without your permission. Visit [add non-clickable URL] to learn what happened, how it affects you, and what you can do to protect your information. We also sent you an email with more information.

In-App Message Notification Exemplar 1

Due to a security breach on our system, the health information you shared with us through [name of product] is now in the hands of unknown attackers. This could include your [Add specifics—for example, your name, email, address, blood pressure data]. Visit [URL] to learn what happened, how it affects you, and what you can do to protect your information. We also sent you an email with additional information.

In-App Message Notification Exemplar 2

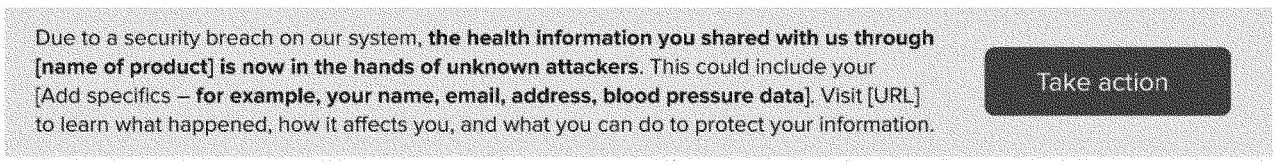
You shared health information with us when you used [product name]. We discovered that we shared your health information with third parties for [if known, describe why the company shared the info] without your permission. This could include your [Add specifics—for example, your name, email, address, blood pressure data]. Visit [URL] to learn what happened, how it affects you, and what you can do to protect your information. We also sent you an email with additional information.

Web Banner Exemplars

Web Banner Notification Exemplar 1

Due to a security breach on our system, the health information you shared with us through [name of product] is now in the hands of unknown attackers. This could include your [Add specifics—for example, your name, email, address, blood pressure data]. Visit [URL] to learn what happened, how it affects you, and what you can do to protect your information.

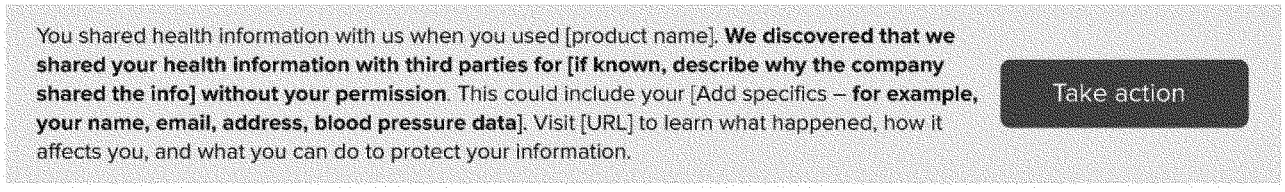
• *Recommend:* Include clear ''Take action'' call to action button, such as the example below:



Web Banner Notification Exemplar 2

You shared health information with us when you used [product name]. We discovered that we shared your health information with third parties for [if known, describe why the company shared the info] without your permission. This could include your [Add specifics—for example, your name, email, address, blood pressure data]. Visit [URL] to learn what happened, how it affects you, and what you can do to protect your information.

- *Recommend:* Include clear ''Take action'' call to action button, such as the example below:



Email Exemplars

Exemplar Email Notice 1

Email Sender: [Company] <company email>
Email Subject Line: [Company] Breach of Your Health Information

Dear [Name],

We are contacting you because an attacker recently gained unauthorized access to our system and stole health information about our customers, including you.

What happened and what it means for you

On [March 1, 2022], we learned that an attacker had accessed a file containing our customers' health information on [February 28, 2022]. The file included your name, the name of your health insurance company, your date of birth, and your group or policy number.

A hacker could use your information now or at a later time to commit identity theft or could sell your information to other criminals. For example, a criminal could get medical care in your name or change your medical records or run up bills in your name.

What you can do to protect yourself

You can take steps now to reduce the risk of identity theft.

1. Review your medical records, statements, and bills for signs that someone is using your information. Under the health privacy law known as HIPAA, you have the right to access your medical records. Get your records and review them for any treatments or doctor visits you don't recognize. If you find any, report them to your healthcare provider in writing. Then go to *www.IdentityTheft.gov/steps* to see what other steps you can take to limit the damage.

Also review the Explanation of Benefits statement your insurer sends you when it pays for medical care.

Some criminals wait before using stolen information so keep monitoring your benefits and bills.

2. Review your credit reports for errors. You can get your free credit reports from the three credit bureaus at *www.annualcreditreport.com* or call 1–877–322–8228. Look for medical billing errors, like medical debt collection notices that you don't recognize. Report any medical billing errors to all three credit bureaus by following the ''What To Do Next'' steps on *www.IdentityTheft.gov*.

3. Sign up for free credit monitoring to detect suspicious activity. Credit monitoring detects and alerts you about activity on your credit reports. Activity you don't recognize could be a sign that someone stole your identity. We're offering free credit monitoring for two years through [name of service]. Learn more and sign up at [URL].

4. Consider freezing your credit report or placing a fraud alert on your credit report. A credit report freeze means potential creditors can't get your credit report without your permission. That makes it less likely that an identity thief can open new accounts in your name. A freeze remains in place until you ask the credit bureau to temporarily lift it or remove it.

A fraud alert will make it harder for someone to open a new credit account in your name. It tells creditors to contact you before they open any new accounts in your name or change your accounts. A fraud alert lasts for one year. After a year, you can renew it.

To freeze your credit report, contact each of the three credit bureaus, Equifax, Experian, and TransUnion.

To place a fraud alert, contact any one of the three credit bureaus, Equifax, Experian, and TransUnion. As soon as one credit bureau confirms your fraud alert, the others are notified to place fraud alerts on your credit report.

Credit bureau contact information

Equifax, *www.equifax.com/personal/credit-report-services,* 1–800–685–1111
Experian, *www.experian.com/help,* 1–888–397–3742
TransUnion, *www.transunion.com/credit-help,* 1–888–909–8872

Learn more about how credit report freezes and fraud alerts can protect you from identity theft or prevent further misuse of your personal information at *www.consumer.ftc.gov/articles/what-know-about-credit-freezes-and-fraud-alerts.*

What we are doing in response.

We hired security experts to secure our system. We are working with law enforcement to find the attacker. And we are investigating whether we made mistakes that made it possible for the attackers to get in.

Learn more about the breach.

Go to [URL] to learn more about what happened and what you can do to protect yourself. If we have any updates, we will post them there.

If you have questions or concerns, call us at [telephone number], email us at [address], or go to [URL].

Sincerely,

First name Last Name
[Role], [Company]

Exemplar Email Notice 2

Email Sender: [Company] <company email>
Email Subject Line: Unauthorized disclosure of your health information by [Company]

Dear [Name],

We are contacting you because you use our company's app [name of app]. When you downloaded our app, we promised to keep your personal health information private. Instead, we disclosed health information about you to another company without your approval.

What happened?

We told Company XYZ (insert website address of Company XYZ) that you use our app, and between [January 10, 2021] and [March 1, 2022], we gave them your name and your email address.

We gave Company XYZ this information so they could use it for advertising and marketing purposes. For example, to target you for ads for cancer drugs.

You may contact Company XYZ at [insert contact info, such as email or phone] for more information.

What we are doing in response

We will stop selling or sharing your health information with other companies.We will stop using your health information for advertising or marketing purposes. We have asked Company XYZ to delete your health information, but it's possible they could continue to use it for advertising and marketing.

What you can do

We made important changes to our app to fix this problem. Download the latest updates to our app then review your privacy settings. You can also contact Company XYZ to request that it delete your data.

Learn more

Learn more about our privacy and security practices at [URL]. If we have any updates, we will post them there.

If you have any questions or concerns, call us at [telephone number] or email us at [address].

Sincerely,
First name Last Name
[Role], [Company]

Exemplar Email Notice 3

Email Sender: [Company] <company email>
Email Subject Line:[Company] Breach of Your Health Information

Dear [Name],

We are contacting you about a breach of your health information collected through the [product], a device sold by our company, [Company].

What happened? On [March 1, 2022], we discovered that our employee had accidentally posted a database online on [February 28, 2022]. That database included your name, your credit or debit card information, and your blood pressure readings. We don't know if anyone else found the database and saw your information. If someone found the database, they could use personal information to steal your identity or make unauthorized charges in your name.

What you can do to protect yourself

You can take steps now to reduce the risk of identity theft.

1. Get your free credit report and review it for signs of identity theft. Order your free credit report at *www.annualcreditreport.com.* Review it for accounts and activity you don't recognize. Recheck your credit reports periodically.

2. Consider freezing your credit report or placing a fraud alert on your credit report. A credit report freeze means potential creditors can't get your credit report without your permission. That makes it less likely that an identity thief can open new accounts in your name. A freeze remains in place until you ask the credit bureau to temporarily lift it or remove it.

A fraud alert will make it harder for someone to open a new credit account in your name. It tells creditors to contact you before they open any new accounts in your name or change your accounts. A fraud alert lasts for one year. After a year, you can renew it.

To freeze your credit report, contact each of the three credit bureaus, Equifax, Experian, and TransUnion.

To place a fraud alert, contact any one of the three credit bureaus, Equifax, Experian, and TransUnion. As soon as one credit bureau confirms your fraud alert, the others are notified to place fraud alerts on your credit report.

Credit bureau contact information

Equifax, *www.equifax.com/personal/credit-report-services,* 1–800–685–1111

Experian, *www.experian.com/help,* 1–888–397–3742

TransUnion, *www.transunion.com/credit-help,* 1–888–909–8872

Learn more about how credit report freezes and fraud alerts can protect you from identity theft or prevent further misuse of your personal information at *www.consumer.ftc.gov/articles/what-know-about-credit-freezes-and-fraud-alerts.*

3. Sign up for free credit monitoring to detect suspicious activity. Credit monitoring detects and alerts you about activity on your credit reports. Activity you don't recognize could be a sign that someone stole your identity. We're offering free credit monitoring for two years through [name of service]. Learn more and sign up at [URL].

What we are doing in response

We are investigating our mistakes. We know the database shouldn't have been online and it should have been encrypted. We are making changes to prevent this from happening again.

We are working with experts to secure our system. We are reviewing our databases to make sure we store health information securely.

Learn more about the breach

Go to [URL] to learn more about what happened and what you can do to protect yourself. If we have any updates, we will post them there.

If you have questions or concerns, call us at [telephone number], email us at [address], or go to [URL].

Sincerely,

First name Last Name
[Role], [Company]

[FR Doc. 2023–12148 Filed 6–8–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AR95

Exemption of ''Diversity and Equal Employment Opportunity (EEO) Program Records'' (203VA08)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: On May 20, 2022, in the publication of the **Federal Register**, the Department of Veterans Affairs (VA) published a notice of a new system of records titled, ''Diversity and Equal Employment Opportunity (EEO) Program Records'' (203VA08). In this notice of proposed rulemaking, VA proposes to exempt this system of records from certain provisions of the Privacy Act in order to prevent interference with harassment and sexual harassment administrative investigations. For the reasons provided below, the Department proposes to amend its Privacy Act regulations by establishing an exemption for records in this system from the specified provisions of the Privacy Act.

DATES: Comments must be received on or before August 8, 2023.

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

FOR FURTHER INFORMATION CONTACT: Vernet W. Fraser, Privacy Officer, Office of Resolution Management, Diversity and Inclusion (ORMDI), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–0289 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Records in this system associated with the Harassment Prevention Program (HPP) are maintained on paper and electronically at VA facilities by supervisors as well as submitted to ORMDI for compliance and oversight purposes. Supervisors are required to submit HPP records via the HPP Complaint Tracking System, Equal Employment Opportunity EcoSystem (EEOE), designated as E-Squared (E2), which is a comprehensive and secure repository for electronic records management to facilitate identification, retrieval, maintenance, routine destruction, report generation, policy compliance, and document routing to create a culture of transparency and accountability.

I. Proposed Exemptions and Affected Records

The ''Diversity and Equal Employment Opportunity (EEO) Program Records'' (203VA08) system captures and houses information concerning any investigation, or response VA takes in response to allegations filed by VA employees and VA contractors of workplace harassment or sexual harassment by another VA employee, VA contractor, or non-department individual such as a Veteran or Visitor to a VA facility. Due to the investigatory nature of information that will be maintained in this system of records, this proposed rule would exempt HPP records in this system of records from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

II. Exemption Rationales

The proposed exemptions through 5 U.S.C. 552a(k)(2) are necessary to avoid interference with or adverse effect on the purpose of this system. In an investigation of alleged harassment, individuals may be contacted during the preliminary information-gathering stage before any individual is identified as the subject of an investigation. Informing the individual of the matters being investigated would hinder or adversely affect any present or subsequent investigations.

The access, amendment, accounting, and notification provided under those subsections would reveal the identity of confidential sources and discourage such sources from cooperating with investigations of alleged harassment for fear of reprisal. In addition, the disclosure of VA's investigative techniques and procedures could compromise the ability to conduct impartial investigations into workplace and sexual harassment allegations. Therefore, individuals involved in harassment and sexual harassment allegations (*e.g.,* alleger, alleged harasser, witnesses) shall not receive a copy of Harassment Prevention Program (HPP) records, such as management notifications; investigators and coordinators findings; analysis used to determine whether harassment occurred; preventive or corrective action taken; related correspondence; exhibits; and written follow up documents.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The operations and administrative processes associated with this proposed rule consists of internal VA management officials and non-bargaining unit individuals (internal VA Human Resource or VA Quality Assurance staff). Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule will not have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act (PRA)

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Disability benefits, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Pensions, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 25, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Michael P. Shores,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 1 as set forth below:

PART 1—GENERAL PROVISIONS

■ 1. The authority citation for part 1 continues to read as: 38 U.S.C. 5101, and as noted in specific sections. 38 U.S.C. 1751–1754 and 7331–7334. Sections 1.500 to 1.527 issued under 72 Stat. 1114, 1236, as amended; 38 U.S.C. 501, 5701.

■ 2. Revise § 1.582(d) to read as follows:

§ 1.582 Exemptions.

* * * * *

(d) *Exemption of Harassment Prevention Program Records.* The Department of Veterans Affairs provides limited access to Harassment Prevention Program (HPP) records as indicated.

(1) The system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f): Diversity and Equal Employment Opportunity (EEO) Program Records (203VA08).

(2) This exemption applies to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(3) For the reasons set forth, the system of records listed above is exempted under 5 U.S.C. 552a(k)(2) from the following provisions of 5 U.S.C. 552a:

(i) 5 U.S.C. 552a(c)(3) requires that an agency make available to the individual to whom the records pertain upon request an accounting of disclosures of records that includes the date, nature and purpose of each disclosure of the record and the name and address of the recipient. Providing an individual with an accounting of disclosures of HPP records could reveal the existence of an investigation of alleged harassment and the allegations being investigated and therefore result in the alternation or destruction of evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) 5 U.S.C. 552a(d), (e)(4), (G), (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an

individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. Providing an individual with notification of, access to, or the right to seek amendment of HPP records could disclose the identity of confidential sources, reveal investigative techniques, and interfere with enforcement proceedings.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. Revealing the sources of information in HPP records could discourage such sources from cooperating with investigations of alleged harassment for fear of reprisal. In addition, the disclosure of VA's investigative techniques and procedures and compromise the ability to conduct impartial investigations into workplace and sexual harassment allegations.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. The relevance or necessity of specific information in HPP records often cannot be detected in the early stages of an investigation and can only be established after the information is evaluated. Further, a thorough and complete investigation could involve information that at first appears incidental but ultimately becomes critical to the investigation.

(Authority: 5 U.S.C. 552a (j) and (k); 38 U.S.C. 501)

[FR Doc. 2023–11606 Filed 6–8–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0049; FRL–10920–01–R5]

Air Plan Approval; Michigan; Michigan Nonattainment New Source Review Certification for the 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, as a revision to the Michigan State Implementation Plan (SIP), Michigan's certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standard (NAAQS).

DATES: Comments must be received on or before July 10, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2023–0049 at *https://www.regulations.gov* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Andrew Lee, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7645, *lee.andrew.c@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this issue of the **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this issue of the **Federal Register**.

Dated: June 2, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–12303 Filed 6–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[EPA–HQ–OLEM–202–0922; FRL–9064–02–OLEM]

Addressing PFAS in the Environment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM); extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the ANPRM, ''Addressing PFAS in the Environment.'' The EPA published the ANPRM in the **Federal Register** on April 13, 2023, and the public comment period was scheduled to end on June 12, 2023. However, the EPA has received several requests for additional time to develop and submit comments on the ANPRM. In response to the request for additional time, the EPA is extending the comment period for an additional 60 days, through August 11, 2023.

DATES: The comment period for the proposed rule published April 13, 2023, at 88 FR 22399, is extended. Comments must be received on or before August 11, 2023.

ADDRESSES: You may send comments, identified by Docket ID No., Docket ID No. EPA–HQ–OLEM–2022–0922, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Linda Strauss, Office of Superfund Remediation and Technology Innovation (5201T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number 202–564–0797; email address: *strauss.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

On April 13, 2023, the EPA published in the **Federal Register** an ANPRM seeking public input and data to assist in the consideration of potential development of future regulations pertaining to per- and polyfluoroalkyl substances (PFAS) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). The agency is seeking input and data regarding potential future CERCLA hazardous substance designation for seven PFAS, besides perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), and their salts and structural isomers, or some subset thereof; precursors (a precursor is a chemical that is transformed into another compound through the course of a degradation process) to PFOA, PFOS, and seven other PFAS; and/or categories of PFAS.

The ANPRM's comment period was scheduled to end on June 12, 2023. Since publication, EPA has received several requests to extend that comment period to allow for additional time to develop comments on the ANPRM. After considering the requests for additional time, EPA has decided to extend the comment period for an additional 60 days, through August 11, 2023.

II. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0922, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Larry Douchand,

Director, Office of Superfund Remediation & Technology Innovation.

[FR Doc. 2023–12410 Filed 6–8–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 4 and 9

[PS Docket No. 15–80, PS Docket No. 13–75 and ET Docket 04–35; Report No. 3195; FR ID 145749]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission's proceeding by Angela Simpson on behalf of Competitive Carriers Association.

DATES: Oppositions to the Petition must be filed on or before June 26, 2023. Replies to oppositions must be filed on or before July 5, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact James Wiley, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–1678, or by email to *James.Wiley@fcc.gov,* or Scott Cinnamon, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2319, or by email to *Scott.Cinnamon@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3195, released May 31, 2023. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *https://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Improving 911 Reliability; New Part 4 of Commission's Rules Concerning Disruptions to Communications, PS Docket Nos. 15–80, 13–75, ET Docket No. 04–35, Second Report and Order, FCC 22–88 (2022), Second Report and Order published at 88 FR 9756, March 17, 2023. This document is being published pursuant to 47 CFR 1.429(e). See also 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–12365 Filed 6–8–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 23–62, 12–375; DA 23–469, FR ID 146569]

Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services; Extension of Comment Periods

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; extension of reply comment periods.

SUMMARY: In this document, the Federal Communications Commission (Commission) extends the reply comment period of a notice of proposed rulemaking, FCC 23–19 (Document 23–19), and the reply comment period of a proposed rule, DA 23–355 (Document 23–355), in this proceeding.

DATES: The reply comments period for the notice of proposed rulemaking (FCC 23–19) published at 88 FR 20804 on April 7, 2023, is extended to July 12, 2023, and the reply comments to the proposed rule (DA 23–355) published at 88 FR 27850 on May 3, 2023, is extended to June 27, 2023.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 23–62, 12–375, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System (ECFS): *https://www.fcc.gov/ecfs/filings.*

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Refer to the **Federal Register** summary of April 7, 2023, or contact Ahuva Battams, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1565 or *ahuva.battams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau's (the Bureau) Order, DA 23–469, granting the Motion for Extension of Time filed on May 23, 2023 by the Wright Petitioners, Benton Institute for Broadband & Society, Public Knowledge, Stephen A. Raher, United Church of Christ Media Justice Ministry, and Worth Rises (collectively, the Public Interest Parties) in the relevant dockets. The Bureau also grants in part and denies in part the Response to the Public Interest Parties' Motion for Extension of Time filed on May 26, 2023, by Securus Technologies, LLC. The Bureau denies Securus's request for an extension for comments on the proposed rule (Document 23–19) and an extension for comments on the document and request for comments published in the **Federal Register**, 88 FR 27885.

Federal Communications Commission.

Lynne Engledow,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 2023–12191 Filed 6–8–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2023–0012]

RIN 2127–AM54

Side Underride Guards; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: NHTSA received two requests to extend the comment period for the Advance Notice of Proposed Rulemaking (ANPRM) regarding side underride guards that NHTSA published on April 21, 2023. The comment period for the ANPRM was scheduled to end on June 20, 2023. NHTSA is extending the comment period for the ANPRM by 30 days.

DATES: The comment period for the ANPRM published on April 21, 2023, at 88 FR 24535, is extended to July 20, 2023.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in

the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by 49 CFR part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact him for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Ms. Lina Valivullah, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590 (telephone) 202–366–8786, (email) *Lina.Valivullah@dot.gov.*

For legal issues: Ms. Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) 202–366–2992, (email) *Callie.Roach@dot.gov.*

SUPPLEMENTARY INFORMATION: On April 21, 2023, NHTSA published an ANPRM responding to section 23011(c) of the November 2021 Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law (BIL), which directs the Secretary to conduct research on side underride guards to better understand their overall effectiveness, and assess the feasibility, benefits, costs, and other impacts of installing side underride guards on trailers and semitrailers. The BIL further directs the Secretary to report the findings of the research in a **Federal Register** notice to seek public comment. The ANPRM also responds to a petition for rulemaking from Ms. Marianne Karth and the Truck Safety Coalition (TSC). The comment period for the ANPRM was scheduled to end on June 20, 2023.

Comment Period Extension Requests

On May 9, 2023, NHTSA received a joint request from Eric Hein, Stephen Bingham, Aaron Kiefer, Jerry Karth, and Lois Durso asking NHTSA to extend the comment period for the ANPRM. The requestors state that 60 days does not provide adequate time to prepare robust and substantive comments on such an important issue, and that they are preparing to conduct additional crash tests of side underride guards that will involve considerable stakeholder involvement, planning, and subsequent analysis. The requestors indicate that extending the comment period by no less than 30 days would provide the opportunity to develop comprehensive, well informed, and data-based input for NHTSA's consideration.

The requestors also noted their concern that there were two additional reports missing from the docket that were referenced in the report titled, ''Side Impact Guards for Combination Truck-Trailers: Cost-Benefit Analysis,'' referred to hereafter as the Cost-Benefit Analysis Report (CBAR). The requestors request immediate posting of this information to the docket and state that a full and proper analysis cannot be conducted until this additional information is released for review.

As to the first report, a sentence on page 1 of CBAR states that ''[t]he effects of speed limit, vehicle age, occupant age, belt use, and road surface conditions on occupant fatalities *are also discussed in this study*'' (emphasis added). The ''study'' refers to a NHTSA analysis conducted for the CBAR. As mentioned in the report, the code NHTSA used for compiling data for the analysis is found in Appendix A of the CBAR. The relevant data from the analysis is available in Section II.A of the CBAR. While the CBAR included NHTSA's analysis of speed limit and restraint use, the data and analysis regarding vehicle age, occupant age, and road surface conditions were removed from the CBAR because they did not add any new information on crash outcomes with respect to underride. Inadvertently, the introductory statement on page 1 and language used elsewhere in the document were not modified accordingly. For completeness, we have now submitted the supplementary information and analysis to the docket, NHTSA–2023–0012. Since these factors do not affect crash outcomes with respect to underride, the additional information does not change the analysis or results of the CBAR.

As to the second report, a sentence on page B–2 of the CBAR refers, in part, to an ''Evaluation of Vehicle Underride and Associated Fatalities in Light Vehicle Crashes into the Side of Truck Trailers Report.'' This refers to a draft NHTSA report the agency prepared and later decided to incorporate into the CBAR. The methodology, data, and analysis for the referenced study may be found in Section II.B of the CBAR. Inadvertently, the reference in Appendix B was not updated accordingly.

NHTSA received a second request to extend the comment period on May 23, 2023, from the American Trucking Associations (ATA). ATA requests a 30-day extension to the comment period to ensure ATA has sufficient time to coordinate with its members to develop comments on the complex issues presented in the notice. ATA notes that the ANPRM requested specific feedback on side underride guard interactions with road features, loading docks, port operations, and other types of operations, and ATA seeks additional time to work with its members to gather examples of these interactions.

Agency Decision

Pursuant to 49 CFR 553.19 and after thorough consideration of these requests, NHTSA has determined that the requestors have provided sufficient justification for an extension, and that the extension is consistent with the public interest. NHTSA agrees that allowing additional time for the public and its stakeholders to provide robust and substantive comments on this complex issue will better inform NHTSA. A 30-day extension appropriately balances NHTSA's interest in providing the public with sufficient time to review the docket and comment on the complex questions raised in the ANPRM with its interest in obtaining specific feedback from stakeholders in a timely manner. The

extension will also provide sufficient time for commenters to review the supplementary information that we have submitted to the docket. Accordingly, NHTSA is granting the aforementioned request and extending the comment period by 30 days.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2023–12296 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 88, No. 111
Friday, June 9, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 10, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Customer Service Survey Project.

OMB Control Number: 0579–0334.

Summary of Collection: The Animal Health Protection Act of 2002 (7 U.S.C. 8301, *et seq.*), authorizes the Secretary of the U.S. Department of Agriculture to prevent, control and eliminate domestic diseases such as tuberculosis and brucellosis and to take actions to prevent and to manage foreign animal diseases such as hog cholera, foot-and-mouth disease. The Veterinary Services (VS) program of the Animal and Plant Health Inspection Service (APHIS), USDA, carries out this work. This information collection solicits the beliefs and opinions of persons who use VS services and products. The survey is required to solicit information from the general public who utilize the business services and animal programs administered by the USDA, APHIS, and VS.

Need and Use of the Information: The data collected from the survey will provide the local Area Office Manager with a general view of the public's perception of customer service and indicate problems which can be addressed locally. The survey will also provide feedback from the public on recommendations to improve upon customer service and provide a vehicle in which questions can be asked about VS to educate the public.

Description of Respondents: Business or other for-profit; Farms; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 15,050.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 800.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–12368 Filed 6–8–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

[Docket Number: USDA–2023–0007]

Notice of Request for Public Comment on 2023 Update to Technical Guidelines for Quantifying Greenhouse Gas (GHG) Emissions and Carbon Sequestration at the Entity-Scale for Agriculture and Forestry

AGENCY: Office of the Chief Economist, U.S. Department of Agriculture.

ACTION: Request for public comment.

SUMMARY: The U.S. Department of Agriculture (USDA) invites public comment on the 2023 update to *Quantifying Greenhouse Gas Fluxes in Agriculture and Forestry: Methods for Entity-Scale Inventory,* Technical Bulletin Number 1939, Office of the Chief Economist, USDA, Washington, DC. This report, prepared in part to meet requirements of section 2709 of the Food, Conservation, and Energy Act of 2008, provides methods to quantify entity-scale greenhouse gas (GHG) emissions from the agriculture and forestry sectors. The updates to this report were drafted by more than 60 authors, including USDA scientists, university researchers, and experts from non-governmental organizations and research institutions. This update adds new methods, improves existing methods where appropriate, and enhances the usability of the report. Comments received under this notice will be used to further refine the update to this report in preparation for publication as a USDA Technical Bulletin. Comments submitted will help USDA to ensure the new and updated quantification methods reflect the state of the science. A series of questions have been provided in the **SUPPLEMENTARY INFORMATION** section below to aid review. When submitting responses, please annotate comments using the report section number designations.

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. Eastern Time July 10, 2023. Comments received after the posted deadline may not be considered, regardless of postmark.

ADDRESSES: Comments submitted in response to this notice may be submitted online Via the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and search for the

Docket number USDA–2023–0007. Follow the online instructions for submitting comments.

All comments received will be posted without change and publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Any questions about this notice should be sent to Wes Hanson, Office of Energy and Environmental Policy via email: *wes.hanson@usda.gov,* or telephone: 202–425–1596.

SUPPLEMENTARY INFORMATION: The Office of Energy and Environmental Policy (OEEP) operates within the Office of the Chief Economist at USDA and functions as the Department-wide focal point on agriculture, rural, and forestry-related climate change activities. OEEP ensures that USDA is a source of objective, analytical assessments of the effects of climate change and proposed response strategies.

The original 2014 report *Quantifying Greenhouse Gas Fluxes in Agriculture and Forestry: Methods for Entity-Scale Inventory* was developed in response to the 2008 Farm Bill, Section 2709, which states that the United States Department of Agriculture (USDA) shall prepare technical guidelines that outline science-based methods to measure the carbon benefits from conservation and land management activities. This report provides scientifically rigorous, Department-wide guidelines for quantifying GHG emissions and carbon sequestration at the farm-, forest-, and entity-scale. The guidelines are intended for use with landowners, nongovernmental organizations, and other groups assessing increases and decreases in GHG emissions and carbon sequestration associated with changes in land management. The report and associated materials, including an erratum published in 2019, are available at: *https://www.usda.gov/oce/climate_change/estimation.htm.* The report also serves as the foundation for COMET-Farm (*http://cometfarm.nrel.colostate.edu*), a field-scale tool developed by USDA and Colorado State University that provides detailed estimates of the on-farm benefits accrued from the implementation of conservation practices.

Updates to the technical guidelines are primarily focused on adding new quantification methods for management practices that have an adequate body of research to support their GHG benefits, revising the methods where appropriate to reflect the state of the science, improving the accuracy of farm-scale GHG flux estimates, reducing ambiguity in how users select a given method, and improving the usability of the report by reorganizing the chapters to make the methods easier to access.

USDA currently requests public comment on the following:

1. *Input on the usability, and the level of detail provided for the methods, practices, and technologies for quantifying of GHG emissions and carbon sequestration at the entity-scale.*

1a. Is the overall flow of the report easy to follow and navigate?

1b. Is there an appropriate level of detail included for background information, and for each method?

1c. Are the methods easily followed [consider the format of the report, language or instructions used, background information provided (or not provided), etc.]?

1d. Are the method descriptions adequate for estimation of emissions at the entity scale? If not, list additional details that are needed to implement the approaches.

1e. Are the activity practice data sufficiently described for compiling this information from farm and ranch operations?

1f. Are the graphics provided useful, or are there changes that would increase clarity or accuracy?

1g. Are the data gaps provided complete or are there additional promising research that you recommend be included?

1h. There are some differences in the entity-scale methods compared to methods used in the national inventory (often due to the level of complexity and availability of entity-level data). Do you have any concerns about these differences?

1i. Is the purpose of the report and its update laid out clearly? If not, please provide any suggestions to make this more accessible to all audiences.

1j. Is the definition of an entity clearly defined?

1k. Are the system boundaries appropriate?

2. *Information to improve the accuracy of the guidelines.*

2a. If you are familiar with the methods provided in the original 2014 report, feel free to provide comment on the updated methods and presentation and whether the updates provide benefits.

2b. Where provided, are the methods descriptions for estimating uncertainty adequate? If not, please elaborate on the missing information or need for further details to quantify uncertainty.

3. *Information to improve the usability of the methods.*

3a. Has the reorganization of the report chapters improved the flow of the chapters, and the usability of the technical guidelines?

3b. Are there additional improvements that could be made to improve the usability of the technical guidelines?

3c. What specific changes or improvements could be made to the COMET-Farm online tool to improve the implementation of the USDA technical guidelines?

Please provide information including citations and/or contact details to the address listed above.

Seth Meyer,

Chief Economist.

[FR Doc. 2023–12312 Filed 6–8–23; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

Advisory Committee on Minority Farmers

AGENCY: Office of Partnerships and Public Engagement (OPPE), USDA.

ACTION: Notice of public hybrid meeting.

SUMMARY: Pursuant to the provisions of the rules and regulations of the United States Department of Agriculture (USDA) and the Federal Advisory Committee Act (FACA), notice is hereby given that a public meeting of the Advisory Committee on Minority Farmers (ACMF) will be convened and accessible in-person and virtually. During this public meeting, the ACMF will consider USDA programs, services, and policies, and how they impact minority farmers. The ACMF seeks to recommend action-oriented strategies that maximize the participation of minority farmers in USDA programs and services.

DATES: The ACMF public meeting is scheduled for June 27–29, 2023, from 9 a.m. to 4 p.m. eastern daylight time (EDT)—each day.

ADDRESSES:

Meeting Pre-Registration: The public is asked to pre-register for the meeting by June 26, 2023, *at https://ems8.intellor.com/?do=register&t=1&p=848053.*

Your pre-registration should include: your name; organization or interest represented; if you plan to give oral comments; and if you require special accommodations. USDA will also accept day-of registrations throughout the meeting. Time will be allotted at the end of each morning and afternoon for comments from those attending in person or virtually. USDA will allow as many individual and organizational comments as time permits.

Oral Comments: Persons or organizations may register for one speaking slot per day. All persons wanting to make oral comments *during* the in-person meeting may check-in each day at the registration table beginning 8:30 a.m. EDT.

Written Comments: Written comments for consideration during the public meeting are requested by or before 3 p.m. EDT, June 26, 2023. The ACMF prefers that all written comments be submitted electronically via the pre-registration link or emailed to: *acmf@usda.gov.* However, written comments may also be submitted (*i.e.,* postmarked) via first class mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section (below) prior to the deadline. Written comments will be accepted up to 7 days after the public meeting.

Availability of Meeting Materials: All written public comments received by June 29, 2023, will be compiled for committee members' review. Please visit: *https://www.usda.gov/partnerships/advisory-committee-on-minority-farmers* to review the agenda, meeting documents (notices), and summary minutes for this meeting.

Location: The ACMF public advisory meeting will be held at the Westin Savannah Harbor, 1 Resort Drive, Savannah, Georgia. Public attendees may register upon arrival beginning 8:30 a.m. each day. Public parking is available onsite for $20.00 per day.

Virtual Participation: Public participants may also view the committee proceedings and presentations via Webex at *https://ems8.intellor.com/login/848046*. Meeting ID and passcode is not required.

The call-in numbers and code for listen-only access are as follows:

U.S. Toll Free: 888–251–2949.

U.S. Toll: 215–861–0694.

Access Code: 8624 273#.

FOR FURTHER INFORMATION CONTACT: Ms. R. Jeanese Cabrera, Designated Federal Officer, Office of Partnerships and Public Engagement, 1400 Independence Avenue SW, Mail Stop 0601, Room 524–A, Washington, DC 20250; Phone: (202) 720–6350; Email: *acmf@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the FCC Telecommunications Relay Service (TRS) at 7–1–1 between 8 a.m. and 8 p.m., eastern daylight time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to section 14008 of the Food Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2008 (7 U.S.C. 2279), to ensure that socially disadvantaged farmers have equal access to USDA programs. The Secretary selected a diverse group of members representing a broad spectrum of persons to recommend solutions to the challenges of minority farmers and ranchers. The members also advise the Secretary on implementation of section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 2501 Program); maximizing the participation of minority farmers and ranchers in USDA programs; and civil rights activities within the Department relative to participants in its programs.

Agenda: Following on from the public meeting held in Tucson, AZ, the ACMF will review and revisit those agency documents, accompanying transcripts, subsequent research, and public comments, on USDA programs, services, and policies. During the upcoming meeting, the ACMF will focus on overarching topics distilled from prior presentations, updated research, and planning discussions, to consider and build final recommendations in the following order: Farm Service Agency (county committees; heirs' property); Rural Development (section 504 Dilapidated Housing; Health Care Infrastructure); Agricultural Marketing Services (community-based support; funding for food and other services; outreach and dissemination of information; specific requests of AMS subject matter experts); United States Department of Agriculture around these topics relevant for all agencies: Outreach and Communications—Build and Expand—*Better and Smarter* to effectively reach and engage more people in hard-to-reach places and situations; eliminate systemic and transactional barriers (particularly those that are unique to 1890s); and manage through impediments to build or rebuild rural infrastructure (*e.g.,* hospitals, healthcare centers, power grids) and encouraging youth engagement in agriculture. And finally, the ACMF will consider recommendations for alternative means by which the USDA may more equitably manage its internal processes, incorporate efficiencies to make those processes more user-friendly for new minority farming or ranching businesses, and deliver enhanced support for those farmers and ranchers with existing operations in minority farming communities.

Dated: June 6, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–12372 Filed 6–8–23; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No.: RHS –23–MFH–0012]

60-Day Notice of Proposed Information Collection: Rural Rental Housing Program; OMB Control No.: 0575–0189

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the United States Department of Agriculture (USDA) Rural Housing Service (RHS) announces its' intention to request a revision of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by August 8, 2023 to be assured of consideration.

ADDRESSES: Comments may be submitted by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: (RHS–23–MFH–0012), and click ''Search.'' To submit public comments, select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if applicable). Input your email address and select an identity category then click ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskla@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the

following information collection that the RHS is submitting to OMB as a revision to an existing collection with Agency adjustment.

Title: 7 CFR 3560, Rural Rental Housing Program.

OMB Control Number: 0575–0189.

Expiration Date of Approval: March 31, 2026.

Type of Request: Revision of a currently approved information collection.

Estimate of Burden: Public reporting for this collection of information is estimated to average .48 hours per response.

Respondents: Businesses or other for-profits, Not-for-profit institutions.

Estimated Number of Respondents: 589,500.

Estimated Number of Responses: 2,236,035.

Estimated Number of Responses per Respondent: 3.8.

Estimated Total Annual Burden on Respondents: 1,072,246 hours.

Abstract: The Rural Rental Housing program provides adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households in rural areas. The programs covered by this part are authorized by title V of the Housing Act of 1949 and are: (1) Section 515 Rural Rental Housing, which includes congregate housing, group homes, and Rural Cooperative Housing. The section 515 direct loan program provides financing to support the development of rental units in rural areas that need housing affordable to very low-, low-, and moderate-income households, and where this housing is unlikely to be provided through other means. (2) Sections 514 and 516 Farm Labor Housing loans and grants. Section 514/516 direct loan and grant programs provide funds to support the development of adequate, affordable housing for farm workers that is unlikely to be provided through other means. (3) Section 521 Rental Assistance. A project-based tenant rent subsidy which may be provided to Rural Rental Housing and Farm Labor Housing facilities.

The Rural Housing Service is revising this information collection to include a new form. The new form titled ''Replacement Reserve Intercreditor Agreement'' (ICA) is a supplement to the existing section 515 Subordination Agreement. The ICA form will be used between the section 515 RRH Borrower/Owner and the section 538 Lender to establish control and guidance on how the Reserve Account will be handled in a joint transaction. The ICA will add an additional 24 responses and 4 hours to the collection's total burden.

Information is completed by developers and potential borrowers seeking approval of rural rental housing loans with the assistance of professionals such as attorneys, architects, and contractors and the operation and management of the MFH properties in an affordable decent, safe and sanitary manner. The forms and information provide the basis for making determinations of eligibility and the need and feasibility of the proposed housing. The information provides the basis for determining that rents charged are appropriate, the housing is well-maintained, and proper priority is given to those tenants eligible for occupancy. Information is collected to assure compliance with the terms and conditions of loan, grant and/or subsidy agreements.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Kimble Brown, Rural Development Innovation Center—Regulations Management Division, at (202) 720–6780. Email: *Kimble.Brown@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–12331 Filed 6–8–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that steel concrete reinforcing bar from Mexico was sold in the United States at less than normal value during the period of review (POR), November 1, 2020, through October 31, 2021.

DATES: Applicable June 9, 2023.

FOR FURTHER INFORMATION CONTACT: David Lindgren or Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1671 or (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2022, Commerce published the *Preliminary Results* for this review in the **Federal Register** and invited interested parties to comment on those results.[1] For a summary of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The product covered by the *Order* is steel concrete reinforcing bar from Mexico. For a complete description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the

[1] *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 75032 (December 7, 2022) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order,* 79 FR 65925 (November 6, 2014) (*Order*).

Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding the *Preliminary Results,* we made certain changes to the margin calculation for Deacero Group, which has also resulted in changes to the rate assigned to the non-selected companies. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Rates for Companies Not Selected for Individual Examination

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated weighted-average dumping margins for both mandatory respondents, Deacero S.A.P.I. de C.V. (Deacero) and Ingeteknos Estructurales, S.A. de C.V. (Ingetek) (collectively, Deacero Group) and Grupo Acerero S.A. de C.V. (Acerero), that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce is assigning the weighted average of the dumping margins calculated for the two respondents as the rate for those companies not selected for individual examination, which are listed below.

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period November 1, 2020, through October 31, 2021:

Producer or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V./Ingeteknos Estructurales, S.A. de C.V	2.30
Grupo Acerero S.A. de C.V	16.28
ArcelorMittal Mexico SA de CV	5.78
Grupo Simec/Aceros Especiales Simec Tlaxcala, S.A. de C.V./Compania Siderurgica del Pacifico S.A. de C.V./Fundiciones de Acero Estructurales, S.A. de C.V./Grupo Chant S.A.P.I. de C.V./Operadora de Perfiles Sigosa, S.A. de C.V./Orge S.A. de C.V./Perfiles Comerciales Sigosa, S.A. de C.V./RRLC S.A.P.I. de C.V./Siderúrgicos Noroeste, S.A. de C.V./Siderurgica del Occidente y Pacifico S.A. de C.V./Simec International, S.A. de C.V./Simec International 6 S.A. de C.V./Simec International 7 S.A. de C.V./Simec International 9 S.A. de C.V	5.78%
Sidertul S.A. de C.V	5.78

Disclosure

Commerce intends to disclose the calculations performed for these final results to interested parties in this review under administrative protective order within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), for Deacero Group and Acerero, we calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR for which the examined companies did not know that the merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these final results.

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register** in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the ''Final Results of Review'' section will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this

proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the rate established in the investigation of this proceeding.[4] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: June 2, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–12332 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Order,* 79 FR at 65926.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain polyester staple fiber (PSF) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable June 9, 2023.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2023, Commerce published the notice of initiation of the third sunset review of the AD order on PSF from China [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

On March 15, 2023, Auriga Polymers Inc, Fiber Industries LLC, and Nan Ya Plastics Corporation, America (collectively, the domestic interested parties) notified Commerce of their intent to participate within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of domestic like product in the United States.

On March 30, 2023, Commerce received a complete substantive response to the *Initiation Notice* with respect to the *Order* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] Commerce did not receive a substantive response from any other interested parties with respect to the *Order* covered by this sunset review. On April 20, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties in this sunset review.[5] Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The scope of the *Order* is certain polyester staple fiber from China. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the accompanying Issues and Decision Memorandum.[6] A list of the issues discussed in the Issues and Decision Memorandum is attached as the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System

[1] *See Notice of Antidumping Duty Order: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 30545 (June 1, 2007) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 12915 (March 1, 2023) (*Initiation Notice*).

[3] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Notice of Intent to Participate,'' dated March 15, 2023.

[4] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response,'' dated March 30, 2023.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on March 1, 2023,'' dated April 20, 2023.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Result of the Expedited Third Sunset Review of the Antidumping Duty Order on Certain Polyester Staple Fiber from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice.

(ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 44.30 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing the results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218 and 351.221(c)(5)(ii).

Dated: June 5, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–12337 Filed 6–8–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Husteel Co., Ltd. (Husteel) and certain producers/exporters subject to this administrative review made sales of circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) at less than normal value during the period of review (POR), November 1, 2020, through October 31, 2021. In addition, Commerce determines that NEXTEEL Co., Ltd. (NEXTEEL) did not make sales of subject merchandise in the United States at prices below NV during the POR.

DATES: Applicable June 9, 2023.

FOR FURTHER INFORMATION CONTACT: Dusten Hom, 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) 482–5075.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 2022, Commerce published the *Preliminary Results* of this administrative review.[1] The review covers 24 producers and/or exporters of subject merchandise. We invited interested parties to comment on the *Preliminary Results.* A summary of the events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise subject to the *Order* is circular welded non-alloy steel pipe and tube. Imports of the product are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are listed in Appendix I to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

For reasons explained in the Issues and Decision Memorandum, we made changes to the macros program to implement our intended methodology for cost recovery in quarterly cost and to no longer overwrite the home market sales control number (CONNUM) characteristics. Additionally, we changed the total cost of manufacturing variable ''TTOTCOM'' to ''TOTCOM'' in the comparison market program for consistency. For a more detailed discussion of the changes, *see* the Issues and Decision Memorandum.[5]

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual

[1] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 74402 (December 5, 2021) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (*Order*).

[4] *Id.*

[5] *Id.*

examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this review, we calculated a weighted-average dumping margin for one of the mandatory respondents, Husteel, that is not zero, *de minimis,* or determined entirely on the basis of facts available. However, for the second mandatory respondent, NEXTEEL, we calculated a weighted-average dumping margin of zero. Accordingly, Commerce assigned Husteel's 12.87 percent weighted-average dumping margin to the companies not individually examined listed in Appendix II.[6]

Final Results of Review

We determine that the following weighted-average dumping margins exists for the period November 1, 2020 through October 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Husteel Co., Ltd	12.87
NEXTEEL Co., Ltd	0.00
Review-Specific Rate for Non-Examined Companies[7]	12.87

[6] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the dumping margins calculated for the examined respondents; (B) a simple average of the dumping margins calculated for the examined respondents; and (C) a weighted-average of the dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[7] *See* Appendix II for a full list of these companies.

Disclosure

We intend to disclose the calculations performed in connection with these final results to parties in this proceeding within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer, and we will instruct CBP to assess antidumping duties on all appropriate entries covered by this. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Husteel or NEXTEEL for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate those entries at the all-others rate of 4.80 percent, if there is no rate for the intermediate company(ies) involved in the transaction.[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 subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be the rates established in these final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 4.80 percent,[9] the all-others rate established in the investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

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 has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections

[9] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: June 2, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: Whether Commerce Incorrectly Overwrote Control Numbers (CONNUM)
  Comment 2: Whether Commerce Inconsistently Used the Field TOTCOM
  Comment 3: Whether Commerce Erred in Applying its Differential Pricing Analysis
  Comment 4: Whether Commerce Should Offset Constructed Export Price (CEP)
VI. Recommendation

Appendix II

List of Companies Not Individually Examined

1. Aju Besteel
2. Bookook Steel
3. Chang Won Bending
4. Dae Ryung
5. Daewoo Shipbuilding & Marine Engineering (Dsme)
6. Daiduck Piping
7. Dong Yang Steel Pipe
8. Dongbu Steel [10]
9. Eew Korea Company
10. Histeel [11]
11. Hyundai Rb
12. Hyundai Steel Company [12]
13. Kiduck Industries
14. Kum Kang Kind
15. Kumsoo Connecting
16. Miju Steel Mfg.[13]
17. Samkang M&T
18. Seah Fs
19. Seah Steel [14]
20. Steel Flower
21. Vesta Co., Ltd.
22. Ycp Co.

[FR Doc. 2023–12327 Filed 6–8–23; 8:45 am]

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[10] This company is also known as Dongbu Steel Co., Ltd.

[11] This company is also known as HiSteel Co., Ltd.

[12] This company is also known as Hyundai Steel Corporation; Hyundai Steel; and Hyundai Steel (Pipe Division).

[13] This company is also known as Miju Steel Manufacturing.

[14] This company is also known as Seah Steel Corporation.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–991]

Chlorinated Isocyanurates From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to the producers and exporters subject to the administrative review of chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China) during the period of review (POR) January 1, 2020, through December 31, 2020.

DATES: Applicable June 9, 2023.

FOR FURTHER INFORMATION CONTACT: Miranda Bourdeau, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2021.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2022, Commerce published the preliminary results of the 2020 administrative review of the countervailing duty order on chlorinated isos from China.[1] This review covers two companies, Heze Huayi Chemical Co., Ltd. (Heze Huayi) and Juancheng Kangtai Chemical Co., Ltd. (Kangtai).[2] We invited interested parties to comment on the *Preliminary Results.*[3] On February 10, 2023, we received a case brief from Bio-Lab, Inc., Clearon Corp., and Occidental Chemical Corporation (collectively, the petitioners).[4] On February 16, 2023, we received a timely combined rebuttal brief from Heze Huayi and Kangtai.[5] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[6]

Scope of the Order

The products covered by the *Order* are chlorinated isos from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Commerce evaluated the comments in the case and rebuttal brief and record evidence and made no changes from the *Preliminary Results.* For a discussion of the comments, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found to be countervailable, Commerce finds that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying all of Commerce's conclusions, including any

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Rescission of Review in Part; 2020,* 87 FR 74600 (December 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] In the *Preliminary Results,* we rescinded the review with respect to an additional company, Hebei Jiheng Chemicals Co., Ltd. However, we incorrectly identified the company as ''Hebei Jiheng Chemical Co., Ltd.,'' instead of Hebei Jiheng *Chemicals* Co., Ltd. *See Preliminary Results,* 87 FR at 74601. We are correcting this error for these final results. The correct company name was published in the *Order. See Chlorinated Isocyanurates from the People's Republic of China: Countervailing Duty Order,* 79 FR 67424 (November 13, 2014) (*Order*).

[3] *See Preliminary Results,* 87 FR at 74602.

[4] *See* Petitioners' Letter, ''Case Brief of Bio-Lab, Inc, Clearon Corp., and Occidental Chemical Corporation,'' dated February 10, 2023.

[5] *See* Heze Huayi and Kangtai's Letter, ''Respondents Rebuttal Brief,'' dated February 16, 2023.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China; 2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

determination that relied upon the use of adverse facts available pursuant to section 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), Commerce calculated the following net countervailable subsidy rates for the period January 1, 2020, through December 31, 2020:

Producer/exporter	Subsidy rate (percent ad valorem)
Heze Huayi Chemical Co., Ltd	3.04
Juancheng Kangtai Chemical Co., Ltd	1.22

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because there are no changes from the *Preliminary Results,* there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of review. 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 Instructions

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of the final results of review, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing the final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: June 2, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–12329 Filed 6–8–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that the sole exporter subject to this review, Thai Premium Pipe Co. Ltd. (TPP), made sales of subject merchandise at less than normal value during the period of review (POR) March 1, 2021, through February 28, 2022.

DATES: Applicable June 9, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, 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) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2023, Commerce published in the **Federal Register** the preliminary results of the 2021–2022 administrative review [1] of the antidumping duty order on circular welded carbon steel pipes and tubes (CWP) from Thailand.[2] We invited interested parties to comment on the *Preliminary Results.* No interested parties submitted comments. Accordingly, Commerce made no changes to the *Preliminary Results.* Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this *Order* are circular welded carbon steel pipes and tubes from Thailand. A full description of the scope of the *Order* is provided in the *Preliminary Results.*[3]

Final Results of Review

We determine that the following weighted-average dumping margin

[1] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 18526 (March 29, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986) (*Order*).

[3] *See Preliminary Results* PDM.

exists for the period March 1, 2021, through February 28, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Thai Premium Pipe Co. Ltd	0.71

Disclosure

Because Commerce received no comments on the *Preliminary Results,* we have not modified our analysis and no decision memorandum accompanies this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We intend to instruct CBP to apply the importer-specific *ad valorem* assessment rates we calculated for the *Preliminary Results* on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[4] If the importer-specific assessment rate is zero or *de minimis,* then Commerce will instruct CBP to liquidate such entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by TPP, for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these 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 upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of CWP from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for TPP will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by a company not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the company-specific rate established for the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 15.67 percent, the all-others rate established in the less-than-fair-value investigation.[5]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 351.221(b)(5).

Dated: June 5, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–12351 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[5] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–818, C–560–806, C–580–837]

Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, and the Republic of Korea: Final Results of Expedited Fourth Sunset Reviews of Countervailing Duty Orders

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) orders on certain cut-to-length carbon-quality steel plate (CTL plate) from India, Indonesia, and the Republic of Korea (Korea) would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable June 9, 2023.

FOR FURTHER INFORMATION CONTACT: Kate Sliney, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–243.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, the U.S. Department of Commerce (Commerce) published the CVD orders on CTL plate from Korea, India and Indonesia.[1] On February 1, 2023, Commerce initiated sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce

[1] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 6700, (February 1, 2023).

received notices of intent to participate in each of these reviews from the following domestic interested parties: Cleveland-Cliffs Inc. (Cleveland-Cliffs), Nucor Corporation (Nucor), and SSAB Enterprises LLC (SSAB) (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.[4]

Commerce received adequate substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive a substantive response from any government or respondent interested party to these proceedings. On March 23, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce determined that the respondent interested parties did not provide an adequate response to the notice of initiation and, therefore, conducted expedited (120-day) sunset reviews of the *Orders.*

[3] *See* Cleveland-Cliff's Letter, ''Five-Year (''Sunset'') Reviews Of Antidumping and Countervailing Duty Orders On Certain Cut-To-Length Carbon-Quality Steel Plate from India, Indonesia, and Korea: Notice Of Intent To Participate In Sunset Reviews,'' dated February 9, 2023 (Cleveland-Cliffs Notice of Intent); *see also* Nucor's Letters, ''Certain Cut-To-Length Carbon-Quality Steel Plate from Indonesia: Notice of Intent to Participate in Sunset Review,'' dated February 15, 2023; ''Certain Cut-To-Length Carbon-Quality Steel Plate from Indonesia: Notice of Intent to Participate in Sunset Review,'' dated February 15, 2023; and ''Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Intent to Participate in Sunset Review,'' dated February 15, 2023 (collectively, Nucor's Notice of Intent); ''SSAB's Letters, ''Notice of Intent to Participate in the Fourth Five-Year Review of the Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from Korea,'' dated February 7, 2023; ''Notice of Intent to Participate in the Fourth Five-Year Review of the Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from India,'' dated February 7, 2023; and ''Notice of Intent to Participate in the Fourth Five-Year Review of the Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from Indonesia,'' dated February 7, 2023 (collectively, SSAB's Notice of Intent).

[4] *See* Cleveland-Cliffs Notice of Intent at 2; *see also* Nucor's Notice of Intent at 2; and SSAB's Notice of Intent at 2.

[5] *See* Domestic Interested Parties' Letters, ''Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Substantive Response to Notice of Initiation of Sunset Review,'' dated March 2, 2023; ''Fourth Five-Year (''Sunset'') Review of the Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from India: Domestic Interested Parties' Substantive Response,'' dated March 3, 2023; and ''Five-Year (''Sunset'') Review Of Countervailing Duty Order On Certain Cut-To-Length Carbon-Quality Steel Plate from Indonesia: Domestic Industry Substantive Response,'' dated February 27, 2023.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2023,'' dated March 23, 2023.

Scope of the Orders

The product covered by the *Orders* is certain cut-to-length carbon-quality steel plate from Korea, India and Indonesia. For a complete description of the scope of the *Orders, see* the Issues and Decision Memoranda.[7]

Analysis of the Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Orders* and the countervailable subsidy rates likely to prevail if the *Orders* were to be revoked, is provided in the Issues and Decision Memoranda. A list of topics discussed in each Issues and Decision Memoranda is included as the appendix to this notice. The Issues and Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, complete versions of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 52(b) of the Act, Commerce determines that revocation of the CVD order on CTL plate from Korea would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Subsidy rate (percent ad valorem)
Dongkuk Steel Mill, Ltd. (DSM)	2.02
All Others	1.99

Pursuant to sections 751(c)(1) and 52(b) of the Act, Commerce determines that revocation of the CVD order on CTL plate from India would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Subsidy rate (percent ad valorem)
Steel Authority of India (SAIL)	12.82
All Others	12.82

Pursuant to sections 751(c)(1) and 52(b) of the Act, Commerce determines that revocation of the CVD order on CTL plate from Indonesia would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Subsidy rate (percent ad valorem)
P.T. Krakatau Steel	47.71
All Others[8]	15.90

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2).

[7] *See* Memoranda, ''Issues and Decision Memorandum for the Final Results of the Fourth Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice; ''Issues and Decision Memorandum for the Final Results of the Fourth Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from India,'' dated concurrently with, and hereby adopted by, this notice; and ''Issues and Decision Memorandum for the Final Results of the Fourth Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (collectively, Issues and Decision Memoranda).

[8] P.T. Gunawan Steel and P.T. Jaya Pari were excluded from the CVD order because they received a *de minimis* net subsidy rate of 0.00 percent *ad valorem. See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia,* 64 FR 73155 (December 29, 1999).

Dated: May 25, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memoranda

[FR Doc. 2023–12320 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–867]

Welded Stainless Pressure Pipe From India: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that welded stainless pressure pipe (WSPP) from India was sold in the United States at less than normal value during the period of review (POR), November 1, 2020, through October 31, 2021.

DATES: Applicable June 9, 2023.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2022, Commerce published the *Preliminary Results* for this review in the **Federal Register** and invited interested parties to comment on those results.[1] On January 19, 2023, Commerce received case briefs from Ratnamani Metals & Tubes Ltd. (Ratnamani) and Apex Tubes Private Ltd. (Apex).[2] On January 31, 2023, Felker Brothers Corporation (the petitioner) submitted a rebuttal brief.[3] For a summary of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [5]

The products covered by the scope of the *Order* are WSPP from India. For a complete description of the scope, *see* the Issues and Decision Memorandum.[6]

Rates for Companies Not Selected for Individual Examination

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we have calculated a weighted-average dumping margin that is not zero, *de minimis,* or determined entirely on the basis of facts available for Ratnamani. Accordingly, Commerce is assigning Ratnamani's rate to the companies not selected for individual examination, which are listed below.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues discussed in the Issues and Decision Memorandum is attached at Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding the *Preliminary Results,* we made certain changes to the margin calculation for Ratnamani, as well as the rate applied to the non-selected companies. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period November 1, 2020, through October 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Ratnamani Metals & Tubes Ltd ..	7.57
Non-Selected Companies [7]	7.57

Disclosure

Commerce intends to disclose the calculations performed for these final results to interested parties in this review under administrative protective order (APO) within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), for Ratnamani, we calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer specific

[1] *See Welded Stainless Pressure Pipe from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 74602 (December 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Ratnamani's Letter, ''Ratnamani's Case Brief,'' dated January 19, 2023; *see also* Apex's Letter, ''Case Brief,'' dated January 19, 2023.

[3] *See* Petitioner's Letter, ''Petitioner's Rebuttal Brief,'' dated January 31, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Welded Stainless Pressure Pipe from India; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Welded Stainless Pressure Pipe from India: Antidumping and Countervailing Duty Orders,* 81 FR 81062 (November 17, 2016) (*Order*).

[6] *See* Issues and Decision Memorandum.

[7] *See* Appendix II for a full list of the companies not individually examined in this review.

assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce will ''automatically assess'' entries of subject merchandise during the POR for which the examined companies did not know that the merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these final results.

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 the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the ''Final Results of Review'' will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.35 percent, the rate established in the investigation of this proceeding.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing 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 and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the term of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: June 2, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

List of Companies Not Selected for Individual Examination

1. Apex Tubes Private Ltd.
2. Apurvi Industries
3. Arihant Tubes
4. Divine Tubes Pvt. Ltd.
5. Heavy Metal & Tubes
6. J.S.S. Steelitalia Ltd.
7. Linkwell Seamless Tubes Private Limited
8. Maxim Tubes Company Pvt. Ltd.
9. MBM Tubes Pvt. Ltd.
10. Mukat Tanks & Vessel Ltd.
11. Neotiss Ltd.
12. Prakash Steelage Ltd.
13. Quality Stainless Pvt. Ltd.
14. Raajratna Metal Industries Ltd.
15. Ratnadeep Metal & Tubes Ltd.
16. Remi Edelstahl Tubulars
17. Shubhlaxmi Metals & Tubes Private Limited
18. SLS Tubes Pvt. Ltd.
19. Steamline Industries Ltd.

[FR Doc. 2023–12330 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Order,* 81 FR at 81063.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD058]

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 Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from September 1, 2023, through April 19, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://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

Shell plans to conduct a 3D towed streamer survey over Mississippi Canyon Lease Block 657 and the surrounding 44 lease blocks, with approximate water depths ranging from 1,600 to 3,000 meters (m). See Section F of the LOA application for a map of the area. Shell anticipates using one source vessel, towing an airgun array source consisting of 32 elements, with a total volume of 5,110 cubic inches (in^3). Please see Shell's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Shell 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 number 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.

Summary descriptions of modeled survey geometries (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). In this case, 3D NAZ was selected as the best available proxy survey type. The planned 3D streamer survey will involve a single source vessel sailing along closely spaced survey lines approximately 30 km in length and 100 m apart. However, the ''racetrack'' pattern employed by the source vessel to cover the planned survey lines while towing the streamer means that the distance between consecutive survey lines sailed is expected to be large. This survey pattern is most similar to the 3D NAZ pattern.

All available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in the airgun array (32 elements, 5,110 in^3), as compared to the source modeled for the rule.

The survey will take place over approximately 80 days, including 60 days of sound source operation. The entire survey would occur within Zone 7. 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.

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. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, the 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 one marine mammal species produces results inconsistent with what is known regarding its occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for the species as described below.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). 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. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

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 (as discussed above) 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; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [3]). 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 encounters 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 1–30 m in 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 occur 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. 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 killer whales will generally 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 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. See also 86 FR 29090, May 28, 2021 and 85 FR 55645, September 9, 2020). For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. 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 1 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,

[3] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://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 [3]	0	n/a	51	n/a
Sperm whale	483	204.3	2,207	9.3
Kogia spp	[4] 294	91.0	4,373	2.3
Beaked whales	4,736	478.3	3,768	12.7
Rough-toothed dolphin	657	188.6	4,853	3.9
Bottlenose dolphin	21	6.1	176,108	0.0
Clymene dolphin	2,056	590.1	11,895	5.0
Atlantic spotted dolphin	0	n/a	74,785	n/a
Pantropical spotted dolphin	20,411	5,858.0	102,361	5.7
Spinner dolphin	479	137.5	25,114	0.5
Striped dolphin	1,068	306.5	5,229	5.9
Fraser's dolphin	368	105.6	1,665	6.3
Risso's dolphin	337	99.5	3,764	2.6
Melon-headed whale	1,451	428.1	7,003	6.1
Pygmy killer whale	544	160.4	2,126	7.5
False killer whale	615	181.6	3,204	5.7
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	115	33.9	1,981	1.7

[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 killer whale, the larger estimated SAR abundance estimate is used.

[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] Includes 11 takes by Level A harassment and 283 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 Shell'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 (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking 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 Shell authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: June 5, 2023.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–12342 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Gulf of Mexico Electronic Logbook

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

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 8, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0543 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Rebecca

Smith, National Marine Fisheries Service, Southeast Fisheries Science Center, Fisheries Statistics Division, 4700 Avenue U, Galveston, TX 77551, 409–210–1817, or *rebecca.smith@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a current information collection.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. NMFS manages the commercial shrimp fishery in Federal waters of the Gulf of Mexico (Gulf) under the Fishery Management Plan for the Shrimp Fishery of the Gulf. The electronic logbook (ELB) regulations for the Gulf shrimp fishery may be found at 50 CFR 622.51(a)(2). The ELB is a device that records the position of the vessel every ten minutes. The tracks of the vessels can be examined to determine when and where shrimp trawling is occurring.

As of May 1, 2023, there are approximately 1,319 valid or renewable Federal permits to commercially harvest shrimp from the exclusive economic zone (EEZ) in the Gulf. Monitoring shrimp vessels, operating together with many other fishing vessels of differing sizes, gears types used, and fishing capabilities, is made even more challenging by seasonal variability in shrimp abundance and price, and the broad geographic distribution of the fleet. ELBs provide a precise means of estimating the amount of shrimp fishing effort. Using ELBs to estimate fishing effort serves an important role to help estimate bycatch in the Gulf shrimp fleet.

II. Method of Collection

The ELB unit automatically collects fishing effort data on a Secure Digital (SD) card. Twice per year the NMFS Galveston Laboratory mails replacement SD cards to the permit holders. The card in the ELB unit must be removed by the shrimper and mailed to the NMFS Galveston Laboratory, and replaced in the unit by the newly one received.

III. Data

OMB Control Number: 0648–0543.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,319.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,638.

Estimated Total Annual Cost to Public: $0 in recordkeeping or reporting costs.

Respondent's Obligation: Required.

Legal Authority: Fishing Regulation 50 CFR 622.51(a)(2).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this 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. 2023–12373 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD075]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before June 26, 2023.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFRF Ventless Trap EFP.''

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

SUPPLEMENTARY INFORMATION: The Commercial Fisheries Research Foundation submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would continue to provide distribution, abundance, and biological data on juvenile lobsters and Jonah crabs from times and areas with low coverage from traditional surveys. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

Citation	Regulation	Need for exemption
50 CFR 697.21(c)	Gear specification requirements	To allow for closed escape vents and smaller trap mesh and entrance heads.
§ 697.19	Trap limit requirements	To allow for 3 additional traps per fishing vessel, for a total of 66 additional traps.
§ 697.19(j)	Trap tag requirements	To allow for the use of untagged traps (though each modified trap will have the participating fisherman's identification attached).
§ 697.20(a), (d), (g), and (h)(1) and (2).	Possession restrictions	To allow for onboard biological sampling of undersized, v-notched, and egg-bearing lobsters and undersized and egg-bearing Jonah crabs and retention of up to 300 legal and sublegal Jonah crabs per month for a molting study.

This project would continue an ongoing effort to collect data on juvenile lobster and Jonah crab abundance and distribution in areas and times of the year with low or no coverage by traditional surveys. To date, this project has collected data from over 200,000 lobsters and 120,000 Jonah crabs. The current EFP will expire on June 30, 2023. The EFP under consideration would authorize research trips from July 1, 2023, through June 30, 2024.

The project would include 5 inshore vessels (Lobster Management Area 2) and 17 offshore vessels (Lobster Management Areas 1 and 3) and may include an additional vessel to increase the offshore coverage (Lobster Management Areas 4 and 5). Each vessel would fish with 3 modified, ventless traps designed to capture juvenile lobsters, totaling up to 69 modified traps. The modified traps would adhere to the standard coast-wide survey gear for lobster and Jonah crab set by the Atlantic States Marine Fisheries Commission and would be fished with standard Atlantic Large Whale Take Reduction Plan-compliant trawls. The traps would remain in the water for up to 12 months and be hauled every 7 days by the inshore vessels and every 10 days by the offshore vessels.

This study would take place during the regular fishing activity of the participating vessels, but catch from modified traps would remain separate from that of standard gear. Operators would collect data on size, sex, presence of eggs, and shell hardness for lobsters and Jonah crabs and v-notch and shell disease for lobsters. In addition to onboard sampling, 3 inshore and 3 offshore vessels would retain up to 50 Jonah crabs per month each, for a total of up to 300 crabs per month, for a molting study. Operators would return all other specimens from modified gear to the ocean once sampling is complete.

The study is designed to inform management by addressing questions about changing reproduction and recruitment dynamics of lobster and to develop a foundation of knowledge for the data-deficient Jonah crab fishery. The Commercial Fisheries Research Foundation would share data with the Atlantic Coastal Cooperative Statistics Program, the Northeast Fisheries Science Center, the Atlantic States Marine Fisheries Commission, and the Rhode Island Department of Environmental Management every six months.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

All comments received are a part of the public record and will generally be posted for public viewing at *https://www.noaa.gov/organization/information-technology/foia-reading-room* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

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

Dated: June 5, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–12290 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC962]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Falls Bridge Replacement Project in Blue Hill, Maine

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

SUMMARY: NMFS received a request from the Maine Department of Transportation (MEDOT) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to Falls Bridge Replacement Project in Blue Hill, Maine. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than June 26, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.harlacher@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On December 8, 2021, NMFS issued an IHA to MEDOT to take marine mammals incidental to Falls Bridge Replacement Project in Blue Hill, Maine (86 FR 71034, December 14, 2021), effective from July 1, 2022 through June 30, 2023. On March 3, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

The MEDOT construction project consists of creating a temporary bridge for vehicle traffic during work on the Falls Bridge; this will require the installation (and then removal when the project is complete) of 15 24-inch steel pipe piles. Work on the main bridge deck was not expected to incidentally harass marine mammals, however in order to facilitate that work, one or two large trestles (up to 100 foot by 125 foot (30.5 by 38 meters) long) would be placed in the water next to the bridge. These trestles would require the installation of up to 60 24-inch diameter steel pipe piles. In addition to the temporary work trestles and temporary bridge, MEDOT anticipated the need for four temporary support towers during the demolition and removal of the existing bridge superstructure. The temporary support towers will be placed at the corners of the tied arch, approximately 20 feet (6.1 meters) in from the existing bridge abutments. Up to 5 24-inch steel pipe piles will be needed to support each of the temporary support towers, for a total of 20 24-inch steel pipe piles.

In total the initial project expected the installation and removal of 95 24-inch diameter steel pipe piles. It was expected that all 95 piles would be installed in rock sockets (holes) in the bedrock created by down-the-hole (DTH) equipment. Impact pile driving would be used to seat the piles and potentially drive them through softer substrates. For piles driven in the center of the channel under the bridge (mostly for the trestles), additional lateral stability may require the use of rebar tension anchors drilled deeper into the substrate in the center of the piles and connected to the piles once installed. This would be accomplished by using an 8-inch diameter DTH bit. It was expected that no more than 65 of the 95 piles would require these tension anchors. Once the work on the bridge was complete, all 95 piles would be removed using a vibratory hammer. The DTH and impact hammer installation and vibratory extraction of the piles was expected to take up to 80 days of in-water work.

Specifically, under the initial IHA, all project related pile installation activities were completed over a 2-day period in October and November 2022. MEDOT completed all pile driving with the use of an impact hammer, and the DTH method was not used by MEDOT. In addition, the number of driven piles was reduced from the previously estimated 95 piles down to a total of 12 piles. Pile size was also reduced from 24-inch steel pipe piles to 14-inch steel pipe piles.

This renewal request is to cover the subset of the activities covered in the initial IHA that will not be completed during the effective IHA period. MEDOT plans to remove all 12 14-inch steel pipe piles through vibratory means between October and December of 2023. MEDOT estimates it will take 30 minutes to remove a single pile, with up to six piles removed per day.

The likely or possible impacts of the MEDOT's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors and is unchanged from the impacts described in the initial IHA. Potential non-acoustic stressors could result from the physical presence of the equipment, vessels, and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal. The effects of underwater and in-air noise and visual disturbance from the MEDOT's proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (86 FR 61164, November 5, 2021; 86 FR 71034, December 14, 2021). As previously mentioned, this request is for a subset of the activities authorized in the initial IHA that would not be completed prior to its expiration. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. Minor changes to the initial scope include the reduction of pile size and number of piles required. The initial scope planned for the installation and removal of 95 24-inch steel pipe piles. In total, 12 14-inch piles were installed. MEDOT is requesting a renewal IHA for vibratory removal of 12 14-inch steel pipe piles. The proposed renewal IHA would be effective from July 1, 2023 through June 30, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (86 FR 61164, November 5, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA (86 FR 61164, November 5, 2021).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the notice of the proposed IHA for the initial authorization (86 FR 61164, November 5, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (86 FR 61164, November 5, 2021; 86 FR 71034, December 14, 2021). Specifically, days

of operation, area or space within which harassment is likely to occur, and marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, daily take estimates and types of take remain unchanged from the initial IHA. The number of takes proposed for authorization in this renewal are a subset of the initial authorized takes that better represent the amount of activity left to complete. These takes, which reflect the lower number of remaining days of work, are indicated below in Table 1.

TABLE 1—PROPOSED AMOUNT OF TAKING, BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Proposed take	Percent of stock
Harbor porpoise	Gulf Maine/Bay of Fundy	20	<0.1
Atlantic white-sided dolphin	Western North Atlantic	20	<0.1
Common dolphin	Western North Atlantic	80	0.1
Harbor seal	Western North Atlantic	198	0.3
Gray seal	Western North Atlantic	8	<0.1
Harp seal	Western North Atlantic	1	<0.1
Hooded seal	Western North Atlantic	1	UNK

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are almost identical to those included in the FR notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate (86 FR 71034, December 14, 2021). In the renewal IHA, the pile size and the amount of piles removed per day has been updated to reflect what occurred under the initial IHA. MEDOT's original shutdown zones were based on removal of three 24-inch steel piles per day. However, due to the reduced pile size used in the initial IHA, MEDOT plans to remove six 14-in steel piles per day causing larger Level A harassment isopleths. The Level A harassment isopleth for high frequency cetaceans increases from 25 meters to 62 meters, therefore the shutdown zone for cetaceans increases from 50 meters to 100 meters and is reflected in Table 2 below and in the proposed IHA renewal.

The following mitigation, monitoring, and reporting measures are proposed for this renewal:

- The MEDOT must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- Conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant MEDOT staff prior to the start of all pile driving activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood.
- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.
- MEDOT will establish and implement the shutdown zones. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group. To simplify implementation of shutdown zones, MEDOT has proposed to implement shutdown zones for two groups of marine mammals, cetaceans and pinnipeds, with the shutdown zone in each group being the largest of the shutdown zones for any of the hearing groups contained within that group. MEDOT has also voluntarily proposed to increase shutdown sizes above those we would typically require in order to be precautionary and protective to marine mammals. Due to the modification of pile size and duration as discussed above, the updated shutdown zones for the IHA renewal are in Table 2.

TABLE 2—MINIMUM REQUIRED SHUTDOWN ZONES

Activity	Shutdown distance (m)	
	Cetaceans	Pinnipeds
Vibratory Removal	100	50

- Monitoring must take place from 30 minutes prior to initiation of construction activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of construction activity.
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead Protected Species Observer (PSO) to determine the shutdown zones clear of marine mammals. Construction may commence when the determination is made.
- If construction is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.
- MEDOT must use soft start techniques. Soft start requires contractors and equipment to slowly approach the work site creating a visual

disturbance allowing animals in close proximity to construction activities a chance to leave the area prior to stone resetting or new stone placement. Contractors shall avoid walking or driving equipment through the seal haulout. A soft start must be implemented at the start of each day's construction activity and at any time following cessation of activity for a period of 30 minutes or longer.

- The MEDOT must employ at least one PSO to monitor the shutdown and Level B harassment zones.
- Monitoring will be conducted 30 minutes before, during, and 30 minutes after construction activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from construction activity.
- The MEDOT must submit a draft report detailing all monitoring within 90 calendar days of the completion of marine mammal monitoring or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first.
- The MEDOT must prepare and submit final report within 30 days following resolution of comments on the draft report from NMFS.
- The MEDOT must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).
- The MEDOT must report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (86 FR 61164, November 5, 2021) and solicited public comments on both our proposal to issue the initial IHA for Falls Bridge Replacement Project and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no comments on either the proposal to issue the initial IHA for the MEDOT's construction activities or on the potential for a renewal IHA.

Preliminary Determinations

The proposed renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the MEDOT's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) MEDOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and, (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to MEDOT for conducting Falls Bridge Replacement Project in Blue Hill, Maine, from July 1, 2023 through June 30, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: June 5, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–12343 Filed 6–8–23; 8:45 am]

BILLING CODE 3510–22–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–003]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by August 8, 2023.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Application for Political Risk Insurance.

Type of Review: Revision of a previously approved collection.

Agency Form Number: DFC–003.

OMB Form Number: 3015–0003.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 100.

Estimated Time per Respondent: 1 hour and 40 minutes.

Total Estimated Number of Annual Burden Hours: 166 hours and 40 minutes.

Abstract: The Application for Political Risk Insurance will be the principal document used by DFC to determine the investors' and the project's eligibility for political risk insurance coverage.

Dated: June 5, 2023.

Deborah Papadopoulos,

Records Management Specialist, Office of Administration.

[FR Doc. 2023–12346 Filed 6–8–23; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Draft Environmental Impact Statement for the O'Brien Road Access Modernization, Fort Meade, Maryland

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability; notice of public meeting; request for comments.

SUMMARY: The DoD announces the availability of the Draft Environmental Impact Statement (EIS) as part of the environmental planning process for the O'Brien Road Access Modernization (ORAM) at Fort George G. Meade, Maryland (hereafter referred to as Fort Meade). The DoD proposes to implement the ORAM project, which would entail renovation and upgrade of inspection facilities, upgrade of access facilities, and corresponding roadway improvements for Mapes, O'Brien, Perimeter, and Venona Roads on Fort Meade. The purpose of the proposed project is to construct facilities and infrastructure to allow for increased capacity for required security processing of traffic and deliveries entering Fort Meade and the National Security Agency (NSA) campus. The need for the proposed project is to address inefficiencies with current infrastructure and capacity issues.

DATES: There will be a virtual public meeting from 5 p.m. to 7 p.m. on July 19, 2023 via the Webex platform. Access and registration details are available on the project website at *https://www.nab.usace.army.mil/oram.* The public meeting may end earlier or later than the stated time depending on the number of persons wishing to speak. All materials that are submitted in response to the Draft EIS should be received by July 24, 2023 to provide sufficient time to be considered in preparation of the Final EIS.

ADDRESSES: Copies of the Draft EIS are available for your review on the project website at *https://www.nab.usace.army.mil/oram* and at the Medal of Honor Memorial Library, 4418 Llewellyn Avenue, Fort Meade, MD 20755; Glen Burnie Regional Library, 1010 Eastway, Glen Burnie, MD 21060; Odenton Regional Library, 1325 Annapolis Road, Odenton, MD 21113; and Severn Community Library, 2624 Annapolis Road, Severn, MD 21144. You may also call (301) 688–2970 or send an email to *ORAM@hdrinc.com* to request a copy of the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Williams at 301–688–2970, or email *jdwill2@nsa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces a 45-day comment period and provides information on how to participate in the public review process. The public comment period for the Draft EIS will officially end July 24, 2023.

Background: NSA is a tenant DoD agency on Fort Meade, occupying approximately 840 acres of the 5,100-acre installation. Renovation and upgrade of inspection and access facilities for NSA is required to meet increased mission and security capacity. The existing Vehicle Control Inspection Facility (VCIF) and Vehicle Control Point 5 (VCP5) represent two significant entry points for access to the NSA campus. Both facilities require replacement due to process inefficiencies and insufficient capacity to meet current and future demand. Original sizing of the VCIF provided for inspection facilities only for NSA deliveries and traffic. Post 9/11, a decision was made that NSA would inspect both Fort Meade and NSA deliveries. Additionally, major construction activities on Fort Meade have generated increases in traffic access and inspection throughout the installation. These conditions have resulted in extensive delays at the VCIF and traffic back-ups onto Maryland State Route 32. The design of VCP5 on O'Brien Road is also outdated and provides insufficient access capacity between the NSA campus and Fort Meade. Relocation of the Fort Meade Access Control Facility (ACF) on Mapes Road is included to facilitate the design and construction of the overall access gate infrastructure and roadway system, as well as minimize environmental impacts.

Proposed Action and Alternatives: The proposed action would consist of: construction of a new VCP5 along O'Brien Road; construction of a new VCIF with adjacent visitor control center; construction of a new Mail Screening Facility adjacent to the VCIF; reconfiguration of the Mapes Road ACF; roadway improvements to provide enhanced routing and separation of traffic between NSA and Fort Meade entering from MDs 32 and 198; and associated infrastructure, including sidewalks, inspection canopies, dog kennels, surface parking areas, stormwater management facilities, and utilities.

Alternatives identified include two build alternatives that involve distinct configurations of project elements within the same general area on the NSA campus and Fort Meade. The No Action Alternative (not undertaking the proposed improvements) is also analyzed in detail.

Summary of Environmental Impacts: The level of environmental impacts potentially resulting from the Proposed Action and alternatives would be largely similar, regardless of which alternative would be selected.

Generally, construction and demolition would result in some ground disturbance, temporary increases in noise, and increased traffic congestion and lane closures, which would be expected regardless of the alternative selected. Implementation of the ORAM would be expected to result in long-term, negligible to major, adverse impacts on noise, geological resources, water resources, biological resources, infrastructure, and socioeconomics. Long-term, negligible to moderate, beneficial impacts on land use and visual resources, air quality, and sustainability. Major adverse impacts on wetlands would occur under either alternative, for which mitigation measures would be developed in coordination with the U.S. Army Corps of Engineers and Maryland Department of the Environment. Major beneficial impacts on transportation would occur as result of the improvements.

Best Management Practices and Mitigation Measures: The Proposed Action has the potential to result in adverse environmental impacts. The Proposed Action includes best management practices, mitigation measures, and design concepts to avoid or minimize adverse impacts to the extent practicable. Unavoidable impacts would be minimized or compensated for to the extent practicable. In accordance with Council on Environmental Quality regulations, mitigation measures are

considered for adverse environmental impacts.

Copies of the Draft EIS are available for public review on the project website, at local repositories, and by request (see **ADDRESSES**). The DoD invites public and agency input on the Draft EIS. Please submit comments and materials during the 45-day public review period to allow sufficient time for consideration in development of the Final EIS (see **DATES**).

The DoD will consider all comments received and then prepare the Final EIS. As with the Draft EIS, DoD will announce the availability of the Final EIS.

Dated: June 2, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–12350 Filed 6–8–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Scoping Comment Period Extension for the Notice of Intent To Prepare an Environmental Impact Statement for an Enhanced Integrated Air and Missile Defense System on Guam

AGENCY: Missile Defense Agency (MDA), Department of Defense (DoD).

ACTION: Notice of intent; extension of comment period.

SUMMARY: The MDA is extending the scoping comment period for the notice of intent entitled ''Notice of Intent to Prepare an Environmental Impact Statement for an Enhanced Integrated Air and Missile Defense System on Guam,'' published in the **Federal Register** on May 5, 2023. The MDA is extending the scoping period to August 11, 2023, in response to Typhoon Mawar-related damage and recovery efforts on Guam. In addition, the MDA will reschedule the in-person open house scoping meetings on Guam to the summer of 2023.

DATES: The scoping comment period for the notice of intent published in the **Federal Register** on May 5, 2023 (88 FR 29104) is extended. Comments must be postmarked or received on or before August 11, 2023, to ensure consideration in the Draft Environmental Impact Statement (EIS).

ADDRESSES: Written comments should be sent via email to *info@EIAMD-EIS.com;* via the website comment submission form on *www.EIAMD-EIS.com;* or by United States (U.S.) Postal Service to: ManTech International Corporation, Attention: EIAMD EIS Project Support, PMB 403, 1270 N Marine Corps Drive, Suite 101, Tamuning, Guam 96913–4331. Written comments will also be accepted at the public scoping meetings. All comments, including names and addresses, will be included in the administrative record, but personal information will be kept confidential unless release is required by law.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Wright, MDA Public Affairs, at 571–231–8212 or by email to *mda.info@mda.mil.* Additional information on the Proposed Action can be found at the MDA website: *https://www.mda.mil/system/eiamd.html.*

SUPPLEMENTARY INFORMATION: On May 5, 2023, the MDA published notice of intent entitled ''Notice of Intent to Prepare an Environmental Impact Statement for an Enhanced Integrated Air and Missile Defense System on Guam'' (88 FR 29104). The EIS will evaluate the potential environmental impacts from the proposed deployment and operation of missile defense radars, sensors, missile interceptors, missile launchers, and command and control systems; construction and operation of associated support facilities and infrastructure; and management of associated airspace on Guam (hereafter called ''Proposed Action''). The MDA invited comments on the scope of the EIS including identification of potential alternatives, information, and analyses relevant to the Proposed Action, and the Proposed Action's potential to affect historic properties pursuant to Section 106 of the National Historic Preservation Act of 1966. The original scoping comment period was scheduled to close on June 27, 2023, with three in-person open house scoping meetings planned on Guam in June 2023.

With this notice, the MDA is extending the scoping comment period to August 11, 2023, in response to Typhoon Mawar-related damage and recovery efforts on Guam.

In addition, the MDA will reschedule the in-person open house scoping meetings on Guam to the summer of 2023. Notification for the meeting locations, dates, and times will be published and announced in local news media to encourage public participation. Access to meeting information can also be found on the MDA website at *https://www.mda.mil/system/eiamd.html.*

Dated: June 2, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–12203 Filed 6–8–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for Improving Homeport Facilities for Three NIMITZ-Class Aircraft Carriers in Support of the U.S. Pacific Fleet, and To Announce Public Scoping Meetings

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality, the Department of the Navy (DoN) announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) to update its analysis in the 1999 Final Environmental Impact Statement (FEIS) for Developing Home Port Facilities for Three Nimitz-Class Aircraft Carriers in Support of the U.S. Pacific Fleet and its 2008 Final SEIS. The new SEIS will address current mission objectives, routine pier-side maintenance activities and proposed electrical shoreside power infrastructure, which may result in three CVNs being simultaneously in port at Naval Air Station North Island (NASNI) for more intermittent, nonconsecutive days per year than analyzed in prior NEPA documents. The DON is initiating a 45-day public scoping process to receive comments on the scope of the SEIS, including identification of potential alternatives, information, and analyses relevant to the Proposed Action, identification of environmental concerns, issues the public would like to see addressed in the SEIS, and the project's potential to affect historic properties pursuant to section 106 of the National Historic Preservation Act (NHPA) of 1966.

DATES: The 45-day public scoping period begins June 9, 2023 and ends July 24, 2023. Comments must be postmarked or submitted electronically via the website no later than 11:59 p.m. PDT on July 24, 2023, for consideration in the Draft SEIS. The DoN will hold three public scoping meetings in the local area during the evenings of June 27–29, 2023. The scoping meetings will consist of informal, open house sessions with informational poster stations staffed by DoN representatives. The information presented at the public meetings will also be available on the project website. The DoN will also publish the public scoping meeting announcements in local newspapers and in press releases. Meeting

announcements will also be published in local Spanish-language newspapers, and Spanish speakers will be present at the meetings.

ADDRESSES: The DoN invites all interested parties to submit scoping comments on the Improving Home Port Facilities for Three Nimitz-Class Aircraft Carriers in Support of the U.S. Pacific Fleet SEIS. Information regarding the project, the public meetings and how to submit comments is available at the DoN project website address, *https://www.nepa.navy.mil/northislandCVNs.* The public scoping meetings will be held at the following locations:

1. June 27, 2023, 6:30 p.m. to 9:00 p.m., Logan Memorial Educational Campus, Building K101, MPR Room, 2875 Ocean View Blvd., San Diego, CA 92113.

2. June 28, 2023, 5:00 p.m. to 7:30 p.m., Coronado Community Center, Nautilus Room, 1845 Strand Way, Coronado, CA 92118.

3. June 29, 2023, 5:00 p.m. to 7:30 p.m., Burress Auditorium, South Bay Union School District, 601 Elm Ave., Imperial Beach, CA 91932.

Comments may be received:

- In person at the public meetings,
- Electronically via the project website, *https://www.nepa.navy.mil/northislandCVNs* by 11:59 PDT, July 24, 2023,
- By mail, postmarked no later than July 24, 2023 to the following address: Naval Facilities Engineering Systems Command, Atlantic 6506 Hampton Blvd., Building A, Norfolk, VA 23508 ATTN: EV21, CVN SEIS Project Manager

FOR FURTHER INFORMATION CONTACT: U.S. Fleet Forces Command, 1562 Mitscher Avenue, Suite 250, Norfolk, VA 23551–2487, Attn: Mr. Theodore Brown, Installations and Environment Public Affairs Officer, 757–836–4427, or visit the project website: *https://www.nepa.navy.mil/northislandCVNs.*

SUPPLEMENTARY INFORMATION: U.S. Fleet Forces Command is the DoN's action proponent for the SEIS. NASNI, which is part of Naval Base Coronado, is located in Coronado approximately 1.5 kilometers (1 mile) west, and across San Diego Bay from, downtown San Diego, California. NASNI is a major port for CVNs and a key support location for the West Coast fleet. NASNI and its CVN berthings are critical to the DoN's presence and military readiness in the Pacific Ocean.

The SEIS is being prepared for the limited purpose of supplementing the 1999 FEIS, and subsequent 2008 SEIS, with current circumstances and information. The Proposed Action will address modernization of shoreside electrical infrastructure, CVN routine pier-side maintenance actions, and update the environmental effects associated with current mission objectives, which may result in three CVNs being simultaneously in port at Naval Air Station North Island (NASNI) for more intermittent, nonconsecutive days per year than analyzed in prior NEPA documents. The 1999 FEIS estimated that, once homeported, three CVNs would be in port simultaneously for an average of 13 intermittent, nonconsecutive days per year. By the time of the 2008 SEIS, that estimate had changed to an average of 29 intermittent, nonconsecutive days per year. That estimate has again changed to address current maintenance, training, and deployment requirements and a SEIS is required to update the environmental analysis based on this updated estimate. Because of the number of variables involved with predicting CVN berthing requirements, the DoN plans to analyze the impacts of an anticipated need for three CVNs to be in port simultaneously for an average of 180 intermittent, nonconsecutive days per year. Although it is considered unlikely that this 180-day scenario would ever occur, the DoN has chosen a conservative average number of intermittent, nonconsecutive days per year in order to ensure a ''hard look'' at the potential impacts of this ongoing project.

The purpose of the Proposed Action is to meet the DoN's mission requirement to support its West Coast fleet and to maintain military readiness of naval forces for prompt and sustained combat incident to operations at sea to meet the needs of war, now and into the future, consistent with Title 10, Section 8062, of the United States Code.

The Proposed Action is needed because (1) CVN-capable berths at NASNI do not currently have the capability to support the DoN's next generation (FORD-Class) of CVNs (2) current mission objectives (to include operational, deployment, and maintenance schedules) may result in three CVNs in port at NASNI at the same time for more intermittent, nonconsecutive days per year than previously analyzed. The presence of three CVNs may include all three NASNI-homeported CVNs or two NASNI-homeported CVNs and one transient CVN. Transient FORD-Class CVNs may berth at NASNI once deployed on the West Coast.

The DoN will evaluate the potential environmental impacts to, but not limited to, the following environmental resources: traffic; air quality; socioeconomics; and environmental justice.

The scoping process is helpful in identifying public concerns and local issues to consider during the development of the Draft SEIS. Federal, state, and local agencies; federally recognized tribes; and interested persons are encouraged to provide substantive comments to the DoN on environmental resources and issue areas of concern that the commenter believes the DoN should consider. All comments, provided in writing at the scoping meetings, submitted via the DoN website, or mailed, will be taken into consideration during the development of the Draft SEIS.

The project website *https://www.nepa.navy.mil/northislandCVNs* provides information on the *Proposed Action, the NEPA process and project schedule.* Additional opportunities for public comment will occur after the release of the Draft SEIS. The DoN intends to publish the Draft SEIS in mid-2024, publish the Final SEIS in spring 2025, and sign a Record of Decision following the 30-day Final SEIS wait period.

Dated: June 2, 2023.

A.R. Holt,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2023–12228 Filed 6–8–23; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0098]

Agency Information Collection Activities; Comment Request; Report of the Randolph-Sheppard Vending Facility Program

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 8, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0098. Comments submitted in response to this notice should be

submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jesse Hartle, 202–245–6415.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Report of the Randolph-Sheppard Vending Facility Program.

OMB Control Number: 1820–0009.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 51.

Total Estimated Number of Annual Burden Hours: 1,199.

Abstract: The U.S. Department of Education (Department) is seeking a continuation of this data collection with revisions necessitated by: (1) a limited exception to the definition of ''equipment'' in 2 CFR 200.1; (2) guidance issued by the Rehabilitation Services Administration (RSA) with respect to ''Allowable Sources of Non-Federal Share for the State Vocational Rehabilitation Services Program;'' (3) citation changes made to the definitions contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); and (4) requests for clarity from State licensing agencies (SLAs) regarding which non-Federal expenditures incurred for the benefit of the Randolph-Sheppard Vending Facilities Program (RSVFP) may be used for satisfying the match and maintenance of effort (MOE) requirements under the VR program. This proposed information collection request (ICR) also proposes a few other technical edits to improve clarity. Current approval for this data collection expires February 29, 2024, but is it requested to use the new instructions at the start of FY 2024 for FY 2023.

The Randolph-Sheppard Act (Act), at 20 U.S.C. 107a(6)(a), directs the Secretary of Education, through the Commissioner of RSA, to conduct periodic evaluations of the programs authorized under the Act. In addition, section 107b(4) requires State government entities designated as the SLA to ''make such reports in such form and containing such information as the Secretary may from time to time require . . ..'' Sections 107a(a)(2) and (4) of the Act also require the Secretary of Education to ''. . . make annual surveys of concession vending opportunities for blind vendors on Federal and other property . . .'' and to ''. . . make available to the public . . . information obtained as a result of such surveys.'' The information to be collected is a necessary component of the data gathering and evaluation process and forms the basis for the Randolph-Sheppard Act section of the RSA annual report to Congress, which is required by section 13 of the Rehabilitation Act of 1973 (Rehabilitation Act) (29 U.S.C. 710). The RSA–15 form includes information on the activities under this program and is used in monitoring the States' implementation of the program. In addition, the fiscal data collected by the RSA–15 highlight the fiscal nexus between the RSVFP and VR program in each State, particularly with respect to the use of Federal VR

This information collection (IC) will be implemented upon the expiration of the current IC on February 29, 2024; however it is requested to begin the use of this form and the new instructions for the FY 2023 data collection (October 1, 2023). The RSA–15: Report of Randolph-Sheppard Vending Facility Program 1820–0009 is available both in hard copy and electronically; however, data will be submitted and collected through the RSAMIS on the *rsa.ed.gov* website by each of the 51 SLAs.

Dated: June 6, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–12348 Filed 6–8–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on June 14, 15, 2023, as a hybrid meeting via webinar and in person, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) which is scheduled at the same time via webinar.

DATES: June 14, 15, 2023.

ADDRESSES: The location details of the SEQ and SOM webinar meeting are under the control of the IEA Secretariat, located at 9 rue de la Fédération, 75015 Paris, France. The in person meeting will take place at IEA Headquarters, 9 rue de la Fédération, 75015 Paris, France.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Reilly, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5000.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA),

the following notice of meetings is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held in person and via webinar at the IEA Headquarters, 9 rue de la Fédération, 75015 Paris, commencing at 9:30 a.m., Paris time, on June 14, 2023. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the same location in person and via webinar at the same time. The IAB will also hold a preparatory meeting among company representatives at the same location at 08:30 a.m. Paris time on June 14, 2023. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting.

The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

Draft Agenda of the 175th Meeting of the SEQ

1. Adoption of the Agenda
2. Approval of the Summary Record of the 174th SEQ meeting
3. Stockholding levels of IEA Member Countries and Update on IEA Collective Actions
4. Oil stockholding task force; Legal task force—update on ongoing work
5. Emergency Response Review of New Zealand
6. Critical Minerals Security—update on ongoing work
7. Mid-term review of Spain
8. IEA Electricity Security—update on ongoing work
9. IEA Natural Gas Security—update on ongoing work
10. Industry Advisory Board Update
11. Emergency Response Review of Switzerland
12. Oral Reports by Administrations
13. Any Other Business

Schedule of ERRs for 2023

Schedule of SEQ & SOM Meetings for 2023/24:

—14–16 November 2023
—21–22 March 2024 (tentative)
—18–20 June 2024 (tentative)
—19–21 November 2024 (tentative)

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held in person and via webinar at the IEA Headquarters, 9 rue de la Fédération, 75015 Paris, commencing at 9:30 a.m., Paris time, on June 15, 2023. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM), which is scheduled to be held at the same location in person and via webinar at the same time.

The agenda of the meeting is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

Draft Agenda of the Joint Session of the SEQ and the SOM

1. Adoption of the Agenda
2. Approval of Summary Record of meeting of 15–16 March 2023
3. Update on the Current Oil Market Situation
4. Reports on Recent Oil Market and Policy Developments in IEA Countries
5. Preparations for the IEA Ministerial Meeting: SOM & SEQ input
6. World Energy Investment Report
7. Medium Term Oil Market Report 2023 (OIL 2023): Overview
8. OIL 2023: Demand
9. OIL 2023: Supply
10. OIL 2023: Refining and Trade
11. OIL 2023: Industry Perspectives
12. OIL 2023: Roundtable discussion
13. Any other business:

Date of next SOM/SEQ meetings: 14–16 November 2023

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Signing Authority: This document of the Department of Energy was signed on June 5, 2023, by Thomas Reilly, Assistant General Counsel for International and National Security Programs, 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, June 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–12316 Filed 6–8–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–176–000.

Applicants: Antelope Valley BESS, LLC.

Description: Antelope Valley BESS, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/2/23.

Accession Number: 20230602–5262.

Comment Date: 5 p.m. ET 6/23/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–934–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to WMPA, SA No. 4825 re: Effective Date in Docket No. ER23–934 to be effective 3/27/2023.

Filed Date: 6/5/23.

Accession Number: 20230605–5009.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–1195–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2023–06–05_Deficiency Response to Ramp Capability Products Filing to be effective 9/1/2023.

Filed Date: 6/5/23.

Accession Number: 20230605–5082.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–1271–001.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Tariff Amendment: Niagara Mohawk Power Corporation submits tariff filing per 35.17(b): NMPC deficiency response re: Segment A Project cost recovery to be effective 8/5/2023.

Filed Date: 6/5/23.

Accession Number: 20230605–5058.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–1361–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response—Revisions to Add Enhanced Language to Attachment V to be effective 5/15/2023.

Filed Date: 6/5/23.

Accession Number: 20230605–5034.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–2070–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3215R14 People's Electric Cooperative NITSA NOAs to be effective 8/1/2023.

Filed Date: 6/2/23.

Accession Number: 20230602–5229.

Comment Date: 5 p.m. ET 6/23/23.

Docket Numbers: ER23–2071–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Escatawpa Solar Energy (Prospero Solar I) LGIA Filing to be effective 5/22/2023.

Filed Date: 6/5/23.

Accession Number: 20230605–5053.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–2072–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Highland Timbers Solar Energy (Prospero Solar II) LGIA Filing to be effective 5/22/2023.

Filed Date: 6/5/23.

Accession Number: 20230605–5054.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–2073–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2965 SWEPCO/Rayburn Country Elec Coop/ETEC Inter Agr Cancel to be effective 5/25/2023.

Filed Date: 6/5/23.

Accession Number: 20230605–5083.

Comment Date: 5 p.m. ET 6/26/23.

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: June 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12363 Filed 6–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Fresno Cogeneration Partners, L.P.	EG00–32–001
Fifth Standard Solar PV, LLC	EG23–88–000
San Jacinto Grid, LLC	EG23–89–000
Ortega Grid, LLC	EG23–90–000
Baldy Mesa Solar, LLC	EG23–91–000
Double Black Diamond Solar Power, LLC.	EG23–93–000
Landrace Holdings, LLC	EG23–94–000
PGR 2021 Lessee 18, LLC	EG23–95–000
Virginia Line Solar, LLC	EG23–96–000
PGR 2022 Lessee 1, LLC	EG23–97–000
Remy Jade II, LLC	EG23–98–000
Newport Solar, LLC	EG23–99–000
CED Peregrine Solar, LLC	EG23–100–000
Waverly Solar, LLC	EG23–101–000
Cavalier Solar A, LLC	EG23–102–000
Foxhound Solar, LLC	EG23–103–000
Texas Solar Nova 2, LLC	EG23–104–000
Partin Solar LLC	EG23–105–000
Desert Peak Energy Center, LLC	EG23–106–000
Desert Peak Energy Storage I, LLC.	EG23–107–000
Desert Peak Energy Storage II, LLC.	EG23–108–000
Lakewood Cogeneration, L.P	EG99–197–001
Stanton Battery Energy Storage LLC.	EG23–109–000
Santa Paula Energy Storage, LLC.	EG23–110–000
Westlake Chemicals & Vinyls LLC.	EG23–111–000
AES ES Westwing, LLC	EG23–112–000

Take notice that during the month of May 2023, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2022).

Dated: June 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12369 Filed 6–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2066–000]

Antelope Valley BESS, 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 Antelope Valley BESS, 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 June 26, 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: June 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12362 Filed 6–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP23–76–000.

Applicants: National Grid LNG, LLC.

Description: Report Filing: 2023–06–02-In-Service Notification eff. 5/25/2023 re dockets CP16–121–000 et al. to be effective N/A.

Filed Date: 6/2/23.

Accession Number: 20230602–5151.

Comment Date: 5 p.m. ET 6/14/23.

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: June 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12371 Filed 6–8–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0223; FRL–11017–01–OCSPP]

Chlorpyrifos; Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel registrations of certain products containing the pesticide chlorpyrifos and to amend their chlorpyrifos registrations to terminate one or more uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of the products listed in this notice after the registrations have been cancelled or the uses terminated would need to be consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 6, 2023.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0223, is available at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.* For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0700; email address: *OPPChlorpyrifosInquiries@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov* or email. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel certain pesticide product registrations and terminate certain uses of product registrations. The affected registrations are listed in sequence by registration number in Table 1 and Table 2 of this unit. Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this Unit, in sequence by EPA company number. This company number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue a final order in the **Federal Register** terminating the affected uses and cancelling the affected registrations.

TABLE 1—CHLORPYRIFOS REGISTRATIONS WITH PENDING REQUESTS FOR TERMINATION OF USE

Registration No.	Product name	Company	Uses to be deleted
93182–3	Chlorpyrifos Technical	Gharda Chemicals International, Inc.	Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), banana, blueberry, caneberry, cherimoya, citrus fruits (except in AL, FL, GA, NC, SC, TX), corn, cotton (except in AL, FL, GA, NC, SC, VA), cranberries, cucumber, date, feijoa, figs, grapes, kiwifruit, leek, legume vegetables (except soybean), mint, onions (dry bulb), pea, peanuts, pepper, pumpkin, sweet potatoes, sugarcane, sorghum, soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), sunflowers, sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), strawberries (except in OR), tree fruit (apples (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), cherries (except tart cherries in MI), peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV) and nectarines), pears, plums/prunes, tree nuts (almonds, filberts, pecans and walnuts), vegetables (cauliflower, broccoli, Brussels sprouts, cabbage, collards, kale, kohlrabi, turnips, radishes, and rutabagas), and wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY).
93182–7	Pilot 4E Chlorpyrifos Agricultural Insecticide.	Gharda Chemicals International, Inc.	Alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), apple (except in AL, DC, DE, GA, ID, IN, KY, MD, MI, NJ, NY, OH, OR, PA, TN, VA, VT, WA, WV), asparagus, brassica (cole) leafy vegetables, broccoli, broccoli rabe, Brussels sprouts, cabbage, cauliflower, cavalo broccoli, Chinese broccoli, Chinese cabbage, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens, radish, rutabaga, turnip, citrus fruits and citrus orchard floors (except in AL, FL, GA, NC, SC, TX), corn (field corn and sweet corn, including corn grown for seed), cotton (except in AL, FL, GA, NC, SC, VA), cranberries, figs, grape, legume vegetables (succulent or dried, adzuki bean, asparagus bean, bean, blackeyed pea, broad bean (dry and succulent), catjang, chickpea, Chinese longbean, cowpea, crowder pea, dwarf bean, edible pod pea, English pea, fava bean, field bean, field pea, garbanzo bean, garden pea, grain lupin, green pea, guar, hyacinth bean, jackbean, kidney bean, lablab bean, lentil, lima bean (dry and green), moth bean, mung bean, navy bean, pea, pigeon pea, pinto bean, rice bean, runner bean, snap bean, snow pea, southern pea, sugar snap pea, sweet lupin, tepary bean, urd bean, white lupin, white sweet lupin, yardlong bean), onions (dry bulb), peanut, pear, peppermint and spearmint, sorghum—grain sorghum (milo), soybean (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), strawberry (except in OR), sugar beet (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), sunflower, sweet potato, almond, walnut (dormant/delayed dormant sprays), tree fruits (except apple, peaches, and cherries) and almond, tree nuts (foliar sprays), tree nut orchard floors, wheat (except spring wheat in CO, KS, MO, MT, ND, NE, SD, WY and winter wheat in CO, IA, KS, MN, MO, MT, ND, NE, OK, SD, TX, WY), cherries (except tart cherries in MI), nectarine, plum, prune, peaches (except in AL, DC, DE, FL, GA, MD, MI, NC, NJ, NY, OH, PA, SC, TX, VA, VT, WV).
93182–8	Pilot 15G Chlorpyrifos Agricultural Insecticide.	Gharda Chemicals International, Inc.	Citrus and citrus orchard floors (except in AL, FL, GA, NC, SC, TX), Cole crops (Brassica) leafy vegetables: (Bok choy, broccoli, Brussels sprouts, cabbage, Chinese cabbage, cauliflower, collards, kale, kohlrabi, broccoli rabe, Chinese broccoli), onions (dry bulb), radishes, rutabagas, sweet potatoes, corn, alfalfa (except in AZ, CO, IA, ID, IL, KS, MI, MN, MO, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WI, WY), sorghum—grain sorghum (milo), soybeans (except in AL, CO, FL, GA, IA, IL, IN, KS, KY, MN, MO, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, WY), peanuts, sugar beets (except in IA, ID, IL, MI, MN, ND, OR, WA, WI), turnips, and sunflowers.

TABLE 2—CHLORPYRIFOS PRODUCT REGISTRATION WITH PENDING REQUEST FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
62719–72	62719	Dursban 50W in Water Soluble Packets	Chlorpyrifos.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR TERMINATION OF USES

EPA company No.	Company name and address
62719	Corteva Agriscience, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268.
93182	Gharda Chemicals International, Inc., 4032 Crockers Lake Blvd., Suite 818, Sarasota, FL 34238.

III. What is the Agency's authority for taking these actions?

FIFRA section 6(f)(1) (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more registered uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

FIFRA section 6(f)(1)(B) (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

EPA is exercising its discretion not to waive the 180-day comment period. No waiver requests have been made by the registrants listed in Table 3, in which case, EPA would typically provide the 180-day comment period. In this instance, while there is a concern for food uses remaining registered in the absence of tolerances, the products identified in this document cannot be used on food—for the products identified in Table 1, tolerances have been revoked, which means that any use of the products in Table 1 on food would render the food adulterated; the product in Table 2 is not registered for use on food. Moreover, there is an ongoing proceeding to cancel the products identified in Table 1 under FIFRA section 6(b) (7 U.S.C. 136d(b)). Therefore, EPA is providing a 180-day comment period.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation or use termination/deletion should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish a final cancellation order in the **Federal Register**. In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1 and 2 of Unit II.

A. Products Listed in Table 1 of Unit II

If EPA grants the registrant's request to terminate uses for the products listed in Table 1 of Unit II, the existing stocks of those products will continue to bear labeling for use on food and non-food use sites. Because all chlorpyrifos tolerances expired on February 28, 2022, use of chlorpyrifos in or on food will result in adulterated food, which cannot be delivered into interstate commerce. Such use would be inconsistent with FIFRA; therefore, EPA will prohibit any use of existing stocks for use on food, including the food uses that the registrant seeks to retain. Use of existing stocks of chlorpyrifos products identified in Table 1 of Unit II will be permitted only for non-food uses identified on the existing labels, as long as such use is consistent with the label.

EPA intends to prohibit all sale and distribution of existing stocks of the chlorpyrifos products identified in Table 1 of Unit II because those products would continue to bear labeling allowing use on food, for which there are no tolerances, except for export consistent with FIFRA section 17 (7 U.S.C. 136o), or for proper disposal in accordance with state regulations. In addition, if EPA and Gharda develop an agreement for return of Gharda's products, EPA intends to include in the final cancellation order terms allowing for distribution consistent with that return program.

B. Product Listed in Table 2 of Unit II

The product listed in Table 2 of Unit II bears labeling only for non-food use. At this time, EPA has identified no significant potential risk concerns associated with the product identified in Table 2 of Unit II. Therefore, EPA intends to allow Corteva to sell and distribute existing stocks of that product for one year after publication of the cancellation order. Thereafter, Corteva will be prohibited from selling and distributing existing stocks of the product, except for export consistent with FIFRA section 17 (7 U.S.C. 136o), or for proper disposal in accordance with state regulations.

Persons other than Corteva will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 5, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–12354 Filed 6–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–11013–01–OCSPP]

Access to Confidential Business Information by Agile Decision Sciences, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Agile Decision Sciences, LLC of Huntsville, AL to access information which has been submitted to EPA under all Sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or

determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than June 16, 2023.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Colby Lintner/Adam Schwoerer, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8182; email address: *lintner.colby@epa.gov* or (202) 564–4767; *schwoerer.adam@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this notice, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *https://www.regulations.gov.* The data being transferred is not in the docket. For the latest status information on EPA dockets, visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under contract number 68HERD23D0003, task order number 68HERD23F0044, contractor Agile Decision Sciences, LLC located at 350 Voyager Way Suite 100B, Huntsville, AL 35806–3200 will assist the Office of Pollution Prevention and Toxics (OPPT) by managing the Non-Confidential Business Information Center (NCIC). They will also provide current and historical reports on all TSCA non-CBI submissions received in compliance with TSCA; organize, distribute and prepare records for permanent storage; and handle all docket-related records for OPPT, in accordance with the TSCA Security Manual.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68HERD23D0003, task order number 68HERD23F0044, Agile Decision Services, LLC will require access to CBI submitted under all Sections of TSCA to perform successfully the duties specified under the contract. Agile Decision Services, LLC personnel will be given access to information claimed or determined to be CBI information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA will provide Agile Decision Sciences, LLC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual* and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI.

Access to TSCA data, including CBI, will continue until March 31, 2026. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Agile Decision Sciences, LLC personnel will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 5, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–12319 Filed 6–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10164–01–R4]

Notice of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GEG460000); Availability of Draft National Environmental Policy (NEPA) Categorial Exclusion (CatX)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of NPDES general permit, notice to states of Mississippi, Alabama, and Florida for consistency review with approved Coastal Management Programs.

SUMMARY: The Regional Administrator of EPA Region 4 (the ''Region'') is today proposing to reissue the National Pollutant Discharge Elimination System (NPDES) general permit for the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GEG460000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. The draft permit pertains to discharges from exploration, development, and production facilities located in, and discharging to, all federal waters of the eastern portion of the Gulf of Mexico seaward of the outer boundary of the territorial seas, and it covers existing and new source facilities with operations located on federal leases occurring in water depths seaward of 200 meters, occurring offshore the coasts of Alabama and Florida. The western boundary of the coverage area is demarcated by Mobile and Visoca Knoll lease blocks located seaward of the outer boundary of the territorial seas from the coasts of Mississippi and Alabama. Individual permits will be issued for operating facilities on lease blocks traversed by and shoreward of the 200-meter water depth.

DATES: Comments must be received by July 10, 2023.

ADDRESSES: The draft NPDES general permit, permit fact sheet, draft CatX and other relevant documents are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permit, permit fact sheet, draft CatX and other relevant documents may be obtained by writing the U.S. EPA-Region 4, Water Division (WD), NPDES Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, Attention: Ms. Bridget Staples, or by calling (404) 562–9783. Alternatively, copies of the draft NPDES general permit, permit fact sheet, draft CatX, Essential Fish Habitat Determination and preliminary Ocean Discharge Criteria Evaluation may be downloaded at: *www.epa.gov/npdes-permits/eastern-gulf-mexico-offshore-oil-gas-npdes-permits.*

FOR FURTHER INFORMATION CONTACT: Ms. Bridget Staples, EPA Region 4, WD, NPDES Section, by mail at the Atlanta address given above, by telephone at (404) 562–9783 or by email at *Staples.Bridget@epa.gov.*

SUPPLEMENTARY INFORMATION: As proposed, this draft NPDES general permit includes, best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT) limitations for existing sources and new source performance standards (NSPS) limitations for new sources as promulgated in the effluent guidelines for the offshore subcategory. The draft permit also includes the

following changes to the current permit: (1) New whole effluent toxicity testing limits for well treatment, completion, and workover fluids not discharged with produced wastewaters; and (2) clarification definitions for ''discharge of a pollutant, ''facility'', ''floating offshore facility'', ''manned facility'', ''mobile offshore drilling unit'', and ''barrels per day''. Region 4 is also making available a draft National Environmental Policy (NEPA) Categorial Exclusion (CatX) for review during the 30-day public comment period for this general permit. The draft CatX is an exclusion from a detailed environmental analysis since the changes in draft NPDES permit were not significant from conditions in the current permit; the proposed federal action was determined to not have a significant effect on the human environment (reference 40 Code of Federal Regulations (CFR) § 1508.1(d).

I. Procedures For Reaching a Final Permit Decision

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the draft NPDES general permit and the draft CatX received within the 30-day comment period will be considered in the formulation of final determination regarding the NEPA review and the permit reissuance. After consideration of all written comments and the requirements and policies in the Clean Water Act (CWA) and appropriate regulations, the EPA Regional Administrator will make a determination regarding the final CatX, Finding of No Significant Impact, and permit reissuance. If the determination results in a permit that is substantially unchanged from the draft permit announced by this notice, the Regional Administrator will so notify all persons submitting written comments. If the determination results in a permit that is substantially changed, the Regional Administrator will issue a public notice indicating the revised determination.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15 and 124.19, except for a general permit, as provided at 40 CFR 124.19(o). Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as authorized at 40 CFR 122.28, in accordance with the application requirements set forth at 40 CFR 122.21, and then request a formal hearing on the issuance or denial of an individual permit. Additional information regarding these procedures is available by contacting Mr. Paul Schwartz, Associate Regional Counsel, Office of Regional Counsel, at (404) 562–9576.

II. Procedures For Obtaining General Permit Coverage

Notice of Intent (NOI) requirements for obtaining coverage for operating facilities are stated in Part I Section A.4 of the general permit. Coverage under the reissued general permit is effective upon receipt of notification of coverage with an assignment of an NPDES general permit number from the EPA-Region 4, Director of the Water Division. EPA will act on the NOI within a reasonable period of time.

III. Exclusion of Non-Operational Leases

This permit does not apply to non-operational leases, *i.e.,* those on which no discharge has taken place in the two (2) years prior to the effective date of the reissued general permit. EPA will not initially accept NOIs for such leases, and the general permit will not cover such leases, except as set forth below. Non-operational leases will lose coverage under the previous general permit on the effective date of the reissued general permit. No subsequent exploration, development or production activities may take place on these leases until and unless the lessee has obtained coverage under the new general permit or an individual permit. EPA will not accept an NOI or individual permit application for non-operational or new acquired leases until such time as an Exploration Plan Document or the Development Operations Coordination Document has been prepared and submitted to Bureau of Energy Management.

IV. State Water Quality Certification

Because state waters are not included in the area covered by the OCS general permit, its effluent limitations and monitoring requirements are not subject to state water quality certification under CWA Section 401. However, the states of Alabama, Florida and Mississippi have been provided a copy of this draft general permit, draft CatX to review and submit comments. Copies of these documents have also been provided to EPA Headquarters for their review.

V. State Consistency Determination

This Notice will also serve as Region 4's requirement under the Coastal Zone Management Act (CZMA) to provide all necessary information for the states of Mississippi, Alabama and Florida to review this action for consistency with their approved Coastal Zone Management Programs. A copy of the consistency determination on the proposed activities is being sent to each affected State, along with a letter including this FR notice, which provides the EPA website where electronic copies can be obtained of the draft NPDES general permit, permit fact sheet, preliminary Ocean Discharge Criteria Evaluation, and draft CatX. Other relevant information for their review is available upon request from each State. Comments regarding State Consistency are invited in writing within 30 days of this notice to the WD, U.S. EPA-Region 4, NPDES Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303–8960, Attention: Ms. Bridget Staples.

VI. Public Comment Period and Public Hearings

The public comment period for the draft NPDES permit, draft CatX will begin on the date of publication of this notice in the **Federal Register** and end 30 calendar days later.

VII. Administrative Record

The draft NPDES general permit, permit fact sheet, draft CatX and other relevant documents are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permit, permit fact sheet, draft CatX and other relevant documents may be obtained by writing the U.S. EPA-Region 4, WD, NPDES Permitting Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–8960, Attention: Ms. Bridget Staples, or by calling (404) 562–9783, or by email at *Staples.Bridget@epa.gov.* Alternatively, copies of the draft NPDES general permit, permit fact sheet, draft CatX, Essential Fish Habitat Determination and preliminary Ocean Discharge Criteria Evaluation may be downloaded at: *www.epa.gov/npdes-permits/eastern-gulf-mexico-offshore-oil-gas-npdes-permits.*

VIII. Executive Order 12866

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review.

IX. Paperwork Reduction Act

The information collection required by this permit has been submitted to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* in submission made for the NPDES permit program and assigned OMB control number 2040–0004 [(NPDES Discharge Monitoring Reports (DMRs)].

Because this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the previous Eastern Gulf of Mexico OCS general permit (GEG460000), the paperwork burdens are expected to be nearly identical. The only new requirement is entry of acute WET tests results for well treatment, completion and workover fluids discharged separately than produced wastewaters into the electronic system. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare DMRs. It is estimated that the time required to prepare the request for coverage and DMRs for the reissued permit will be approximately the same.

Dated: June 2, 2023.

Denisse Diaz,

Acting Director, Water Division.

[FR Doc. 2023–12292 Filed 6–8–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 147101]

Deletion of Item From June 8, 2023 Open Meeting

June 6, 2023.

The following item was adopted and released by the Commission on June 5, 2023 and deleted from the list of items scheduled for consideration at the Thursday, June 8, 2023, Open Meeting. The item was previously listed in the Commission's Sunshine Notice on Thursday, June 1, 2023.

5	Media	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–12355 Filed 6–8–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1309; Docket No. CDC–2023–0047]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Enterprise Laboratory Information Management System (ELIMS). This data collection is used by CDC to record specimen metadata and patient data related to test order requests submitted by external partners (SPHLs, International organizations, Federal institutions, hospitals, doctor's offices, etc.) to the CDC Infectious Diseases testing laboratories.

DATES: CDC must receive written comments on or before August 8, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0047 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Enterprise Laboratory Information Management System (ELIMS) (OMB Control No. 0920–1309, Exp. 11/30/2023)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The collection of specimen information designated for testing by the CDC occurs on a regular and recurring basis (multiple times per day) using an electronic PDF file called the CDC Specimen Submission 50.34 Form or an electronic XSLX file called the Global File Accessioning Template. Hospitals, doctor's offices, medical clinics, commercial testing labs, universities, State public health laboratories, U.S. Federal institutions, and foreign institutions use the CDC Specimen Submission Form 50.34 when submitting a single specimen to CDC Infectious Diseases laboratories for testing. The CDC Specimen Submission 50.34 Form consists of over 200 data entry fields (of which five are mandatory fields that must be completed by the submitter) that captures information about the specimen being sent to the CDC for testing. The type of data captured on the 50.34 Form identifies the origin of the specimen (human, animal, food, environmental, medical device or biologic), CDC test order name/code, specimen information, patient information (as applicable), animal information (as applicable) information about the submitting organization requesting the testing, patient history (as applicable), owner information and animal history (as applicable), and epidemiological information. The collection of this type of data is pertinent to ensuring a specimen's testing results are linked to the correct patient and the final test reports are delivered to the appropriate submitting organization to aid in making proper health-related decisions related to the patient. Furthermore, the data provided on this form may be used by the CDC to identify sources of potential outbreaks and other public-health related events. When the form is filled out, a user in the submitting organization prints a hard copy of it that will be included in the specimen's shipping package sent to the CDC. The printed form has barcodes on it that allow the CDC testing laboratory to scan its data directly into ELIMS where the specimen's testing lifecycle is tracked and managed.

Likewise, the Global File Accessioning Template records the same data as the 50.34 Form but provides the capability to submit information for a batch of specimens (typically 50–1,000 specimens per batch) to a specific CDC laboratory for testing. The CDC testing laboratory electronically uploads the Global File Accessioning Template into ELIMS where the batch of specimens are then logged and are ready to be tracked through their respective testing and reporting workflow.

CDC requests OMB approval for an estimated 2,153 annual burden hours. There is no cost to respondents other than their time for participation.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Medical Scientists, Except Epidemiologists, State Public Health Lab, Medical Assistant, Doctor's Office/Hospital.	CDC Specimen Submission 50.34 Form.	2,098	12	5/60	2,098
Medical Assistant, Doctor's Office/Hospital.	Global File Accessioning Template	15	11	20/60	55
Total					2,153

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–12360 Filed 6–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1333; Docket No. CDC–2023–0045]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Feeding My Baby and Me: Infant Feeding Practices Study III (FMB&M–IFPS III). This study is designed to understand the current state of mothers' intentions, behaviors, feeding decisions, and practices from pregnancy through their child's first two years of life.

DATES: CDC must receive written comments on or before August 8, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0045 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of

the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Feeding My Baby and Me: Infant Feeding Practices Study III (FMB&M–IFPS III) (OMB Control No. 0920–1333, Exp. 4/30/2024)—Extension—National Center for Chronic Disease Prevention and Health Promotions (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Infant Feeding Practices Study (IFPS) III is a longitudinal study that will follow pregnant women and their new baby for two years. Data will be collected using web-based surveys at multiple time points over two years. This includes: (1) a prenatal survey; (2) 14 follow-up surveys after the baby is born; and (3) 2–4 maternal dietary data recalls. The data from IFPS III will be used to: (1) fill research gaps on how feeding behaviors, patterns, and practice changes over the first two years of life and the health-related impacts; (2) inform multiple Federal agency efforts targeting maternal and infant and toddler nutrition through work in hospitals, with health care providers, with early care and education providers, and outreach to families and caregivers; and (3) provide context to policy level documents such as the *U.S. Dietary Guidelines for Americans,* which will include pregnant women and children birth to 24 months of age for the first time in 2020–2025.

This is an Extension of previously approved data collection efforts. No changes are proposed. OMB approval is requested for one year. Participation is voluntary, and there are no costs to respondents other than their time. The total estimated annualized burden hours requested are 5,051.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annualized burden hours
Pregnant/Postpartum Women	Study Screener	7,477	1	3/60	125
	Study Consent	4,711	1	5/60	131
	Prenatal Survey	4,239	1	20/60	471
	24-Hour Dietary Recall—Prenatal	2,756	1	24/60	367
	Replicate 24-Hour Dietary Recall—Prenatal.	269	1	24/60	36
	Request for notification of child's birth.	4,239	1	2/60	47
	Birth Screener	4,103	1	2/60	46
	1-Month Survey	3,693	1	20/60	410
	2-Month Survey	3,575	1	15/60	298
	3-Month Survey	3,460	1	15/60	288
	24-Hour Dietary Recall—Month 3	2,249	1	24/60	300
	Replicate 24-Hour Dietary Recall—Month 3.	219	1	24/60	29
	4-Month Survey	3,350	1	15/60	279
	5-Month Survey	3,243	1	15/60	270
	6-Month Survey	3,139	1	15/60	262
	8-Month Survey	3,038	1	15/60	253
	10-Month Survey	2,941	1	20/60	327
	12-Month Survey	2,847	1	15/60	237
	15-Month Survey	2,756	1	15/60	230
	18-Month Survey	2,668	1	15/60	222
	21-Month Survey	2,582	1	15/60	215
	24-Month Survey	2,500	1	15/60	208
Total					5,051

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–12361 Filed 6–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–23AH]

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 ''Community Health Workers for COVID Response and Resilient Communities (CCR) National Evaluation'' 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 October 21, 2022 to obtain comments from the public and affected agencies. CDC received two non-substantive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Community Health Workers for COVID Response and Resilient Communities (CCR) National Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting approval for a New data collection entitled ''Community Health Workers for COVID Response and Resilient Communities (CCR) National Evaluation.'' OMB approval is requested for three years.

In 2021, CDC funded DP21–2109, ''Community Health Workers for COVID Response and Resilient Communities (CCR)''. DP21–2109 funds 68 CCR recipients across the United States to train and deploy community health workers (CHWs) to support COVID–19 response efforts and to build and strengthen community resilience to fight COVID–19 through addressing existing health disparities. DP21–2109 is funded for a three-year period, from September 2021 through August 2024. At the same time, CDC also funded two recipients under CDC–RFA–DP21–2110, ''Community Health Workers for COVID Response and Resilient Communities (CCR)—Evaluation and Technical Assistance'' (CCR–ETA recipients) to design and conduct the national evaluation of DP21–2109 CCR. These two recipients will lead the information collection described in this request.

Both DP21–2109 and DP21–2110 were funded through the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 funds allocated to CDC to achieve the goal of protecting the American people from the public health impacts of COVID–19. The novel Coronavirus Disease 2019 has impacted communities nationwide. Racial and ethnic minority groups, economically disadvantaged persons, justice-involved individuals, people experiencing homelessness, and people who use drugs and/or have certain underlying medical conditions have a higher risk of having severe COVID–19 illness and adverse outcomes. Thus, these groups represent the CCR populations of focus.

The purpose of the DP21–2109 CCR national evaluation is to monitor implementation and evaluate implementation and outcomes of CCR. CDC will use resulting information to describe the implementation of CCR at the national level, inform future community-based and CHW-led COVID response programs, and, in conjunction with secondary data sources, assess some important health outcomes, including vaccination rates among populations of focus. This request includes the following information collections:

- *CCR Recipient Survey:* The survey will collect information about: (1) program management; (2) organizational infrastructure; (3) populations of focus served by CCR funded efforts; (4) CHW hiring and compensation; (5) CHW training, certification, and integration into community-based and care COVID response teams; (6) CHW referral tracking systems; (7) non-CDC resources supporting the program; and (8) other aspects of program implementation. The survey will be administered once—at the end of program Year 3—in both English and Spanish using web-based survey software.
- *CHW Survey:* The survey will collect information about: (1) CHW compensation and benefits; (2) core CHW roles during CCR implementation; (3) integration of CHWs into community-based and care COVID response teams; (4) core competency training; (5) supervision; (6) CHW-initiated referrals; and (7) CHW involvement in decision-making. The survey will be administered once—at the end of program Year 3—in English and Spanish using web-based survey software.

CDC requests OMB approval for an estimated 194 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
CDC–RFA–DP21–2109 CCR recipients	CCR Recipient Survey	23	1	25/60
CCR CHWs	CCR CHW Survey	367	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–12357 Filed 6–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–23AA]

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 ''DELTA Achieving Health Equity through Addressing Disparities (AHEAD) Cooperative Agreement Evaluation'' 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 October 17, 2022 to obtain comments from the public and affected agencies. CDC received four comments 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

DELTA Achieving Health Equity through Addressing Disparities (AHEAD) Cooperative Agreement Evaluation—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The goal of this project is to collect monitoring data for performance and implementation of the cooperative agreement: Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Achieving Health Equity through Addressing Disparities (AHEAD). The Centers for Disease Control and Prevention (CDC) seeks OMB approval for three years for a New Information Collection Request (ICR) to collect information from 22 recipients (State Domestic Violence Coalitions) and all 32 sub-recipients (Coordinated Community Response Teams) funded through CDC's DELTA AHEAD Program cooperative agreement. CDC will collect information from DELTA AHEAD recipients as part of its program evaluation to assess the implementation and impact of the Notice of Funding Opportunity (NOFO) and further understand the facilitators, barriers, and critical factors to implement specific violence prevention strategies and conduct program evaluation activities.

Intimate Partner Violence (IPV) is a serious, yet preventable public health problem that affects millions of people in the United States each year. Data from CDC's 2015 National Intimate Partner and Sexual Violence Survey indicate that about one in four women and one in 10 men have experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact. This form of violence disproportionately affects marginalized populations in the United States. Evidence suggests an increase in new cases and severity of IPV, particularly for marginalized groups, during the COVID–19 pandemic, pointing to the need to adapt IPV prevention strategies during shutdowns and other national and global emergencies. Such disparities in the risk of IPV are created and maintained through systemic health and social inequities. To achieve health equity requires addressing root causes (*e.g.,* discrimination and biases in societal values, public policy) that differentially disadvantage groups based on characteristics such as race, ethnicity, gender, and ability, and are often expressed as racism, sexism, and disability discrimination. Information to be collected will provide crucial data for program performance monitoring and provide CDC with the capacity to respond in a timely manner to requests for information about the program from the Department of Health and Human Services (HHS), the White House, Congress, and other sources. Information to be collected will also strengthen CDC's ability to monitor awardee progress, provide data-driven technical assistance, and disseminate the most current surveillance data on unintentional and intentional injuries.

Monitoring the impact of population-based strategies and identifying new insights and innovative solutions to health problems are two of the noted public health activities that all public health systems should undertake. For

NCIPC, these objectives cannot be satisfied without the systematic collection of data and information from state health departments. The information collection will enable the accurate, reliable, uniform, and timely submission to NCIPC of each awardee's progress report and injury indicators, including strategies and performance measures. Funded recipients are expected to use data to identify populations and environments at differential risk for violence due to inequitable access to conditions needed for health and safety. By increasing equitable access to Social Determinants of Health (SDOH), funded recipients reduce risk factors for and/or increase protective factors against Intimate Partner Violence (IPV). Authorized by the Family Violence and Prevention Services Act (FVPSA), CDC has funded the DELTA Program since 2002. The DELTA program funds State Domestic Violence Coalitions (SDVCs) to implement statewide IPV prevention efforts and assist and fund local communities to do the same.

The information collection and reporting requirements have been carefully designed to align with and support the specific goals and outcomes outlined in the cooperative agreement. This funding opportunity includes two funding options. Category A recipients will have existing high capacity to implement primary prevention strategies and will build upon existing efforts. Category B recipients will focus on gathering publicly available data to better understand gaps in IPV prevention resources, building capacity to implement and evaluate IPV primary prevention in their state and selected communities, and using evaluation data for quality improvement.

Using recipients' annually submitted progress, outcomes, performance indicators and related measures, CDC will aggregate and synthesize those data to inform the CDC evaluation of the cooperative agreement initiative across all recipients to capture program impact at the community and state levels as well as performance monitoring and continuous program improvement. The CDC evaluation will inform and highlight the progress and achievements that recipients are making toward reducing IPV using community and societal level primary prevention approaches in addressing risk and protective factors.

CDC requests OMB approval for an estimated 163 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
DELTA AHEAD State Domestic Violence Coalition (SDVC) Project Leads.	Annual Performance Report	13	1	10
	Key Informant Interview—Project Lead	13	1	1
DELTA AHEAD SDVC Evaluators	Key Informant Interview Evaluator	13	1	1
DELTA AHEAD SDVC staff—Category B Recipients.	Prevention Infrastructure Assessment	3	1	30/60
DELTA AHEAD SDVC Staff—Category A Recipients.	Health Equity Capacity Assessment	10	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–12356 Filed 6–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23FQ; Docket No. CDC–2023–0046]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Public Health/Public Safety Strategies to Reduce Drug Overdose Data Collection. This data collection is designed to collect data on overdose prevention efforts that involve Public Health/Public Safety sectors or to address justice-involved populations at increased risk of overdose.

DATES: CDC must receive written comments on or before August 8, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0046 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of

information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Public Health/Public Safety Strategies to Reduce Drug Overdose Data Collection—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The drug overdose epidemic continues to pose a serious threat to communities across the country. In March 2023, the declaration of the opioid crisis as a national Public Health Emergency was renewed yet again. Further, provisional data from the National Center for Health Statistics (NCHS) confirmed that the number of overdose deaths in 2022 was 109,680, which is a 0.5% increase from 2020. Adding to this challenge, drug availability and overdose trends are rapidly changing, shaped by the westward expansion of fentanyl, the eastward expansion of methamphetamine, the inclusion of adulterants in the drug supply (*e.g.,* fentanyl, xylazine), and increasing polysubstance-involved overdose.

Multisector collaboration is critical to saving lives and reducing the overdose epidemic. Two key sectors in this response are public health and public safety (PH/PS), as they are both on the front lines and both tasked with improving community safety and well-being. CDC demonstrates strong commitment to PH/PS partnerships through implementation of several national programs. Beginning in September 2019, CDC's Overdose Data to Action (OD2A) funds enhanced surveillance and prevention of fatal and nonfatal opioid overdoses in 47 states and 19 localities. In most of these jurisdictions, prevention activities are carried out in partnership with public safety. Since 2017, CDC has supported the Overdose Response Strategy (ORS), a unique collaboration between public health and public safety partners created to help local communities reduce drug overdose and save lives. Finally, CDC recently launched the Opioid Rapid Response Program, an interagency, coordinated Federal effort with the HHS Office of Inspector General to help mitigate overdose risks among patients who lose access to a prescriber of opioids due to law enforcement actions. As a relatively new and increasingly leveraged tool for overdose prevention, a greater understanding of PH/PS strategies are needed to inform these national programs.

The goal of this Generic mechanism is to collect data to improve overdose prevention efforts that involve PH/PS sectors or address justice-involved populations at increased risk of overdose. This requires practical information and experiential knowledge on current implementation of overdose prevention efforts by PH/PS. Based on previous experience, NCIPC anticipates that information will need to be collected to: (a) understand the design, implementation, and uptake of strategies that involve public health and safety, or individuals involved in the criminal legal system who are at increased risk of overdose; (b) identify barriers, facilitators, and best practices associated with strategy implementation; and (c) identify disparities in access to strategies among diverse populations or the effectiveness of these strategies in reducing overdose.

This Generic mechanism will allow for the gathering of information about PH/PS strategies to identify actions to improve responses to the overdose crisis. No Generic currently exists that would allow for exploration of programs, practices, and capacity among PH/PS partnerships to address overdose. The assessments conducted and information gathered through this mechanism will be used to rapidly improve the implementation of programs enacted through these partnerships throughout the lifespan of CDC's national programs and more broadly.

The estimated annual burden hours requested for this collection are 2,500. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Public Health/Public Safety Strategies Data Collection Participants.	Public Health/Public Safety Strategies Data Collection Instruments.	5,000	1	30/60	2,500

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–12359 Filed 6–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23FN; Docket No. CDC–2023–0044]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled, Menthol-Flavored Tobacco Products Policy Evaluation, which aims to collect data on menthol-flavored tobacco product use, any tobacco use, quit rates, and product switching behaviors among adults 18 years of age and older.

DATES: CDC must receive written comments on or before August 8, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0044 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Menthol-Flavored Tobacco Products Policy Evaluation—New—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) is submitting this new information collection request (ICR) for an evaluation of local policies restricting the sale of menthol and other flavored tobacco products on outcomes such as menthol-flavored tobacco product use, any tobacco use, quit rates, and product switching behaviors. The evaluation will also study the impact community education efforts associated with the flavored tobacco product sales restriction policies have on individuals' awareness of the policies and perceptions about the harms of tobacco use. This evaluation seeks to explore the effects of the policies on racial and ethnic groups (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino populations), and lesbian, gay, bisexual, transgender, queer, and/or questioning (LGBTQ+) communities specifically, as these populations are known to use menthol-flavored tobacco products at a higher prevalence than other populations and may therefore be most affected by policies addressing menthol-flavored tobacco use.

Understanding how the aforementioned policies impact menthol-flavored tobacco product use may help to inform public health activities and decisions regarding tobacco control. Although some research on local tobacco policies indicates they are effective at limiting the availability of policy-restricted products, there is a lack of information on the policies' potential impact on tobacco use behaviors (*e.g.,* product switching behavior, online purchasing). There have been no other evaluation data collection efforts conducted on this topic to date, nor does the information to be collected exist in any existing centralized data source. Each data collection tool submitted through this package has a distinct purpose with no overlap across other tools or data collection efforts.

OMB approval is requested for three years. The total annualized burden is 3,047 hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
General population	Survey Screener Questionnaire	9,875	1	2/60	329

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Individuals in racial and ethnic groups.	Survey Screener Questionnaire	1,500	1	2/60	50
LGBTQ+ individuals	Survey Screener Questionnaire	1,125	1	2/60	38
General population	Community Web-Panel Survey	4,050	1	30/60	2,025
Individuals in racial and ethnic groups.	Community Web-Panel Survey	600	1	30/60	300
LGBTQ+ individuals	Community Web-Panel Survey	450	1	30/60	225
General population	Focus Group Screener Questionnaire.	34	1	3/60	2
Individuals in racial and ethnic groups.	Focus Group Screener Questionnaire.	33	1	3/60	2
LGBTQ+ individuals	Focus Group Screener Questionnaire.	33	1	3/60	2
General population	Community Focus Group	25	1	1	25
Individuals in racial and ethnic groups.	Community Focus Group	25	1	1	25
LGBTQ+ individuals	Community Focus Group	25	1	1	25
Total	.....	.....	.....	.....	3,047

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–12358 Filed 6–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Medical Health Assessment Form and Public Health Investigation Forms, Tuberculosis and Non-Tuberculosis Illness (Office of Management and Budget 0970–0509); Correction

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments; correction.

SUMMARY: The Administration for Children and Families (ACF) published a document in the **Federal Register** of June 1, 2023, concerning request for comments on a 3-year extension of the *Mental* Health Assessment Form (formerly the Health Assessment Form) and Public Health Investigation Forms, Active Tuberculosis (TB) and Non-TB Illness (Office of Management and Budget (OMB) #0970–0509, expiration December 31, 2023). The published notice contained an incorrect title and a typo in the *Description* section.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 1, 2023, in FR Doc. 2023–11627, the following corrections apply:

1. On page 35879, in the third column, the correct title is: Proposed Information Collection Activity; Mental Health Assessment Form and Public Health Investigation Forms, Tuberculosis and Non-Tuberculosis Illness (Office of Management and Budget 0970–0509).

2. On page 35880 in the third column, there is a typo in the second sentence. The sentence should read: In addition, ORR has written an instructional letter for the Mental Health Assessment Form to explain the purpose of the form and provide general guidance on completion to healthcare providers.

DATES: Comments due on the information collection proposed in 88 FR 35879 on or before July 31, 2023.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–12334 Filed 6–8–23; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1848]

Clinical Drug Interaction Studies With Combined Oral Contraceptives; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Clinical Drug Interaction Studies With Combined Oral Contraceptives.'' This guidance is intended to help sponsors of investigational new drug applications and new drug applications evaluate the need for drug-drug interaction (DDI) studies with combined oral contraceptives (COCs), design such studies, and determine how to communicate DDI study results and risk mitigation strategies to address potential risks associated with increased or decreased exposure of COCs in labeling. The guidance finalizes the draft guidance ''Clinical Drug Interaction Studies With Combined Oral Contraceptives'' issued on November 23, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on June 9, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1848 for ''Clinical Drug Interaction Studies With Combined Oral Contraceptives.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Xinning Yang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Silver Spring, MD 20993, 301–796–7412, *Xinning.Yang@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Clinical Drug Interaction Studies With Combined Oral Contraceptives.'' COCs can effectively prevent pregnancy; however, the use of concomitant medications could result in DDIs that affect the safety and/or efficacy of COCs. For example, the induction of drug metabolizing enzymes could cause lower levels of progestin and/or estrogen and compromise the efficacy of COCs, while inhibition of metabolizing enzymes could cause higher levels of these hormones and increase the risk of safety events, such as venous thromboembolism. This guidance discusses when clinical DDI studies with COCs should be conducted. It also provides recommendations on the design and conduct of such studies, including but not limited to, the study population, the choice of COC, study design, pharmacokinetic sampling schedule, and pharmacodynamic assessments. In addition, this guidance discusses the interpretation of results from clinical DDI studies with COCs and whether it is possible to extrapolate the results of such studies to other COCs. This guidance also provides recommendations to sponsors on communicating DDI study results and risk mitigation strategies in labeling to address potential risks associated with increased or decreased exposure of COCs. A decision tree regarding whether a DDI study with a COC is recommended based on the metabolizing enzyme inhibition or induction potential of the investigational drug is also included.

This guidance finalizes the draft guidance entitled ''Clinical Drug Interaction Studies With Combined Oral Contraceptives'' issued on November 23, 2020 (85 FR 74737). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include the addition of more explanations/scenarios when a DDI study with COCs may or may not be recommended, clarifications for non-teratogenic drugs that are intended to be used as a combination therapy with teratogenic drugs, removal of food intake recommendations, addition of alternative options for choosing COCs, and more examples of pharmacodynamic parameters for the DDI study.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Clinical Drug Interaction Studies With Combined Oral Contraceptives.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 pertaining to investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 pertaining to new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 pertaining to biologic license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR 201.56 and 201.57 pertaining to the content and format of labeling have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: June 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–12370 Filed 6–8–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3343]

Advisory Committee; Dermatologic and Ophthalmic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Dermatologic and Ophthalmic Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Dermatologic and Ophthalmic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the October 7, 2024, expiration date.

DATES: Authority for the Dermatologic and Ophthalmic Drugs Advisory Committee will expire on October 7, 2024, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2855, *DODAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Dermatologic and Ophthalmic Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of nine voting members including two Chairpersons. Members and the Chairpersons are selected by the Commissioner or designee from among authorities knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/dermatologic-and-ophthalmic-drugs-advisory-committee/dermatologic-and-ophthalmic-drugs-advisory-committee-charter* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: June 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–12293 Filed 6–8–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Communication Disorders Review Committee, which was published in the **Federal Register** on May 01, 2023, FR DOC 2023–09130, 88 FR 26579.

This notice is being amended to change the meeting location from Embassy Suites at Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 to Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852. The meeting is closed to the public.

Dated: June 5, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12326 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pilot Practice-based Research for Primary Care Suicide Prevention.

Date: July 10, 2023.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301–500–5829, *serena.chu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12376 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

The event is free and open to the public; however, registration is required. Please use this link to register: *https://nih.zoomgov.com/webinar/register/WN_i1kFQILvQwCYRPAWPN3hag.*

Name of Committee: Sleep Disorders Research Advisory Board.

Date: August 3, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: The purpose of this meeting is to update the Advisory Board and stakeholders on the progress of sleep and circadian research activities across NIH.

Place: National Institutes of Health, Rockledge Centre I, 6705 Rockledge Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Marishka Brown, Ph.D., SDRAB Executive Secretary, Director, National Center on Sleep Disorders Research, National Institutes of Health, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Suite 407B, Bethesda, Maryland 20814–7952, 301–435–0199, *ncsdr@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person 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.

Information is also available on the Institute's/Center's home page: *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/sleep-disorders-research,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12375 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Nursing Research.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: June 22, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 5, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12325 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications.

Date: July 11, 2023.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, MSC 6902, Bethesda, MD 20892, 301–443–4032, *anna.ghambaryan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: June 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12374 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; R21 Secondary Data Analysis Grant Applications.

Date: July 7, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, Bethesda, MD 20817, 240–276–5864, *jennifer.schiltz@nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; Clinical Applications UG1 and R34.

Date: July 20, 2023.

Time: 9:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 5, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12324 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; RFA AA22–001 and AA22–002 Specialized Alcohol Research Centers (P50 and P60).

Date: July 11, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: June 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12377 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of RFA DE–23–014.

Date: July 14, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher T. Campbell, Ph.D., MD, Scientific Review Officer, Division of Extramural Activities, National Institute of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, 310-827-4603, *christopher.campbell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12379 Filed 6–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0393]

National Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard seeks applications to fill two-member vacancies on the National Merchant Marine Personnel Advisory Committee (Committee). This Committee advises the Secretary of Homeland Security and the Coast Guard on matters relating to personnel in the United States Merchant Marine, including the training, qualifications, certification, documentation, and fitness of mariners.

DATES: Completed applications should reach the U.S. Coast Guard on or before August 8, 2023.

ADDRESSES: Applications should include a cover letter expressing interest in an appointment to the National Merchant Marine Personnel Advisory Committee, a resume detailing the applicant's relevant experience for the position applied for (including the mariner reference number for the credentials held), and a brief biography. Applications should be submitted via email with subject line ''Application for NMERPAC'' to *megan.c.johns@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mrs. Megan Johns Henry, Alternate Designated Federal Officer of the National Merchant Marine Personnel Advisory Committee; telephone 202–372–1255 or email at *megan.c.johns@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Merchant Marine Personnel Advisory Committee is a Federal advisory committee. The Committee must operate under the provisions of the *Federal Advisory Committee Act,* (Pub. L. 117–286, 5 U.S.C. ch. 10), and 46 U.S.C. 15109.

The Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat 4192), and is codified in 46 U.S.C. 15103. The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee will hold meetings at least twice a year, typically in the last week of March and the week of September following the Labor Day holiday. The meetings are held at locations across the country selected by the U.S. Coast Guard.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. The Secretary of Homeland Security may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed for travel and per diem in accordance with Federal Travel Regulations. If you are appointed as a member of the Committee, you will be required to sign a Non-Disclosure Agreement and a Gratuitous Services Agreement.

In this solicitation for Committee members, we will consider applications for two (2) positions:

- One shall be a United States citizen holding an active license or certificate issued under 46 U.S.C. chapter 71 or a merchant mariner documents issued under 46 U.S.C. chapter 73, as a deck officer who represents merchant marine deck officers, who currently holds a Merchant Mariner Credential with an endorsement for oceans any gross tons, an endorsement for inland river route with a limited or unlimited tonnage, and significant tanker experience.
- One shall be a pilot who represents merchant marine pilots.

Each member of the Committee must have expertise, knowledge, and experience on matters related to personnel in the United States merchant marine, including the training, qualifications, certification, documentation, and fitness of mariners.

The members who will fill the two positions described above will be appointed to represent the interest of their respective groups and viewpoints and are not Special Government Employees as defined in 18 U.S.C. 202(a).

In order for the Department, to fully leverage broad-ranging experience and education, the National Merchant Marine Personnel Advisory Committee must be diverse with regard to professional and technical expertise. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the Nation's people.

If you are interested in applying to become a member of the Committee, email your application to *megan.c.johns@uscg.mil* as provided in the **ADDRESSES** section of this notice. Applications must include: (1) a cover letter expressing interest in an appointment to the National Merchant Marine Personnel Advisory Committee; (2) a resume detailing the applicant's relevant experience and (3) a brief biography of the applicant by the deadline in the **DATES** section of this notice.

The U.S. Coast Guard will not consider incomplete or late applications.

Dated: June 6, 2023.

Benjamin J. Hawkins,

Deputy Director, Commercial Regulations and Standards.

[FR Doc. 2023–12408 Filed 6–8–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0016; OMB No. 1660–NW165]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Information Collection Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 14-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection/emergency information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the following Grant Programs Directorate instruments: Shelter and Services Program (SSP) Application Worksheet; Shelter and Services Program (SSP) Federal Emergency Management Agency A-Number Submission Template,

Shelter and Services Program (SSP) Program-Specific Required Forms and Information; State and Local Cybersecurity Grant Program (SLCGP) Investment Justification Form; and State and Local Cybersecurity Grant Program Project Worksheet (SLCGP). The information is used by FEMA's Grants Programs Directorate to evaluate applications, monitor grants for performance and compliance, and respond to requests from Congress.

DATES: Comments must be submitted on or before June 23, 2023.

ADDRESSES: Please follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0016. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Regarding the Shelter and Services Program (SSP): Amy Bulgrien, Senior Advisor Resilience/GPD/Office of Grants Administration, FEMA at (202) 880–7522 or *amy.bulgrien@fema.dhs.gov.* Regarding the State and Local Cybersecurity Grant Program (SLCGP): Lisa Nine, Senior Program Analyst Resilience/GPD/Office of Grants Administration, FEMA at (202) 706–3176 or *Lisa.nine@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On December 29, 2022, the President signed the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) (''Omnibus''), which includes statutory appropriations for SSP. The purpose of this authority is to ''support sheltering and related activities provided by non-federal entities, including facility improvements and construction, in support of relieving overcrowding in short-term holding facilities of Customs and Border Protection.'' Because FEMA is responsible for implementing and ensuring compliance with these programs, and Congress authorized $1.2 billion in FY 2023 in funding to support these programs, FEMA requests an emergency approval to collect the necessary information from eligible entities to administer the award processes.

The SSP is a grant program in DHS that makes federal funds available to enable state and local governments, federally recognized tribal governments, and non-governmental organizations to off-set allowable costs incurred for services associated with noncitizen arrivals in their communities. The SSP supports the FY 2020–2024 DHS Strategic Plan, Goal 5: Strengthen Preparedness and Resilience, Objective 5.1: Build a National Culture of Preparedness, and the 2022–2026 FEMA Strategic Plan Goal 3: Promote and Sustain a Ready FEMA and Prepared Nation.

The authority for this grant program is derived from:

- Consolidated Appropriations Act, 2023 (''the Omnibus'')
- 2 CFR part 200

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA), which amends Section 2220A of the Homeland Security Act of 2002 to include statutory language for cybersecurity grant programs, became a law. The purpose of this authority is to ''award grants to eligible entities to address cybersecurity risks and cybersecurity threats to information systems owned or operated by, or on behalf of state, local, or tribal governments.'' The purpose of the State and Local Cybersecurity Grant Program (SLCGP) is to provide funding to state, local, tribal, and territorial (SLTT) governments to address cybersecurity risks and cybersecurity threats to SLTT-owned or operated information systems.

The authority for this grant program is derived from:

- Section 2220A of the Homeland Security Act of 2002, as amended (Pub. L. 107–296) (6 U.S.C. 665g)
- Section 70612 of the Infrastructure Investments and Jobs Appropriations Act (Pub. L. 117–58)
- 2 CFR part 200

Collection of Information

Title: FEMA Grant Programs Directorate Programs.

Type of Information Collection: New Information Collection/Emergency Information Collection Request.

OMB Number: 1660–NW165.

FEMA Forms:

FEMA Form FF–008–FY–23–105, Shelter and Services Program (SSP) Application Worksheet.

FEMA Form Number FF–008–FY–23–106, Shelter and Services Program (SSP) Federal Emergency Management Agency A-Number Submission Template.

FEMA Form Number FF–008–FY–23–107, Shelter and Services Program (SSP) Program-Specific Required Forms and Information.

FEMA Form FF–008–FY–23–103, State and Local Cybersecurity Grant Program (SLCGP) Investment Justification Form.

FEMA Form Number FF–008–FY–23–104, State and Local Cybersecurity Grant Program (SLCGP) Project Worksheet.

Abstract: It is vital that FEMA implement the information collection as soon as possible to support immediate needs in response to delivering and supporting grant programs that help the Nation before, during, and after disasters in order to make the country more resilient. In accordance with the Paperwork Reduction Act (PRA) and the Office of Management and Budget's (OMB) implementing regulations at 5 CFR 1320.13: (1) this information is necessary to the mission of the Agency, (2) this information is necessary prior to the expiration of time periods established under PRA, (3) public harm is reasonably likely to result if normal clearance procedures are followed, and (4) the use of normal clearance procedures is reasonably likely to cause a statutory deadline to be missed.

Shelter and Services Program (SSP) Application Worksheet

As part of the FY 2023 Shelter and Services Program (SSP) application process, applicants must complete a formal application worksheet that addresses the evaluation criteria specified in the NOFO and provides additional information and certifications. The SSP is authorized in the Consolidated Appropriations Act, 2023 (Pub. L. 117–328). The Federal Emergency Management Agency (FEMA) has developed guidelines that ensure submissions are organized in a consistent manner while addressing key data requirements. This application worksheet template may be used by applicants to complete and submit their application. Failure to address these data elements in the prescribed format could potentially result in the rejection of the application worksheet from review consideration.

Shelter and Services Program (SSP) Federal Emergency Management Agency A-Number Submission Template

For reimbursement and advanced funding requests, applicants are required to collect, track and report Alien Registration Numbers (A-Numbers) or evidence of DHS processing (*e.g.,* I–94, I–385, I–860, I–

862) and release dates for all noncitizen migrants served by SSP funding. This includes a summary list reporting A-Numbers (where available), names, corresponding DHS release dates, and corresponding service dates.

Shelter and Services Program (SSP) Program-Specific Required Forms and Information

In addition to the application worksheet, applicants must submit a variety of forms and information with their funding request. The list of requested information includes Form 990s when applicable, rental agreements for applicants who are requesting funding for renovations or modifications to existing facilities, and proof of purchase documentation for reimbursement requests.

State and Local Cybersecurity Grant Program (SLCGP) Investment Justification (IJ)

As part of the FY 2023 SLCGP application process, applicants must develop and submit no more than four Investment Justification forms, corresponding to each of the four SLCGP objectives described in the Notice of Funding Opportunity (NOFO). The IJ acts as a program narrative, where the applicant describes how their investments will address existing cybersecurity gaps, risks, and threats; how each investment aligns to the SLCGP Objectives; and how each project within an investment will align to the 16 cybersecurity elements described in the NOFO. The IJ concludes with an implementation schedule, a planning tool for applicants to describe the key activities and milestones associated with each project. This schedule gives applicants the ability to categorize each project within main processes of the Project Management life cycle (*e.g.,* initiate, execute, control, or close out) to allow for ease of management, reporting, and monitoring purposes.

State and Local Cybersecurity Grant Program (SLCGP) Project Worksheet (PW)

In addition to the IJ, applicants for FY2023 SLCGP funding must submit a Project Worksheet. This tool captures baseline project and budget information at the time of application. For each project, the applicant must describe each project, categorize each project within one of the objectives described in the FY 2023 SLCGP NOFO, quantify the amount to be spent for planning, organization, equipment, training and exercises (POETE) activities, identify their proposed management and administrative costs, determine whether the project builds sustain existing core capabilities or builds new core capabilities. The projects identified in this worksheet must align to the applicant's Cybersecurity Plan.

Affected Public: Affected public includes: business entity (business contact information only), not for profit institutions, state, local and tribal governments.

Estimated Number of Respondents: The estimated total number of respondents is 18.

Estimated Number of Responses: The estimated total number of responses is 18.

Estimated Total Annual Burden Hours: The estimated total annual burden hours is 186 hours.

Estimated Total Annual Respondent Cost: The estimated total annual respondent cost is $10,438.00.

Estimated Respondents' Operation and Maintenance Costs: There are no capital, start-up, maintenance, or operating costs for respondents associated with this collection.

Estimated Respondents' Capital and Start-Up Costs: There are no capital, start-up, maintenance, or operating costs for respondents associated with this collection.

Estimated Total Annual Cost to the Federal Government: The total cost to the federal government is $4,646,398.

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. 2023–12345 Filed 6–8–23; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2023–0019]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Department of Homeland Security Privacy Office.

ACTION: Request for applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

SUMMARY: The U.S. Department of Homeland Security seeks applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

DATES: Applications for membership must reach the Department of Homeland Security Privacy Office at the address below on or before July 31, 2023.

ADDRESSES: If you wish to apply for membership, please submit the documents described below to Sandra L. Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by either of the following methods:

- *Email: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2023–0019) in the subject line of the message.
- *Fax:* (202) 343–4010.

FOR FURTHER INFORMATION CONTACT: Sandra L. Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Mail Stop 0655, Washington, DC 20598–0655, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The DHS Data Privacy and Integrity Advisory Committee is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. ch. 10. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451 and provides advice at the request of the Secretary and the Chief Privacy Officer on programmatic, policy, operational, security, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity, transparency, and other privacy-related matters. The duties of the Committee are solely advisory in nature. In developing its advice and recommendations, the Committee may, consistent with the requirements of the FACA, conduct studies, inquiries, or

briefings in consultation with individuals and groups in the private sector and/or other governmental entities. The Committee typically hosts at least one public meeting per calendar year.

Committee Membership: The DHS Privacy Office is seeking to fill up to 22 positions for terms of 3 years from the date of appointment. Members are appointed by and serve at the pleasure of the Secretary of the U.S. Department of Homeland Security and must be specially qualified to serve on the Committee by virtue of their education, training, and experience in the fields of data protection, privacy, cybersecurity, and/or emerging technologies. Members are expected to actively participate in Committee and Subcommittee activities and to provide material input into Committee research and recommendations. The Committee's Charter requires that Committee membership be balanced among individuals from the following fields:

1. Individuals who are currently working in higher education, state or local government, or not-for-profit organizations;
2. Individuals currently working in for-profit organizations including at least one who shall be familiar with the data privacy-related issues addressed by small- to medium-sized enterprises;
3. Individuals currently working in for-profit organizations, including at least one who shall be familiar with data privacy-related issues addressed by large-sized and/or multinational enterprises; and
4. Other individuals, as determined appropriate by the Secretary.

In order for DHS to fully leverage broad-ranging experience and education, the Data Privacy and Integrity Advisory Committee must be diverse with regard to professional and technical expertise. DHS is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people. Committee members serve as Special Government Employees (SGE) as defined in section 202(a) of title 18 U.S.C. As such, they are subject to Federal conflict of interest laws and government-wide standards of conduct regulations. Members must annually file a New Entrant Confidential Financial Disclosure Report (OGE Form 450) for review and approval by Department ethics officials. DHS may not release these reports or the information in them to the public except under an order issued by a federal court or as otherwise permitted under the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (FOIA) (5 U.S.C. 552). Committee members are also required to obtain and retain at least a secret-level security clearance as a condition of their appointment. Members are not compensated for their service on the Committee; however, while attending meetings or otherwise engaged in Committee business, members may receive travel expenses and per diem in accordance with Federal travel regulations.

Committee History and Activities: All individuals interested in applying for Committee membership should review the history of the Committee's work. The Committee's charter and current membership, transcripts of Committee meetings, and all Committee reports and recommendations to the Department are posted on the Committee's web page on the DHS Privacy Office website (*www.dhs.gov/privacy*).

Applying for Membership: If you are interested in applying for membership to the DHS Data Privacy and Integrity Advisory Committee, please submit the following documents to Sandra L. Taylor, Designated Federal Officer, at the address provided below within 30 days of the date of this notice:

1. A current resume; and
2. A letter that explains your qualifications for service on the Committee and describes in detail how your experience is relevant to the Committee's work.

Your resume and letter will be weighed equally in the application review process. Please note that individuals who are registered as federal lobbyists are not eligible to serve on federal advisory committees in an individual capacity. *See* ''Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions,'' 79 FR 47482 (Aug. 13, 2014). If you are or were registered as a federal lobbyist, you are not eligible to apply for membership on the DHS Data Privacy and Integrity Advisory Committee unless you have filed a bone fide de-registration or have been de-listed by your employer as an active lobbyist reflecting the actual cessation of lobbying activities, or you have not appeared on a quarterly lobbying report for three consecutive quarters as a result of actual cessation of lobbying activities. Applicants selected for membership will be required to certify, pursuant to 28 U.S.C. 1746, that they are not currently registered as federal lobbyists. Pursuant to the Committee's Charter, individuals who are not U.S. citizens or legal permanent residents of the United States are ineligible to serve on the DHS Data Privacy and Integrity Advisory Committee.

Please send your documents to Sandra L. Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by either of the following methods:

- *Email: PrivacyCommittee@hq.dhs.gov* or
- *Fax:* (202) 343–4010.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the Federal Records Act, 44 U.S.C. 3101; the FACA, 5 U.S.C. ch. 10; and the Privacy Act of 1974, 5 U.S.C. 552a.

Principal Purposes: When you apply for appointment to the DHS Data Privacy and Integrity Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. DHS will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly-available Committee documents, membership lists, and Committee reports.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the principal purposes noted above and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–009 Department of Homeland Security Advisory Committees System of Records Notice (October 3, 2008, 73 FR 57639).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the requested information. If you choose not to provide some or all of the requested information, DHS may not be able to consider your application for appointment to the Data Privacy and Integrity Advisory Committee.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may submit a Privacy Act and FOIA request in writing to the DHS Chief Privacy Officer and Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–009 Department of Homeland Security Advisory Committees System of Records Notice (October 3, 2008, 73 FR 57639) referenced above.

Dated: June 1, 2023.

Mason C. Clutter,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2023–12305 Filed 6–8–23; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0021]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for a Stay of Deportation or Removal

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until August 8, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0021 in the body of the correspondence, the agency name and Docket ID ICEB–2008–0006. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2008–0006.

FOR FURTHER INFORMATION CONTACT: If you have questions related to this revision, please contact: James Laforge, ERO Domestic Operations Unit, (973) 392–8026, *james.a.laforge@ice.dhs.gov.*

(This is not a toll-free number. Comments are not accepted via telephone message).

SUPPLEMENTARY INFORMATION:

Comment

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Application for a Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–246; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individual or households; business or other for-profit. The information collected on the I–246 is necessary for ICE to make a determination that the eligibility requirements for a request for a stay of deportation or removal are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,664 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden is 1,832 hours.

Dated: June 6, 2023.

Scott Elmore,

PRA Clearance Officer, U.S. Immigrations and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2023–12349 Filed 6–8–23; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–29]

30-Day Notice of Proposed Information Collection: Operating Fund Energy Incentives: Energy Performance Contracting Program, Rate Reduction Incentive, OMB Control Number 2577–New

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 comments 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* July 10, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. 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 or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *PaperworkReductionActOffice@hud.gov* or telephone 202–402–3400. 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. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 12, 2022 at 87 FR 41344.

A. Overview of Information Collection

Title of Information Collection: Operating Fund Energy Incentives: Energy Performance Contracting Program, Rate Reduction Incentive.

OMB Approval Number: Pending.

Type of Request: New Collection.

Form Number: HUD–52722, HUD–52723, EPC Savings Calculator, Resident Paid Utility Worksheet.

Description of the need for the information and proposed use: Section 9(e)(2)(C) of the United States Housing Act of 1937 (1937 Act) authorizes Public Housing Agencies (PHAs) to ''receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.'' Energy Conservation Improvements or often referred to as Energy Conservation Measures (ECMs) include improvements to other utilities such as water and gas. Under 24 CFR 990.185, PHAs may qualify for conservation incentives when undertaking ECMs that are financed by an entity other than HUD.

This third-party financing of energy consumption measures is termed an Energy Performance Contract (EPC). A PHA uses a loan from a third-party to finance initial improvements in PHA infrastructure that will reduce a PHA's energy and/or water consumption through implementation of ECMs and/or renewable energy. HUD will continue to provide the PHA operating subsidy based on a PHA's energy consumption before the improvements were made. The PHA will then use the energy savings to pay for the debt service on the loan.

There are three energy consumption incentives that are available to a PHA:

1. The Frozen Rolling Base (24 CFR 990.185(a)(1))—where HUD freezes the PHA's pre-EPC Rolling Base Consumption Level (RBCL) following the installation of ECMs so that the PHA can retain the savings from the decreased energy and/or water consumption for the term of the contract.

2. The Add-on Subsidy—an Additional Operating Subsidy (or ''add-on'') is an increase in total operating subsidy eligibility provided by HUD as a conservation incentive, as described in 24 CFR 990.185(a)(3). The additional subsidy is for amortization of the loan of the EPC and other direct costs related to the conservation project during the term of the contract.

3. The Resident-Paid Utility incentive (24 CFR 990.185(a)(2)). PHAs undertaking energy and/or water conservation measures that are financed by an entity other than HUD may include resident-paid utilities under the consumption reduction incentive. This incentive provides for PHAs to review and update all utility allowances to ascertain that residents are receiving the proper allowances before energy savings measures are begun; the PHA makes future calculations of rental income for purposes of the calculation of operating subsidy eligibility based on these baseline allowances. In effect, HUD will freeze the baseline allowances for the duration of the contract. This approach allows a PHA to exclude from its Operating Fund rental income calculations any rents received that are a result of decreased utility allowances resulting from decreased consumption.

In addition to consumption incentives, PHAs are also eligible for a Rate Reduction Incentive. 24 CFR 990.185(b) also allows PHAs to retain 50% of any savings attributable to taking specific actions to reduce the cost of their energy consumption, such as well-head purchase of natural gas, administrative appeals, or contract negotiation with a utility company. RRIs executed at the same time as an EPC are eligible to retain up to 100 percent of the savings (rather than 50 percent of the savings with the RRI alone) during the EPC repayment period when the EPC and RRI impact the same AMP and utility.

The lower rate cannot be a result of factors that do not require the PHA to take an action and/or are beyond a PHA's control including, but not limited to, market changes, legislative changes, rate changes for all customers, or consuming energy at a different time of day. Applicants for an EPC program submit the following documents at the time of submission:

- A letter applying for an EPC incentive, identifying the project location, any PHA units that would fall under the EPC contract, the type of incentive that a PHA is applying for and whether the project will be managed by the PHA, or using an Energy Services Company (ESCO) to manage the EPC on their behalf;
- Completed Investment Grade Energy Audit to the ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) standard that supports the proposal;
- The Request for Proposals (RFP) used to solicit proposals from third-party lenders or ESCOs;
- A Cost Summary Sheet showing ECMs by project, funding type and Measurement and Verification (M&V) type;
- Detailed Utility Baseline Data summary sheet showing the RBCL and any adjustments to the data;
- Copies of the HUD 52722 and 52723 forms [1] by Asset Management Project (AMP) for each year of the required rolling base years;
- Copy of the most recent HUD 52722 and 52723 forms by AMP; and
- A detailed Cash Flow Summary, showing:
  - That the energy savings are sufficient to cover the project costs including replacement costs;
  - That 75% of the annual energy savings are utilized for payment of the debt for the contract; and
  - Any Bureau of Labor and Statistics historical documentation supporting any utility rate escalations.

Applicants for Resident Paid Utility Allowances submit the following:

- Copies of existing utility allowances with supportive documentation;
- Copies of the Pre-EPC utility allowances with supportive documentation;
- Copies of projected post-EPC utility allowances will be with supportive documentation;
- A copy of the Energy Services Agreement contract between the PHA and their third-party lender/ESCO Energy Services Agreement (ESA);
- A certification that the PHA has performed a cost analysis per 2 CFR part 200, and that the costs associated with the EPC are reasonable;
- A repayment certification that the PHA will pay for any debt using cost savings from implementing ECMs; and
- A letter from the PHA's legal counsel that states that the ESA complies with State and Local laws and that the legal interests of the Authority are fairly represented in the ESA.

Applications for the Rate Reduction Incentive (RRI) must include the following information:

- PHA Name and PHA code;
- Asset Management Project (AMP) number for each AMP included in the proposed RRI;

[1] The burden for these forms has been approved under OMB Control No. 2577–0029. As a result, the burden from these forms is not included in the current collection.

• A brief description of the action the PHA undertook to reduce the utility rate and supporting documentation;

• An explanation of how the PHA will calculate savings and anticipated savings; and

• Identification of the incentive the PHA will claim, whether it is 50 percent or 100 percent of the actual savings.

HUD uses collected information to determine whether applications meet eligibility requirements and application submission requirements. Applicants provide information about the proposed contract to enable HUD to evaluate the applicant's response to the criteria for rating the application and approving or disproving the contract.

Annual EPC Measurement and Verification and savings calculation information collected allows HUD to audit program performance accurately. The quality of reported data is critical for ensuring an accurate distribution of the Operating Fund subsidy appropriation. The information collected will allow HUD to accurately audit the program. For the EPC program, Measurement and Verification data will be submitted by the PHA annually in a format of their choice. The report must contain the actual usage amount of each utility under the EPC, the actual unit of measure, the consumption savings, and the cost savings. The PHAs will also be required to submit their consumption data using a standardized Excel Spreadsheet through the Operating Fund Web Portal, the Energy Savings Calculator. This Calculator is used to ensure the accuracy of the EPC incentives being claimed by the PHA in their annual Operating Subsidy submission.

For the RRI program, PHAs must annually submit documentation on energy cost savings attributed to the reduction in the rate. This data is submitted on an Asset Management Project (AMP basis). For the RRI program, PHAs will submit their data via email using the format of their choice.

Respondents: Public Housing Agencies (PHAs).

Type of submission/information collection	Number of respondents	Frequency of submissions	Total responses	Estimate average time (hours)	Estimate annual burden (hours)	Hourly cost	Total annual cost
EPC Application and supporting documentation	10	1	10	560	5,600	$125	$700,000
EPC Measurement and Verification Report and Energy Savings Calculator	200	1	200	20	4,000	125	500,000
RRI Application and supporting documentation	30	1	30	2	60	125	7,500
RRI savings calculation	60	1	60	10	600	125	75,000
Totals	300		300		10,260		1,282,500

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 regarding 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 respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Record Management Officer, Officer of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–12341 Filed 6–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2023–0075; FXES11140800000–234–FF08EVEN00]

Receipt of Incidental Take Permit Application for Participation in the General Conservation Plan for Oil and Gas Activities; Draft Categorical Exclusion for the Conoco Philips Soil Remediation Project; Santa Barbara County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from Conoco Philips for an incidental take permit (ITP), pursuant to the Endangered Species Act, under the approved General Conservation Plan for Oil and Gas Activities (GCP). If granted, the ITP would authorize take of the California red-legged frog (*Rana draytonii*) and the Santa Barbara County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*), incidental to excavation and remediation of soils contaminated with hydrocarbons at the historical Cox 3–32 oil well sump and oilfield lease access road. The Service prepared a draft screening form in accordance with the National Environmental Policy Act to evaluate the potential effects of the specific project to the natural and human environment resulting from issuing an ITP to the applicant. We invite the public and local, State, Tribal, and Federal agencies to comment on the draft screening form and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual.

DATES: We must receive your written comments on or before July 10, 2023.

ADDRESSES: *Obtaining Documents:* The document this notice announces (draft screening form), as well as any comments and other materials that we

receive, will be available for public inspection online in Docket No. FWS–R8–ES–2023–0075 at *https://www.regulations.gov.* The approved GCP and the associated final environmental assessment/finding of no significant impact are also available on that site. However, we are no longer taking comments on those finalized, approved documents.

Submitting Comments: If you wish to submit comments, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2023–0075.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–NWRS–2023–0075; U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Kirby Bartlett, Fish and Wildlife Biologist, by email at *kirby_bartlett@fws.gov,* by telephone at 805–644–1766, or by U.S. mail at the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from Conoco Philips for an incidental take permit (ITP), pursuant to the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), under the approved General Conservation Plan for Oil and Gas Activities (GCP). A GCP is a mechanism that meets the definition of a conservation plan in section 10(a)(1)(B) of the ESA and enables the construct of a programmatic permitting and conservation process to address a defined suite of proposed activities over a defined planning area. The application for an incidental take permit was made pursuant to section 10(a)(1)(B) of the ESA. The ITP, if granted, would authorize take of the federally threatened California red-legged frog (*Rana draytonii*) and the federally endangered Santa Barbara County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) incidental to activities associated with the soil remediation for the historical Cox 3–32 oil well sump and oilfield lease access road in Santa Maria, California. The permit would be issued to the applicant under the GCP for Oil and Gas Activities, which was approved on June 27, 2022. Prior to approval, a notice of availability of the draft programmatic environmental assessment (EA) and GCP published on March 6, 2020 (85 FR 13181). The approved GCP and the associated final programmatic environmental assessment/finding of no significant impact are available on the Ventura Fish and Wildlife Office web page at *https://www.fws.gov/media/habitat-conservation-plans-and-general-conservation-plans.* We have also uploaded them to *https://www.regulations.gov.* However, we are no longer taking comments on these finalized, approved documents.

Document for Public Comment

We invite public comment on a draft screening form we prepared in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), and on our preliminary determination that this proposed ITP qualifies as ''low effect,'' and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)).

Background

The Service listed the California red-legged frog as threatened on May 23, 1996 (61 FR 25813), and the Santa Barbara County DPS of the California tiger salamander as endangered on September 21, 2000 (65 FR 57242). Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as threatened or endangered (16 U.S.C. 1538), where take is defined to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32, respectively. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittee would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Applicant's Proposed Activities

The applicant has applied for a permit for incidental take of California red-legged frog and California tiger salamander. The take would occur in association with activities necessary to remediate soil contaminated with hydrocarbons at the historical Cox 3–32 oil well sump and oilfield lease access road in Santa Maria, California. Excavation of hydrocarbon-impacted material surrounding the oil well sump would extend to a maximum depth of approximately 12 feet (ft) below ground surface within an approximately 0.88-acre work area surrounded by a temporary chain link fence. California red-legged frogs have a known population approximately 0.5 miles (mi) west of the project site in Bradley Lake, making the project within dispersal distance for the California red-legged frog. Additionally, California tiger salamanders have been identified approximately 0.65 mi southwest of the project site, making the project site potential California tiger salamander upland habitat. The proposed soil remediation would require excavating contaminated soils to a depth of approximately 12 ft in the area where the oil well sump was located, which will result in impacts to burrowing and dispersal habitat for the covered species as well as the potential for direct injury or mortality from crushing during excavation activities.

The project includes avoidance and minimization measures for the California red-legged frog and California tiger salamander and mitigation for unavoidable impacts to their habitat. The applicant has proposed mitigation in the form of funding activities consistent with the GCP that will compensate for unavoidable impacts to the California red-legged frog. To mitigate for impacts to the California tiger salamander, the applicant proposes to purchase one California tiger salamander credit from the Service-approved La Purisima Conservation Bank located in Santa Barbara County, California.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2023–12338 Filed 6–8–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500170655]

Notice of Intent To Prepare a Resource Management Plan for the Cascade-Siskiyou National Monument in Oregon/Washington and California and an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), Presidential Proclamations entitled ''Establishment of the Cascade-Siskiyou National Monument'' (June 9, 2000) and ''Boundary Enlargement of the Cascade-Siskiyou National Monument'' (January 12, 2017), the Bureau of Land Management (BLM) Oregon/Washington (OR/WA) and California (CA) State Offices intend to revise a resource management plan (RMP) with an associated environmental impact statement (EIS) for the Cascade-Siskiyou National Monument (Monument). With this notice, the BLM announces the beginning of a 60-day public scoping period to solicit public comments and identify issues, provide the planning criteria for public review, and issue a call for nominations for areas of critical environmental concern (ACECs). This RMP revision would replace the existing 2008 Monument RMP.

DATES: The BLM requests the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, studies, and ACEC nominations by August 8, 2023. The BLM also requests the public submit comments on the planning criteria by the same date identified earlier. The planning criteria will be made available to the public within the first 30 days of the 60-day comment period to ensure the public has at least 30 days to comment on the planning criteria as required by the planning regulations at 43 CFR 1610.2(e).

ADDRESSES: You may submit comments on issues and planning criteria related to the Monument RMP and nominations of new ACECs by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2023675/510.*
- *Mail:* ATTN: CSNM RMP Project Manager, BLM Medford District, 3040 Biddle Rd., Medford, OR 97504.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2023675/510* and at the BLM Medford District Office, 3040 Biddle Rd., Medford, OR 97504.

FOR FURTHER INFORMATION CONTACT: Nikki Haskett, Cascade-Siskiyou National Monument RMP Project Manager; (458) 246–8861, address 3040 Biddle Rd., Medford, OR 97504; email *blm_csnm_rmp@blm.gov.* Contact Ms. Haskett to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Haskett. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM OR/WA and CA State Directors intend to prepare an RMP with an associated EIS for the Monument, announces the beginning of the scoping process, seeks public input on issues and relevant planning criteria, and invites the public to nominate ACECs. The planning area is in Jackson and Klamath Counties in Oregon and Siskiyou County in California and encompasses approximately 113,500 acres of BLM-administered lands. While most of the BLM-administered lands are within the BLM Ashland and Klamath Falls Field Offices in Oregon, approximately 5,000 acres are located within the BLM Redding Field Office in California.

In response to Presidential Proclamation No. 9564 (Boundary Enlargement of the Cascade-Siskiyou National Monument January 12, 2017), multiple plaintiffs sued the President and the BLM, claiming that the monument expansion violated the Oregon and California Revested Lands Sustained Yield Management Act of 1937 (the O&C Act). In 2017, two plaintiffs filed separate suits in the U.S. District Court for the District of Columbia. A third plaintiff filed suit in the District of Oregon. In September 2019, the District of Oregon upheld the monument expansion, and the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's judgment in April 2023. In November 2019, the District Court for the District of Columbia held that the monument expansion violated the O&C Act by ''reserving land governed by the O&C Act from sustained yield timber production'' and held Presidential Proclamation No. 9564 ''invalid and unenforceable as applied to land subject to the O&C Act.'' The United States has appealed this decision to the U.S. Court of Appeals for the District of Columbia Circuit. Although the outcome of this appeal is uncertain, the BLM is exercising its discretion to initiate preliminary planning steps with the understanding that the BLM retains the ability to modify or terminate any planning effort in response to the outcome of the litigation.

Purpose and Need for the RMP

This RMP will provide a management framework, including goals, objectives, and management direction, to guide management of the Monument. The RMP purposes and needs will frame issue identification, alternatives development, and effects analyses. The following purposes are explicitly provided in Presidential Proclamations No. 7318 (Establishment of the Cascade-Siskiyou National Monument) and No. 9564, other designating legislation, and/or have been identified based on key present and historical Monument management challenges. Planning for these purposes will be crucial for development of an RMP that provides direction for addressing critical management challenges. Associated problems and opportunities that the RMP will address are also summarized.

1. Protect and/or restore the unique and varied natural and scientific resources in the Monument. This includes Monument objects identified in the proclamations, including:

a. A landscape of ecological wonder with unmatched biological diversity that provides habitat connectivity, watershed protection, and landscape-

scale resilience for the area's critically important natural resources.

b. The varied and diverse plant communities that support the diverse, rare, and endemic wildlife and plant species that populate them.

c. The intact habitats and undisturbed corridors that allow for animal migration and movement.

d. The unique and varied geological features and landscapes that exist.

e. A landscape that provides opportunities for scientific and historic studies and an invaluable resource to scientists and conservationists wishing to research and sustain the functioning of the landscape's ecosystems into the future.

Challenges and Opportunities: The Monument is home to a spectacular variety of rare species of plants and animals, whose survival depends upon its continued ecological integrity. Ecological integrity refers to the degree to which an area's natural ecosystem processes have either remained intact or been interrupted through human intervention. The checkerboard pattern of ownership within the monument, the lack of fire due to fire exclusion, and activities such as timber harvest, livestock grazing, and road building have changed natural processes across the monument landscape. These current and past activities continue to present management challenges. Additionally, recreation and visitor use in the monument continues to increase.

The Monument's biodiversity is internationally recognized and provides an invaluable resource to scientists. Evolutionary biologists have identified this area as a center of endemism and diversity for springsnails, and researchers have discovered four new species of mygalomorph spiders in the Monument. Scientific research and monitoring activities play a crucial role in supporting an adaptive management approach in the land use planning process. They contribute to effective and science-based management decisions and help us understand the intricate web of actions and reactions in an ecosystem as changes are introduced or disturbances occur.

The BLM will explore various ways of protecting and restoring the Monument's natural and scientific resources, including the Monument objects, by identifying acceptable existing conditions, educating visitors, setting research priorities, and providing for public access and enjoyment where access does not conflict with the protection of Monument objects.

2. Protect and or restore the historical and cultural understanding and appreciation related to the Monument, including Monument objects. These objects include historic and prehistoric features on the landscape that provide traces of the presence of human use in the Monument, both by Native American and Euro-American settlers.

Challenges and Opportunities: Public visitation, permitted activities, and climate change have the potential to impact cultural resources, including the Monument's historic and prehistoric features. Management decisions are needed to clarify how to select and prioritize protection and restoration of these features and our understanding of and appreciation for them.

3. Reduce fire risk to important fire-susceptible Monument objects, and adjacent wildland urban interface lands.

Challenges and Opportunities: The lack of fire due to fire exclusion and the checkerboard pattern of ownership within the Monument continue to present management challenges. Much of the planning area has a checkerboard pattern of ownership of intermixed private, state, Bureau of Reclamation, and BLM-administered lands. The private lands are comprised of rural residential areas, the small communities of Greensprings, Lincoln, and Pinehurst, and private and industrial forests. This is an area commonly referred to as the wildland urban interface.

4. Protect a range of habitats that can be resistant and resilient to large-scale disturbance such as fire, insects and disease, invasive species, drought, or floods, events likely to be exacerbated by climate change.

Challenges and Opportunities: Climate change is leading to changes in disturbance regimes and severities (*e.g.,* drought, fire, insects, and disease). For example, long-term drought has led to declining stream flows and historically low reservoir levels, which impacts aquatic habitats and species that depend on them. Drought and subsequent insect damage have caused substantial mortality in forest stands, increasing fuel loading, and reducing resilience to fire.

5. Manage discretionary uses in the Monument in the context of protecting Monument objects and values.

Challenges and Opportunities: Public land uses in the Monument, such as recreation and livestock grazing, are important to the economic opportunities and quality of life of the local communities surrounding the Monument. These uses, and others, can present management challenges for the BLM. Since designation in 2000, controversy and disputes have existed among interested parties regarding BLM's discretionary uses, particularly because designation as a national monument requires the BLM to protect the objects and values within its boundary. External interests span the spectrum from supporting a wide variety of uses and activities to promoting strong preservation interests. Establishing management that best protects the Monument's objects and values while considering other compatible uses is vital in this planning effort.

Preliminary Alternatives

The BLM will analyze a range of alternatives that explore and evaluate different ways of achieving its purposes and needs. The alternatives will explore different outcomes to be addressed through this planning effort to better understand the trade-offs of different land management approaches. The BLM welcomes comments on all preliminary alternatives, as well as suggestions for additional alternatives.

Preliminary Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. The BLM has identified preliminary issues for the planning area from early engagement conducted for this planning effort with Federal, State, and local agencies, Tribal Nations, and interested participants. The BLM will provide the planning criteria within the timeframe identified in **DATES** earlier. The planning criteria will be available for public review and comment at the ePlanning website (see **ADDRESSES**).

Summary of Expected Impacts

Consistent with protection of the Monument's objects of scientific and historic interest identified in Presidential Proclamations No. 7318 and No. 9564, implementation of a new RMP may impact—either beneficially or adversely—resources, resource uses, and special designations within the Monument, including soils, water, vegetation, cultural and historic resources, paleontological resources, visual resources, recreation, livestock grazing, social and economic values, and other human and environmental resources.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with NEPA and BLM land use planning processes, including a 90-day comment period on the Draft RMP/EIS, then a 30-day public protest period, as well as a concurrent 60-day

Governor's consistency review, on the Proposed RMP. The Draft RMP/EIS is anticipated to be ready for public review in early 2024, and the Proposed RMP/Final EIS is anticipated to be available for public protest in fall 2024, with an approved RMP and Record of Decision completed in late 2024.

Public Scoping Process

This Notice of Intent initiates the scoping period and public review of the planning criteria, which guide the development and analysis of the Draft RMP/EIS. The BLM will hold a total of four scoping meetings. One scoping meeting will be held virtually. Three scoping meetings will be conducted in-person: one in Ashland, Oregon, one in Greensprings, Oregon, and one in Klamath Falls, Oregon. Details of all meetings will be announced once known. In compliance with Department of the Interior public health guidelines, the BLM may need to hold public meetings in a virtual format if county-level transmission of COVID–19 is ''high'' at the time of the public meetings. In that case, the BLM will hold four virtual public meetings. The specific dates and locations of these scoping meetings will be announced at least 15 days in advance through local media, social media, newspapers, and the ePlanning website (see **ADDRESSES**).

The ePlanning website (see **ADDRESSES**) also includes, or will include, background information on the Monument, an overview of the planning process, preliminary planning criteria, and interim management guidance. You may submit comments on issues, potential alternatives, relevant information and analyses, and the preliminary planning criteria in writing to the BLM at any public scoping meeting, or to the BLM using one of the methods listed in the **ADDRESSES** section.

Areas of Critical Environmental Concern (ACECs)

There are five ACECs within the Monument: Jenny Creek, Tunnel Creek, Moon Prairie, Lost Lake, and Old Baldy. This notice invites the public to comment on whether to retain the existing ACECs and whether to nominate areas on BLM-administered lands for ACEC consideration. To assist the BLM in evaluating nominations for consideration in the Draft RMP/EIS, please provide supporting descriptive materials, maps, and evidence of the relevance and importance of resources or hazards by the close of the public scoping period to facilitate timely evaluation (see **DATES** and **ADDRESSES**). The BLM has identified the anticipated issues related to the consideration of ACECs in the planning criteria.

Tribal Coordination

The Monument planning process will provide Tribal Nations multiple ways to engage, including, but not limited to, through government-to-government coordination and consultation, consultation under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108), and participation as cooperating agencies.

Cooperating Agencies

Federal, State, and local agencies, along with Tribal Nations, may request or be asked by the BLM to participate as cooperating agencies. At this time, the BLM has identified the following potential cooperating agencies:

- National Park Service,
- U.S. Fish and Wildlife Service,
- NOAA, Fisheries,
- U.S. Geological Survey,
- U.S. Bureau of Indian Affairs,
- Oregon Department of Environmental Quality,
- Oregon Department of Fish and Wildlife,
- California Department of Fish and Wildlife,
- Oregon Department of Transportation,
- California Department of Transportation,
- Oregon State Parks and Recreation Department,
- California Department of Forestry and Fire Protection,
- Klamath County Commissioners,
- Jackson County Commissioners,
- Siskiyou County Board of Supervisors,
- City of Ashland,
- City of Klamath Falls, and
- All nine affiliated Tribal Nations that wish to participate.

Responsible Official

The OR/WA and the CA State Directors are the deciding officials for this planning effort.

Nature of Decision To Be Made

The nature of the decision to be made will be the State Directors selection of land use planning decisions for managing BLM-administered lands within the Monument that protect the objects and values identified in Proclamation 7318 and Proclamation 9564. Uses on the Monument may be allowed to the extent they are consistent with Proclamation 7318 and Proclamation 9564 and the protection of the objects and values within the Monument.

Interdisciplinary Team

The BLM will use an interdisciplinary approach in developing the RMP/EIS to consider the variety of resource issues and concerns identified. Specialists with expertise in various disciplines, such as cultural resources, Native American concerns, paleontology, minerals, lands/access, recreation, special designations, wildlife, livestock grazing, soils, water resources, vegetation, rangeland management, fisheries, fire management, woodlands/forestry, socioeconomics, environmental justice, visual resources, air quality, and climate change will be involved in the planning process.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed RMP and all analyzed alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation, and may be considered at multiple scales, including the landscape scale.

The BLM will coordinate its NEPA and land use planning processes with its efforts to ensure compliance with section 7 of the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the NHPA, as provided in 36 CFR 800.2(d)(3), including the public involvement requirements of section 106. Information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Tribal Nations on a government-to-government basis in accordance with Executive Order 13175 and applicable Departmental policies. Tribal concerns, including impacts on American Indian trust assets and potential impacts on cultural resources, will be given due consideration. The BLM intend to hold a series of government-to-government consultation meetings beginning during the public scoping period. The BLM will send invitations to interested Tribal Nations at least 30-days prior to the meetings. The BLM will provide additional opportunities for government-to-government consultation during the NEPA process.

Before including your address, phone number, email address, or other

personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.9 and 43 CFR 1610.2.)

Barry Bushue,

BLM Oregon/Washington State Director.

Karen Mouritsen,

BLM California State Director.

[FR Doc. 2023–12311 Filed 6–8–23; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35969; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before May 27, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by June 26, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 27, 2023. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ALABAMA

Macon County

St. Paul Baptist Church and Armstrong School, (U.S. Public Health Service Syphilis Study, Macon County, Alabama MPS), 14650 Cty. Rd. 2, Tuskegee vicinity, MP100009106

Mobile County

Automobile Alley Historic District (Boundary Increase), 752–54, 756, 762 St. Louis St., Mobile, BC100009107

MARYLAND

Baltimore County

Grey Rock Mansion, 400 Grey Rock Road (also known as 400 Clifton Court), Pikesville, SG100009110

MISSOURI

Cape Girardeau County

First Baptist Church, 200 Broadway St., Cape Girardeau, SG100009100

Linn County

Uptown Theatre, 104 North Main St. U.S.A. (North Kansas Ave.), Marceline, SG100009101

St. Louis Independent City

Famous-Barr Warehouse, 3728 Market St., St. Louis, SG100009099

MONTANA

Golden Valley County

Lavina School Historic District, 214 1st St. East, Lavina, SG100009087

NEBRASKA

Lancaster County

Speidel Barn, 7800 South 40th St., Lincoln, SG100009090

NEW YORK

Ontario County

Fairview Cemetery, North side of Mount Pleasant St. west of North Main St., Naples, SG100009097

OHIO

Cuyahoga County

Empire Junior High School, 9113 Parmelee Ave., Cleveland, SG100009088

TENNESSEE

Cannon County

Meltons Bank, The, 229 Gassaway Main St., Liberty vicinity, SG100009095

Dyer County

Bruce High School, 801 Vernon St., Dyersburg, SG100009096

Maury County

Haynes Haven Stock Farm, US 31/Nashville Hwy. between Northfield and Denning Lns., Spring Hill, SG100009094

WASHINGTON

Douglas County

45DO1238, (Spiritually Significant Rock Features of the Southern Columbia Plateau and Okanogan Highlands MPS), Address Restricted, Palisades vicinity, MP100009085

WISCONSIN

Grant County

Rock School and Hanmer Robbins School Complex, 405 East Main St., Platteville, SG100009102

Sheboygan County

ADVANCE (schooner) Shipwreck, (Great Lakes Shipwreck Sites of Wisconsin MPS), 9.5 miles south of the Sheboygan Harbor entrance, in Lake Michigan, Holland vicinity, MP100009104

A request for removal has been made for the following resources:

NEBRASKA

Colfax County

Our Lady of Perpetual Help Catholic Church & Cemetery, Address Restricted, Schuyler vicinity, OT82000600

OKLAHOMA

Oklahoma County

Goodholm House, 3101 West Gen. Pershing Blvd., Oklahoma City, OT83002099

Additional documentation has been received for the following resources:

KANSAS

Douglas County

University of Kansas East Historic District (Additional Documentation), Roughly bounded by Oread and Sunnyside Aves., Jayhawk Blvd., Lilac Ln., Pearson Pl., Louisiana and West 13th Sts., Lawrence, AD13001038

MARYLAND

Baltimore Independent City

Market Center (Additional Documentation), 24 blks surrounding the jct. of Howard and Lexington Sts., Baltimore, AD00000040

Old West Baltimore Historic District (Additional Documentation), Roughly

bounded by North Ave., Dolphin St., Franklin St. and Fulton Ave., Baltimore, AD04001374

NEW YORK

Nassau County

Grace and Thomaston Buildings (Additional Documentation), 11 Middle Neck Rd. and 8 Bond St., Great Neck Plaza, AD78001865

UTAH

Garfield County

Hole-in-the-Rock Trail (Additional Documentation), From the beginning of BLM Federal Land just south of Escalante, Utah, to the end of BLM Federal Land just west of Bluff, Utah, Escalante vicinity, AD82004792

WISCONSIN

Dane County

Spooner-Haight Farmstead (Additional Documentation), 2733 Cty. Rd. MM, Fitchburg, AD93001162

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 1, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2023–12347 Filed 6–8–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–029]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: June 14, 2023 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–682 and 731–TA–1592–1593 (Final)(Freight Rail Couplers and Parts Thereof from China and Mexico). The Commission currently is scheduled to complete and file its determination and views on July 3, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 7, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–12502 Filed 6–7–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1365]

Certain Photovoltaic Connectors and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 4, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Shoals Technologies Group, LLC of Portland, Tennessee. A supplement to the complaint was filed on May 12, 2023. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain photovoltaic connectors and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,553,739 (‘‘ ’739 Patent’’) and U.S. Patent No. 10,992,254 (‘‘ ’254 Patent’’). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 5, 2023, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–13 and 15–18 of the ’739 patent and claims 1–15 of the ’254 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ‘‘photovoltaic wire harnesses or string harnesses that contain one or more inline fuses, in-line fuse kits, and assemblies for connecting solar panel arrays to an inverter, which assemblies are called lead assemblies or trunk buses, and which may also include one or more in-line fuses’’;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Shoals Technologies Group, LLC, 1400 Shoals Way, Portland, Tennessee 37148

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hikam America, Inc., 3521 Main St. #501, Chula Vista, CA 91911

Hikam Electrónica de México, S.A. de C.V., Carretera A San Luis No. Km. 10.5, Las Californias Industrial Park, Mexicali, Baja California 21394, Mexico.

Hikam Tecnologia de Sinaloa, International Road Guasave, Los Mochis No. Km. 2.5 Industrial Zone, Guasave, Sinaloa 81149, Mexico
Hewtech Philippines Corp., Lot C2–9, Carmelray Industrial Park II, Laguna, 4027 Philippines
Hewtech Philippines Electronics Corp., TECO Industrial Park, Ninoy Aquino Highway, Bundagul Mabalacat, Pampanga, 2010 Philippines
Hewtech (Shenzhen) Electronics Co., Ltd., Block 5 and Block 6, 172 Hengpailing Estate, Wu Tong Shan, Luo Hu District, Shenzhen, 518114 China
Voltage, LLC, 450 Raleigh Rd., Ste. 208, Chapel Hill, NC 27517
Ningbo Voltage Smart Production Co., No. 201 Bldg. 5 (14) Miaofengshan Rd., Beilun District, 57020 Ningbo, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 5, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12314 Filed 6–8–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Judgment Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

On June 5, 2023, the Department of Justice lodged a proposed Consent Judgment with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States of America* v. *City of New York,* Civil Action No. 1:23–CV–4129.

The United States filed this lawsuit under sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606(a) and 9607(a) in connection with the Wolff-Alport Chemical Company Superfund Site (the ''Site'') in Ridgewood, Queens County, New York. The complaint seeks injunctive relief to remediate radioactive materials on New York City-owned property located near the former Wolff-Alport Chemical Company facility and cost recovery. The Wolff-Alport Chemical Company's operations resulted in the release of residues containing radioactive materials, including thorium and uranium along with their decay products, such as radium. On September 26, 2017, EPA selected a remedy for the Site.

The Consent Judgment requires the City of New York to pay the United States approximately $1.6 million for past costs incurred by the U.S. Environmental Protection Agency related to addressing conditions at the New York City-owned property. The Consent Judgment also requires the City of New York to fund and perform remedial work on New York City-owned property, including the removal of soil and sediments exhibiting levels exceeding the remediation goals in the impacted sewers and beneath the roadway and sidewalks.

The publication of this notice opens a period for public comment on the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States of America* v. *City of New York,* Civil Action No. 1:23–CV–4129, D.J. Ref. No. 90–11–3–11741/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Judgment may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Judgment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $93.50 (25 cents per page reproduction cost) for the Consent Judgment with appendix, or $10.00 for the Consent Judgment without the appendix, payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–12294 Filed 6–8–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benefits Timeliness and Quality Review System

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 July 10, 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) 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; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: These reports provide data necessary to monitor state performance in administration of Unemployment Insurance as mandated by the Secretary of Labor. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 17, 2023 (88 FR 2639).

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–ETA.

Title of Collection: Benefits Timeliness and Quality Review System.

OMB Control Number: 1205–0359.

Affected Public: Private sector—State, local and Tribal governments.

Total Estimated Number of Respondents: 5,193.

Total Estimated Number of Responses: 23,740.

Total Estimated Annual Time Burden: 36,612 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–12317 Filed 6–8–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0015]

Crawler, Locomotive, and Truck Cranes Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in its Standard on Crawler, Locomotive, and Truck Cranes.

DATES: Comments must be submitted (postmarked, sent, or received) by August 8, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0015) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of each of these requirements is to prevent workers from using unsafe cranes and ropes, thereby reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

(A) Inspection of and Certification Records for Cranes (§ 1910.180(d)(4), (6))

Paragraph 1910.180(d) specifies that employers must prepare a written record to certify that the monthly inspection of critical items in use on cranes (such as brakes, crane hooks, and ropes) has been performed. The certification record must include the inspection date, the signature of the person who conducted the inspection, and the serial number (or other identifier) of the inspected crane. Employers must keep the certificate readily available. The certification record provides employers, workers, and OSHA compliance officers with assurance that critical items on cranes have been inspected, and that the equipment is in good operating condition so that the crane and rope will not fail during material handling. These records also enable OSHA to determine that an employer is complying with the Standard.

(B) Rated Load Tests (§ 1910.180(e)(2))

This provision requires employers to make available written reports of load-rating tests showing test procedures and confirming the adequacy of repairs or alterations, and to make readily available any rerating test reports. These reports inform the employer, workers, and OSHA compliance officers of a crane's lifting limitations, and provide information to crane operators to prevent them from exceeding these limits and thereby causing crane failure.

(C) Inspection and Certification Records for Ropes (§ 1910.180(g)(1), (g)(2)(ii))

Paragraph (g)(1) requires employers to thoroughly inspect any rope in use at least once a month. The authorized person conducting the inspection must observe any deterioration resulting in appreciable loss of original strength and determine whether or not the condition is hazardous. Before reusing a rope that has not been used for at least a month because the crane housing the rope is shut down or in storage, paragraph (g)(2)(ii) specifies that employers must have an appointed or authorized person inspect the rope for all types of deterioration. Employers must prepare a certification record for the inspections required by paragraphs (g)(1) and (g)(2)(ii). These certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier for the inspected rope; paragraph (g)(1) states that employers must keep the certificates ''on file where readily available,'' while paragraph (g)(2)(ii) requires that certificates ''be . . . kept readily available.'' The certification records assure employers, workers, and OSHA that the inspected ropes are in good condition.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Standard on Crawler, Locomotive, and Truck Cranes. The agency is requesting a burden hour adjustment decrease of 1,872 hours, from 30,511 hours to 28,639 hours. This decrease is due to the decrease in operational cranes used for general industry purposes.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Crawler, Locomotive, and Truck Cranes Standard.

OMB Control Number: 1218–0221.

Affected Public: Business or other for-profits.

Number of Respondents: 3,399.

Number of Responses: 78,584.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 29,639.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2010–0015). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–12394 Filed 6–8–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number NASA–23–021; Docket Number–NASA–2023–0001]

Request for Information on Advancing Racial Equity and Support for Underserved Communities in NASA Procurements and Federal Financial Assistance

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Request for Information (RFI); extension of comment period.

SUMMARY: The National Aeronautics and Space Administration (NASA) published a document in the **Federal Register** of April 11, 2023, concerning a request for information to receive input from the public on the barriers and challenges that prevent members of underserved communities from participating in NASA's procurements, grants, and cooperative agreements. The document contained a 60-day comment period. The comment period has been extended for an additional 30 days.

DATES: The comment period for the notice published April 11, 2023, at 88 FR 21725, is extended. Comments must be received by July 10, 2023.

FOR FURTHER INFORMATION CONTACT: Cheryl Robertson, 202–358–0667, or *hq-op-deia@mail.nasa.gov.*

Julia B. Wise,

Director, Procurement Management and Policy Division, NASA—Headquarters, Office of Procurement.

[FR Doc. 2023–12318 Filed 6–8–23; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 12, 19, 26, July 3, 10, 17, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov*.

MATTERS TO BE CONSIDERED:

Week of June 12, 2023

Tuesday, June 13, 2023

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting) (Contact: Angie Randall: 301–415–6806)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*.

Week of June 19, 2023—Tentative

Tuesday, June 20, 2023

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Nicole Fields: 630–829–9570)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*.

Week of June 26, 2023—Tentative

There are no meetings scheduled for the week of June 26, 2023.

Week of July 3, 2023—Tentative

There are no meetings scheduled for the week of July 3, 2023.

Week of July 10, 2023—Tentative

There are no meetings scheduled for the week of July 10, 2023.

Week of July 17, 2023—Tentative

There are no meetings scheduled for the week of July 17, 2023.

FOR FURTHER INFORMATION CONTACT: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 7, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–12471 Filed 6–7–23; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–45; MC2023–166 and CP2023–170; MC2023–167 and CP2023–171]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 13, 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:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2023–45; *Filing Title:* USPS Notice of Amendment to Priority Mail, First-Class Package Service & Parcel Select Contract 4, Filed Under Seal; *Filing Acceptance Date:* June 2, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 13, 2023.

2. *Docket No(s).:* MC2023–166 and CP2023–170; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 25 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 2, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* June 13, 2023.

3. *Docket No(s).:* MC2023–167 and CP2023–171; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 26 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 2, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* June 13, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–12309 Filed 6–8–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97647; File No. SR–ICC–2023–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to Clearance of Additional Credit Default Swap Contracts

June 5, 2023.

I. Introduction

On April 3, 2023, ICE Clear Credit LLC (''ICC''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the clearance of Standard Subordinated European Insurance Corporate Single Name CDS contracts (''STSEIC Contracts''). The Proposed Rule Change was published for comment in the **Federal Register** on April 21, 2023.[3] The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.[4] Chapter 26 of ICC's Clearing Rules covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and Rules applicable to the various specific categories of CDS contracts that ICC clears. The purpose of the proposed rule change is to add a new subchapter to Chapter 26 to permit ICC to clear an additional contract type. Specifically, new Subchapter 26S would provide the basis for ICC to clear STSEIC Contracts.

New Subchapter 26S has nine associated Rule provisions, with each described further below. Overall, ICC based new Subchapter 26S on existing Subchapter 26G, which applies to Standard European Corporate Single Name contracts (''STEC Contracts''), because STSEIC Contracts and STEC Contracts have similar terms.

That said, new Subchapter 26S would differ from existing Subchapter 26G as needed to account for differences between the two types of contracts. For example, Subchapter 26S does not include several provisions that relate to Modified Modified Restructuring found in Subchapter 26G. This is the case because the market convention is that Modified Modified Restructuring does not apply to STSEIC Contracts, unlike STEC Contracts cleared under Subchapter 26G.[5] Additionally, Subchapter 26G includes references to 2003-Type CDS Contracts[6] as well as 2014-Type CDS[7] Contracts.[8] Subchapter 26S references 2014-Type Contracts only and eliminates unnecessary references to 2014 Type Contracts because ICC does not anticipate that any STSEIC Contract would incorporate the 2003 ISDA definitions.[9]

The remaining differences are discussed with each of the nine associated rule provisions below.

1. Rule 26S–102 (Definitions)

New Rule 26S–102 would set out the defined terms used in Subchapter 26S. For example, Rule 26S–102 would define an STSEIC Contract as a CDS Contract in respect of any Eligible STSEIC Reference Entity having a combination of characteristics listed as eligible for such Eligible STSEIC Reference Entity in, and permitted by, the List of Eligible STSEIC Reference Entities. Eligible STSEIC Reference Entities would be defined as each particular Reference Entity included in the List of Eligible STSEIC Reference Entities (a list of eligible reference entities that ICE Clear Credit maintains on its website). Similarly, for each of those Eligible STSEIC Reference Entities, ICE Clear Credit would determine which of their obligations (such as bonds) are considered to be Eligible STSEIC Reference Obligations.

This section differs from its counterpart in Subchapter 26G in that it does not have a definition that corresponds to the definition of Eligible STEC Sector in Rule 26G–102. Rule 26G–102 lays out a number of permitted industrial sectors for STEC reference entities in STEC Contracts, such as energy and healthcare.[10] Subchapter

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 97318 (Apr. 17, 2023), 88 FR 24647 (Apr. 21, 2023) (File No. SR–ICC–2023–004) (''Notice'').

[4] Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Clearing Rules.

[5] *Id.* at 24648.

[6] A 2003-Type CDS Contract is a CDS Contract that incorporates the 2003 Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association (''ISDA'').

[7] A 2014-Type CDS Contract is a CDS Contract incorporating the 2014 ISDA Credit Derivatives Definitions.

[8] ICE Clear Credit Clearing Rules Subchapter 26G.

[9] Notice, 88 FR at 24648.

[10] ICE Clear Credit Clearing Rule 26G–102.

26S does not need a similar definition because there are no further sectors to identify. STSEIC Contracts already apply at a sector level of insurance. Thus, identifying eligible sectors for STSEIC Contracts is not necessary.[11] Additionally, this section is updated to remove references to 2003-Type CDS Contracts, unnecessary references to 2014-Type CDS Contracts, and provisions relating to restructuring as discussed above.

2. Rule 26S–203 (Restriction on Activity)

New Rule 26S–203 would allow ICE Clear Credit to auction off a CDS Participant's open STSEIC Contracts where that CDS Participant, among other things, merges with or becomes an affiliate of an Eligible STSEIC Reference Entity. This provision would be functionally equivalent to the corresponding provision in Subchapter 26G. The purpose of this provision is to prevent ICE Clear Credit's CDS Participants from being parties to STSEIC Contracts where the CDS Participants are, or could become, the reference entity of the contract.

3. Rule 26S–206 (Notices Required of Participants With Respect to STSEIC Contracts)

New Rule 26S–206 would require that CDS Participants provide notice to ICE Clear Credit if they or their customer, among other things, merge with or become an affiliate of an Eligible STSEIC Reference Entity. In such a situation, as discussed above, new Rule 26S–203 would allow ICE Clear Credit to auction off a CDS Participant's open STSEIC Contracts. This provision would be functionally equivalent to the corresponding provision in Subchapter 26G. Like Rule 26S–203, this provision would help prevent ICE Clear Credit's CDS Participants from becoming reference entities to STSEIC Contracts.

4. Rule 26S–303 (STSEIC Contract Adjustments)

New Rule 26S–303 would explain how ICC would treat certain contracts submitted for clearing that appear to be submitted as STSEIC Contracts, but may be missing certain information or appear to contain certain incorrect information. For example, if ICC accepts a contract for an Eligible STSEIC Reference Entity but the contract specifies a type of transaction other than Standard Subordinated European Insurance Corporate, then ICC will treat the contract as an open position in an STSEIC Contract that is otherwise equivalent, but that specifies Standard Subordinated European Insurance Corporate as the transaction type. Again, this provision is functionally equivalent to the corresponding provision in Subchapter 26G.

5. Rule 26S–309 (Acceptance of STSEIC Contracts by ICE Clear Credit)

New Rule 26S–309 would impose certain additional requirements on CDS Participants when they submit a STSEIC Contract for clearing. ICC Rule 309 describes ICC's general process for accepting trades for clearing,[12] and Rule 26S–309 would prescribe additional provisions specific to STSEIC Contracts. These provisions would be based on the existing provisions for Rule 26G–309, but updated to remove references to 2003-Type Contracts, unnecessary references to 2014-Type Contracts, and provisions relating to restructuring as discussed above.

For example, under Rule 26S–309, if the CDS Participant is or is an Affiliate of the Eligible STSEIC Reference Entity for a STSEIC Contract at the time of the Trade submission or Novation Time, it may not submit such Trade for clearance as a STSEIC Contract and ICC does not have to accept the Trade for clearance. Rule 26S–309 also would require CDS Participants to give ICC notice of certain circumstances as soon as reasonably practicable and would govern the contents of certain ICC notices to CDS Participants notifying them that ICC has accepted a Trade submitted for clearance. Additionally, under this rule ICC would give effect to circumstances giving rise to a Successor and a Succession Date (*i.e.,* in the event of a corporate merger, acquisition, or similar transaction that could require a change in a CDS contract's Reference Entity). Rule 26S–309(e) would explain when ICC would give effect to a Successor and Succession Date, and the actions ICC would take to do so.

6. Rule 26S–315 (Terms of the Cleared STSEIC Contract)

New Rule 26S–315 would explain what the terms of each STSEIC Contract would be. Generally, Rule 26S–315 would incorporate the 2014 Definitions into the STSEIC Contracts but also would define and set certain terms that would be specific to STSEIC contracts. For example, Rule 26S–315(f) would define the Transaction Type as being a Standard Subordinated European Insurance Corporate for the Eligible STSEIC Reference Entity. Rule 26S–315(g) would indicate which terms would be determined according to the particular STSEIC Contract submitted for clearing, subject to Rule 26S–303. For example, the Trade Date is a term that will be determined according to the particular STSEIC Contract submitted for clearing, subject to Rule 26S–303. Rule 26S–315(e) would provide that the Settlement Method for particular STSEIC Contracts will be Auction Settlement and the Fallback Settlement Method will be Physical Settlement in accordance with the CDS Physical Settlement Rules. For the most part, these provisions would be based on the existing provisions for Rule 26G–315, but updated to remove references to 2003-Type Contracts, unnecessary references to 2014-Type Contracts, and provisions relating to restructuring as discussed above.

The proposed rule change adds one sentence to new Rule 26S–315 that is not present in the corresponding section of existing 26G–315. That sentence, in new Rule 26S–315(f), ensures that the Subordinated European Insurance Terms will apply to each STSEIC Contract. Subordinated European Insurance Terms are part of the market-standard provisions that apply under the 2014 Definitions.[13] According to the definition for List of Eligible STSEIC Reference Entities in Rule 26S–102, Eligible STSEIC Reference Entities must use the 2014 Definitions in their STSEIC Contracts.

7. Rule 26S–316 (Relevant Physical Settlement Matrix Updates)

New Rule 26S–316 would describe how ICC would handle ISDA updates to the Relevant Physical Settlement Matrix. For example, Rule 26S–316(a) indicates that in certain circumstances when ISDA publishes a newer version of the Credit Derivatives Physical Settlement Matrix (''New Matrix'') than the Relevant Physical Settlement Matrix for any STSEIC Contract, STSEIC Contracts with previous versions of the Matrix (''Superseded Matrix'') shall become STSEIC Contracts referencing the New Matrix as the Relevant Physical Settlement Matrix, and the List of Eligible STSEIC Reference Entities shall be updated accordingly. Any STSEIC Contract referencing a Superseded Matrix and submitted for clearing shall, upon acceptance for clearing, become a STSEIC Contract referencing the New Matrix. This provision is functionally equivalent to the corresponding provision in Subchapter 26G.

8. Rule 26S–502 (Specified Actions)

ICC Rule 502 defines certain actions as Specified Actions and prohibits ICC

[11] Notice, 88 FR at 24647–48.

[12] ICE Clear Credit Clearing Rule 309.

[13] *Id.* at 24648.

from taking or permitting to be taken any Specified Action without first consulting with the Risk Committee.[14] For example, modification of the ICC Rules, Procedures, or any other governing provisions related to Margin would be a Specified Action.[15] New Rule 26S–502 provides that certain actions are not Specified Actions. For example, adding and/or Modifying Permitted STSEIC Fixed Rates and adding new Eligible STSEIC Reference Entities each would not constitute a Specified Action. This provision is functionally equivalent to the corresponding provision in Subchapter 26G.

9. Rule 26S–616 (Contract Modification)

ICC Rule 616 prohibits ICC from carrying out a Contract Modification without first providing Participants at least ten ICE Business Days' notice prior to the effective date of such Contract Modification. Under ICC Rule 616 a Contract Modification is defined as a Modification that ''would, in the determination of ICC, (i) reasonably be expected to have a material effect on the Mark-to-Market Price (as defined in Rule 404) of such Contract or (ii) materially increase the basis risk of such Contract relative to the over-the-counter agreement equivalent to such Contract referred to in Rule 301.'' [16] New Rule 26S–616 would provide that it will not constitute a Contract Modification if ICC's Board or its designee updates the List of Eligible STSEIC Reference Entities (and modifies the terms and conditions of related STSEIC Contracts) to give effect to determinations by the Regional CDS Committee (or applicable Dispute Resolver) or a Credit Derivatives Determinations Committee. Additionally, the determination that ''Standard Reference Obligation'' will be applicable to an Eligible STSEIC Reference Entity will not constitute a Contract Modification.

Rule 26S–616 would contain two differences from the corresponding provision in Subchapter 26G. First, Rule 26S–616 would not include a provision applicable to 2003-Type Contracts that convert to 2014-Type Contracts. As mentioned above, ICC does not anticipate that any STSEIC Contract would be a 2003-Type Contract, so this provision is not necessary.

Second, Rule 26S–616 would not include a provision that incorporates the NTCE Supplement to the 2014 Definitions.[17] ISDA has issued the NTCE Supplement and previously incorporated it into the 2014 Definitions. Thus, the NTCE Supplement would automatically apply to any STSEIC Contracts going forward, and 26S–616 would not need to specifically incorporate it into the terms of the contracts.[18]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[19] For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act [20] and Rule 17Ad–22(e)(1).[21]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICC's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, 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 . . . and, in general, to protect investors and the public interest . . . .'' [22] Based on its review of the record, and for the reasons discussed below, the Commission believes that ICC's proposed rule change is consistent with Section 17A(b)(3)(F) of the Act because ICC's clearing of STSEIC Contracts will allow market participants an increased ability to manage risk and the provisions of Subchapter 26S would help ensure that ICC has in place rules to appropriately govern the clearing of STSEIC Contracts and manage the risk related to clearing STSEIC Contracts.

ICC's clearing of STSEIC Contracts will provide market participants an increased ability to manage risk through the contracts. ICC will clear STSEIC Contracts pursuant to its existing clearing arrangements and related financial safeguards, protections and risk management procedures.[23] For example, ICC will apply its existing initial margin methodology to the clearing of STSEIC Contracts.[24] The Commission believes these safeguards, protections, and risk management procedures will lower the risk that a party to a STSEIC Contract transaction will default, which, in turn, would promote the prompt and accurate clearance and settlement of STSEIC Contracts and help to ensure the safeguarding of margin assets.

Moreover, combined with ICC's current safeguards, Subchapter 26S promotes the prompt and accurate clearance and settlement of STSEIC Contracts. Subchapter 26S would amend the ICC Clearing Rules to accommodate the clearing of STSEIC Contracts. Among other things, these amendments would provide definitions and contract terms with respect to STSEIC Contracts, which would help ensure that ICC has in place rules to appropriately govern the clearing of STSEIC Contracts. In addition, ICC will clear STSEIC Contracts pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. This will allow ICC to appropriately manage the risk of STSEIC Contracts. Accordingly, the Commission believes that the addition of Subchapter 26S, taken together with ICC's existing safeguards, would promote the prompt and accurate clearance and settlement of STSEIC Contracts.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[25]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[26] When it adopted Rule 17Ad–22(e)(1), the Commission noted that, in addressing legal risk, a covered clearing agency should consider whether its rules, policies and procedures, and contracts are clear,

[14] ICE Clear Credit Clearing Rule 502.

[15] ICE Clear Credit Clearing Rule 502(f).

[16] ICE Clear Credit Clearing Rule 616(a).

[17] The NTCE Supplement is the 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions published by ISDA. For more information on this supplement, *see* Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Rules To Reflect the ISDA NTCE Supplement, Exchange Act Release No. 87971 (Jan. 5, 2020), 85 FR 3724 (Jan. 22, 2020) (SR–ICC–2019–013).

[18] Notice, 88 FR at 24648.

[19] 15 U.S.C. 78s(b)(2)(C).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240Ad–22(e)(1).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] Notice, 88 FR at 24648.

[24] *Id.*

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240.17Ad–22(e)(1).

understandable, and consistent with relevant laws and regulations.[27]

The Commission believes that ICC's addition of Subchapter 26S to its clearing rules helps ensure that ICC's rules are clear and understandable with respect to its clearance of STSEIC Contracts. Among other things, Subchapter 26S defines relevant terms, provides provisions relevant to STSEIC Contracts, and clarifies how ICC will handle and process certain potential lifecycle and other events in connection with relevant STSEIC Contracts, including a CDS Participant's merger or affiliation with an Eligible STSEIC Reference Entity and certain ISDA updates to the Relevant Physical Settlement Matrix. Through its provisions, Subchapter 26S provides a reasonable level of certainty related to, and a clear legal basis for, outcomes related to its clearance of STSEIC Contracts.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad–22(e)(1) of the Act.[28]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act and Rule 17Ad–22(e)(1) thereunder.[29]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR–ICC–2023–004) be, and hereby is, approved.[30]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12299 Filed 6–8–23; 8:45 am]

BILLING CODE 8011–01–P

[27] Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (File No. S7–03–14).

[28] 17 CFR 240.17Ad–22(e)(1).

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–40, OMB Control No. 3235–0313]

Submission for OMB Review; Comment Request; Extension: Rule 203–2 & Form ADV–W

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration or pending registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The potential respondents to this information collection are all investment advisers registered with the Commission or have applications pending with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 769 respondents annually filing for full withdrawal and approximately 647 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 739 hours ((769 respondents × .75 hours) + (647 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by July 10, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: June 5, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12297 Filed 6–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97648; File No. SR–ICC–2023–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Withdrawal of Proposed Rule Relating to the Clearance of Additional Credit Default Swap Contracts

June 5, 2023.

On February 28, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2023–002 (''Proposed Rule Change''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder, to clear additional credit default swap contracts. The Proposed Rule Change was published for public

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comment in the **Federal Register** on March 15, 2023.[3] On April 21, 2023, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to disapprove the Proposed Rule Change.[4] The Commission has not received comments regarding the proposal described in the Proposed Rule Change.

On May 10, 2023, ICC withdrew the Proposed Rule Change (SR–ICC–2023–002).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12300 Filed 6–8–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12097]

Notice of Public Meeting

The Department of State will conduct a public meeting at 11:00 a.m. on Thursday, July 20, 2023, by way of teleconference. The primary purpose of the meeting is to prepare for the ninth session of the International Maritime Organization's (IMO) Sub-Committee on Implementation of IMO Instruments (III 9) to be held at the IMO Headquarters, London, United Kingdom, from Monday, July 31, 2023, to Friday, August 4, 2023.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants. To RSVP, participants should contact the meeting coordinator, Mr. Christopher Gagnon, by email at *christopher.j.gagnon@uscg.mil.* Mr. Gagnon will provide access information for the teleconference line.

The agenda items to be considered at the public meeting mirror those to be considered at III 9, and include:

—Decisions of other IMO bodies;
—Consideration and analysis of reports on alleged inadequacy of port reception facilities;
—Lessons learned and safety issues identified from the analysis of marine safety investigation reports;
—Measures to harmonize port state control (PSC) activities and procedures worldwide;
—Validate model training courses;
—Identified issues relating to the implementation of IMO instruments from the analysis of data;
—Analysis of consolidated audit summary reports;
—Development of guidance in relation to IMSAS to assist in the implementation of the III Code by Member States;
—Updated survey guidelines under the Harmonized System of Survey and Certification (HSSC);
—Non-exhaustive list of obligations under the instruments relevant to the IMO Instruments Implementation Code (III Code);
—Development of guidance on assessments and applications of remote surveys, ISM Code audits and ISPS Code verifications;
—Unified interpretation of provisions of IMO safety, security, and environment related conventions;
—Follow-up work emanating from the Action Plan to address plastic litter from ships; and
—Development of guidance to assist competent authorities in the implementation of the Cape Town Agreement of 2012.

Please note: the IMO may, on short notice, adjust the III 9 agenda to accommodate the constraints associated with the meeting format. Any changes to the agenda will be reported to those who RSVP and those in attendance at the meeting.

Those who plan to participate may contact the meeting coordinator, Mr. Christopher Gagnon, by email at *christopher.j.gagnon@uscg.mil,* by phone at (202) 372–1231, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7501, Washington, DC 20593–7509. Members of the public needing reasonable accommodation should advise Mr. Gagnon not later than July 14, 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. 552.)

Emily A. Rose,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2023–12353 Filed 6–8–23; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 810X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Marion County, Ind.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 2.26-mile rail line on its Great Lakes Division, Indianapolis Belt Subdivision, from milepost QIB 11.24 to milepost QIB 13.50, in Marion County, Ind. (the Line). The Line traverses U.S. Postal Service Zip Codes 46202 and 46218.

CSXT has certified that: (1) no local traffic has moved over the Line for at least two years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [1] to subsidize continued rail service has been received, this exemption will be effective on July 9, 2023, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues must be filed by June 16, 2023, and formal expressions of intent to file an OFA to subsidize continued rail

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 97094 (Mar. 9, 2023), 88 FR 16042 (Mar. 15, 2023) (File No. SR–ICC–2023–002).

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 97348 (Apr. 21, 2023), 88 FR 25717 (Apr. 27, 2023) (File No. SR–ICC–2023–002).

[5] 17 CFR 200.30–3(a)(31).

[1] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] CSXT states that it intends to consummate the discontinuance of the Line on July 11, 2023.

service under 49 CFR 1152.27(c)(2)[3] must be filed by June 20, 2023.[4] Petitions for reconsideration must be filed by June 29, 2023.

All pleadings, referring to Docket No. AB 55 (Sub-No. 810X), must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. Additionally, a copy of each pleading filed with Board must be sent to CSXT's representative, Melanie B. Yasbin, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 6, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2023–12366 Filed 6–8–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 682 (Sub-No. 14)]

2022 Tax Information for Use in the Revenue Shortfall Allocation Method

The Board is publishing, and providing the public an opportunity to comment on, the 2022 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1), slip op. at 10 (STB served Sept. 5, 2007),[1] as further revised in *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method* (*Simplified Standards—Taxes in RSAM*), EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its ''potentially captive traffic'' (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (*i.e.,* earn a return on investment equal to the railroad industry cost of capital). *Simplified Standards—Taxes in RSAM,* EP 646 (Sub-No. 2), slip op. at 1. In *Simplified Standards—Taxes in RSAM,* EP 646 (Sub-No. 2), slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. *Id.* at 5–6.

Pursuant to 49 CFR 1135.2, AAR is required to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad for the previous year. On May 30, 2023, AAR filed its calculation of the weighted average state tax rates for 2022. AAR then refiled their calculations on June 1, 2023, to correct the Annual Report (R–1) data that was previously submitted. Therefore, June 1 will be considered the filing date for AAR's submission. Listed below for each Class I railroad are AAR's calculations:

WEIGHTED AVERAGE STATE TAX RATES

Railroad	2022 (%)	2021 (%)	% Change
BNSF Railway Company	4.960	5.068	−0.108
CSX Transportation, Inc	5.242	5.010	0.232
Grand Trunk Corporation	7.906	7.904	0.002
The Kansas City Southern Railway Company	4.897	5.164	−0.267
Norfolk Southern Combined Railroad Subsidiaries	5.620	5.671	−0.051
Soo Line Corporation	7.802	7.827	−0.025
Union Pacific Railroad Company	5.337	5.451	−0.114

Pursuant to 49 CFR 1135.2(b), notice of AAR's submission will be published in the **Federal Register**. Any party wishing to comment on AAR's calculation of the 2022 weighted average state tax rates should file a comment by July 10, 2023. *See* 49 CFR 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due within 20 days of the filing date of the comments. *Id.* If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. *Id.* If no comments are filed by July 10, 2023, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 11, 2023. *Id.*

It is ordered:

1. Comments on AAR's calculation of the 2022 weighted average state tax rates for the Class I railroads are due by July 10, 2023. If any comments opposing AAR's calculations are filed, AAR's reply is due within 20 days of the filing of the comments.

2. If no comments are filed, AAR's calculation of the 2022 weighted average state tax rates for each Class I railroad will be automatically adopted by the Board, effective July 11, 2023.

Decided: June 6, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–12378 Filed 6–8–23; 8:45 am]

BILLING CODE 4915–01–P

[3] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

[1] *Aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Waiver of Aeronautical Land Use Assurance: Wichita Dwight D. Eisenhower National Airport (ICT), Wichita, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land use change from aeronautical to non-aeronautical.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal from the Wichita Airport Authority, Wichita, KS, to release two parcels of land including a 20 acre parcel and a 4.176 acre parcel of land from the federal obligation dedicating it to aeronautical use and to authorize these parcels to be used for revenue-producing, non-aeronautical purposes.

DATES: Comments must be received on or before July 10, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: John Oswald, Airport Engineering & Planning Manager, Wichita Airport Authority, 2173 Air Cargo Road, Wichita, KS 67209, (316) 946–4700.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106, Telephone number (816) 329–2603, Fax number (816) 329–2611, email address: *amy.walter@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to change two parcels of land totaling 24.176 acres of airport property at the Wichita Dwight D. Eisenhower National Airport (ICT) from aeronautical use to non-aeronautical for revenue producing use. These parcels will be developed for commercial use with no airfield access.

No airport landside or airside facilities are presently located on these parcels, nor are airport developments contemplated in the future. There is no current use of the surface of the parcel. The parcel will serve as a revenue producing lot with the proposed change from aeronautical to non-aeronautical. The request submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the change to non-aeronautical status of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

The Wichita Dwight D. Eisenhower National Airport (ICT) is proposing the use release of two parcels of land totaling 24.176 acres from aeronautical to non-aeronautical. The use release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The rental of the subject property will result in the land at the Wichita Dwight D. Eisenhower National Airport (ICT) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market rental value for theproperty. The annual income from rent payments will generate a long-term, revenue-producing stream that will further the Sponsor's obligation under FAA Grant Assurance number 24, to make the Wichita Dwight D. Eisenhower National Airport as financially self-sufficient as possible. Following is a legal description of the subject airport property at the Wichita Dwight D. Eisenhower National Airport (ICT):

The south 1140.60 feet of the East half of the Southeast Quarter of Section 28, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, except the West 500 feet thereof and also except that part dedicated for highway right-of-way found on Film 311, Page 147, and also except the South 30 feet and the East 30 feet for road right-of-way. More particularly described as: Beginning at the Southeast corner of Section 28, Township 27 South, Range 1 West of the 6th P.M.; thence bearing N 90°00′00″ W along the South line of said Section 28 a distance of 441.10 feet; thence bearing N 0°29′30″ E a distance of 561.16 feet; thence bearing N 04°45′30″ W a distance of 581.40 feet to the North line of the South 1140.60 feet of said Southeast Quarter; thence bearing N 89°59′57″ E along the North line of the South 1140.60 feet a distance of 494.83 feet to the East line of said Section 28; thence bearing S 0°31′20″ W along the East line of said Section 28 a distance of 1140.60 feet to the point of beginning; except the East 30 feet and the South 30 feet thereof.

AND

Beginning One Thousand One Hundred Forty and Six Tenths feet (1,140.6′) north of the SE corner of the SE ¼ of Section 28–T27S–R1W, thence west One Thousand Three Hundred Twenty and Forty-eight Hundredths feet (1,320.48′) to the west line of the east half of said SE ¼, thence north on said west line Two Hundred Seventy-four and Six Tenths feet (274.6′) to a point on the south Right-Of-Way line of the Atchison-Topeka & Santa Fe Railway Company, thence ENE along said Railway Right-Of-Way line One Thousand Three Hundred Twenty-eight and Nine Hundredths feet (1,328.09′) to a point on the east line of said SE ¼ and on the south Right-Of-Way line of said Railway Company, thence south Four Hundred Two and Sixty-five Hundredths feet (402.65′) to point of beginning, all in said SE ¼, Section 28–T27S–R1W.

Any person may inspect, by appointment, the request in person at the FAA office listed above. In addition, any person may upon request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Wichita Dwight D. Eisenhower National Airport.

Issued in Kansas City, MO, on June 5, 2023.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2023–12298 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to develop and discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system.

DATES: The meeting will be held on Wednesday, June 28, 2023, from 9:00 a.m. to 4:30 p.m. and Thursday, June 29,

2023, from 9:00 a.m. to 4:30 p.m. Eastern Daylight Time (EDT).

Requests to attend the meeting must be received by 5:00 p.m. EDT on the prior week, Monday, June 19, 2023, to facilitate entry. Requests for accommodations for a disability must be received by the day before the meeting, Tuesday, June 27, 2023. Those requesting to speak during the public comment period of the meeting must submit a written copy of their remarks to DOT no later than by the prior week, Monday, June 19, 2023. Requests to submit written materials to be reviewed during the meeting must also be received by the prior week, Monday, June 19, 2023.

ADDRESSES: The meeting will be held at the DOT Conference Center at 1200 New Jersey Ave. SE, Washington, DC 20590. Any Committee related request should be sent to the person listed in the following section.

FOR FURTHER INFORMATION CONTACT: Capt. Jeffrey Flumignan, Designated Federal Officer, by email at *MTSNAC@dot.gov* or by phone at (347) 491–2349. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE, W21–307, Washington, DC 20590. Please visit the MTSNAC website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0.*

SUPPLEMENTARY INFORMATION:

I. Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the maritime transportation system. The MTSNAC was established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 50402 and operates in accordance with the provisions of the Federal Advisory Committee Act.

II. Agenda

The agenda will include (1) welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) updates to the Committee on the subcommittee work; (5) public comments; (6) discussions relevant to formulate recommendations; and (7) presentation of recommendations (if necessary). A final agenda will be posted on the MTSNAC internet website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Seating will be limited and available on a first-come-first-serve basis.

Special services. The public meeting is physically accessible to people with disabilities. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public comments. A public comment period will commence at approximately 11:45 a.m. EST on June 28, 2023, and again on June 29, 2023, at the same time. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Additional written comments are welcome and must be filed as indicated below.

Written comments. Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 5 U.S.C. 552b; 5 U.S.C. app. Sections 1–16; 41 CFR parts 102 and 103; 49 CFR part 1.93(a).)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–12307 Filed 6–8–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2023–0003]

Request for Information on Annual Consumer Trust in Banking Survey

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Request for information and comment.

SUMMARY: The OCC is gathering information and comments to inform the development of an annual survey to understand consumer trust in banking and bank supervision that the agency plans to develop and implement, as discussed in the OCC's Strategic Plan for 2023–2027. The purpose of this request for information (RFI) is to solicit input to maximize the value and use of any survey. Specifically, the RFI seeks comments on the scope of the survey, components and drivers of trust, and ways to track and analyze trust over time.

DATES: Comments must be received on or before October 10, 2023.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Consumer Trust in Banking Survey Request for Information'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:* Go to *https://www.regulations.gov.* Enter ''Docket ID OCC–2023–0003'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2023–0003'' in your comment. In general, the OCC will enter all

comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

• *Viewing Comments Electronically—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2023–0003'' in the Search Box and click ''Search.'' Click on the ''Documents'' tab and then the document's title. After clicking the document's title, click the ''Browse Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Documents Results'' options on the left side of the screen. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Chau Do (Deputy Comptroller for Economics and Risk Analysis in Supervision Risk and Analysis), (202) 649–5550. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Background Information

The OCC, as the federal regulator for national banks, federal savings associations, and federal branches and agencies of foreign banking organizations (*collectively,* ''national banks''), is committed to its mission of ensuring that the institutions it supervises operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. While other types of banks have other federal and/or state regulators, the OCC recognizes that an effective supervisory framework across federal and state regulators can support a strong and fair banking system, which enables individuals, communities, and the U.S. economy to thrive. The public's trust in banks is an important aspect of a thriving and stable banking system. Without trust, banks cannot attract or retain customers, including depositors, or meet the credit needs of the communities they serve.

The safety and soundness of banks can clearly impact consumer's trust in them. Recent events and the 2008 financial crisis have underscored the importance of trust in banking and the role banks play in economic growth. For instance, following the collapse of Lehman Brothers in 2008, people who lost trust in their bank were more than four times more likely to withdraw deposits from their bank than those who retained full trust.[1] Furthermore, the effects of lost trust in banks can be long lasting. Research suggests that in circumstances where there were bank runs, the aggregate level of deposits may not return to pre-crisis levels.[2] Such effects have implications for banks' asset portfolios and loans and availability of credit to borrowers.

The fairness of banks' products and services and banks' compliance with laws and regulations can also impact consumers' trust in banks. Discrimination on a prohibited basis, deceptive or unfair practices, and fraud are examples of practices that erode trust in banking. They may reflect weak controls and can suggest a disproportionate prioritization of profits over consumers or an indifference to certain groups and communities.

Changes in trust in banks can also affect banks' earnings, funding costs, business models, and safety and soundness. The reciprocal nature of the relationship between trust and safety and soundness should make consumer trust a key variable of interest to bank regulators. Moreover, trust in banks can also impact financial inclusion[3] and financial stability.[4]

For these reasons, as part of the OCC's efforts to safeguard the public's trust in the federal banking system and contribute to a federal banking system that is safe, sound, and fair, the OCC is developing an annual consumer trust in banking survey with the goals of understanding, measuring, and tracking the consumer trust in banking and bank supervision over time. By surveying the public, the OCC could identify area(s) where trust can be further enhanced. The results of the proposed survey may complement existing sources of public and supervisory information and provide additional insight into the many aspects that are important to consider in working to maintain and enhance consumer trust in banking and bank supervision. The OCC could publish the main results of the annual survey in an OCC report to inform policymakers, bankers, and researchers about the trends and drivers of consumer trust in banking and bank supervision. Other more detailed reports on specific trust topics may also be produced.

Request for Comment

In this RFI, the OCC is inviting interested members of the public, including financial industry participants, other government agencies, academic and research organizations, consumer advocacy and financial education organizations, trade associations, and financial services customers to comment on the possible scope of the survey, components and drivers of trust, and ways to track and analyze trust over time.

Scope of Survey

Trust survey questions have generally been limited to assessing customers' sentiment toward financial institutions or their level of trust in the financial institution with which they have an account. However, trust in financial

[1] Guiso, L. (2010) ''A trust-driven financial crisis. Implications for the future of financial markets.'' *Einaudi Institute for Economic and Finance Working Paper Series 1006,* available at: *http://ideas.repec.org/p/eie/wpaper/1006.html.*

[2] Iyer, R., & Puri, M. (2012). ''Understanding Bank Runs: The Importance of Depositor-Bank Relationships and Networks,'' *The American Economic Review,* 102(4): 1414–1445, available at: *http://www.jstor.org/stable/23245460.*

[3] *See* for example, Xu, X. (2020) ''Trust and financial inclusion: A cross-country study.'' *Finance Research Letters,* 35, available at: *https://www.sciencedirect.com/science/article/pii/S1544612319303915,* and Allen, F., Demirguc-Kunt, A., Klapper, L., and Peria, M.S.M., (2016) ''The foundations of financial inclusion: Understanding ownership and use of formal accounts.'' *Journal of Financial Intermediation,* 27: 1–30, available at: *https://www.sciencedirect.com/science/article/pii/S1042957315000534.*

[4] *See* for example, Chernykh L., Davydov D., and Sihvonen J., (2019). ''Financial Stability and Public Confidence in Banks.'' *BOFIT Discussion Paper No. 2/2019,* available at: *https://ssrn.com/abstract=3339743* or *http://dx.doi.org/10.2139/ssrn.3339743,* and Miao J., Wang, P. (2015) ''Banking bubbles and financial crises.'' *Journal of Economic Theory,* 157: 763–792, available at: *https://www.sciencedirect.com/science/article/pii/S002205311500037X.*

institutions may differ based on customers' experiences with the financial product sought or used (*e.g.,* credit card, mortgage, demand deposit account) or with the type of financial service providers (*e.g.,* federally chartered depository institutions, state-chartered depository institutions, credit unions, non-banks).

Question 1: Are there certain segments of the U.S. population (*e.g.,* geographic, unbanked, underbanked, demographic groups) that should be targeted for inclusion to ensure survey participation is sufficiently high to make generalized statements about those groups? Are there specific types of questions that should be included for any such targeted group?

Question 2: What are some of the key considerations in determining whether the survey should focus solely on groups of potential bank customers that have not been the subject of previous surveys, such as (1) those who use wealth or asset management services or private banking services; (2) those who regularly use overdraft products, small dollar unsecured loans, remittances services, or low-cost deposit accounts; or (3) small business owners? For example, what are the benefits or drawbacks of focusing on segments of customers, and are there certain types of questions that should be included in order to maximize those benefits?

Question 3: Alternatively, what are some key considerations in determining whether the survey respondents should be expansive to reflect the general population? For example, what are the benefits or drawbacks of surveying individuals, not limited to bank customers or potential bank customers, and are there certain types of questions that should be included in order to maximize those benefits?

Question 4: What are some of the key considerations in determining whether the survey should include questions related to customers' use of specific types of financial products or services such as mortgage loans, credit cards, or overdrafts?

Question 5: What are the key considerations in asking respondents to distinguish between different financial institutions (*i.e.,* federally chartered depository institutions, state-chartered depository institutions, credit unions, non-banks) providing financial services in terms of their experience, perceptions, or trust?

Question 6: To what extent should the OCC consider conducting a survey focused solely on federally chartered depository institutions?

Question 7: To what extent should the OCC consider conducting a survey focused more broadly on banks (*i.e.,* bank holding companies and federally chartered and state- chartered depository institutions)?

Question 8: To what extent should the OCC consider conducting a survey focused more broadly on banks and non-banks (*e.g.,* fintech firms) that provide financial services or products?

Components of Trust

Admittedly, consumer trust in the banking system is hard to explicitly define since the public may have various issues in mind when asked about their level of trust in financial institutions. Although there is no clear consensus on all of the components of trust, research [5] has generally found that the following components influence a customer's level of trust in a financial institution: competency, goodwill, integrity, and transparency.

- Competency can refer to the ability of the financial institution to: (1) consistently provide financial services and relevant information to assist customers with their decisions, (2) promptly address problems and complaints, and (3) safeguard customer information appropriately.[6]
- Goodwill can refer to the financial institution's responsiveness and empathy for the customer's needs and welfare.[7]
- Integrity can refer to whether the financial institution treats customers in a fair and equal way and the financial institution does not defraud consumers or misuse their private information.[8]
- Transparency can refer to whether the financial institution provides clear communication and the disclosure of the relevant information to enable customers' understanding of the benefits and costs associated with a financial product or service.[9]

Question 9: Are the definitions above of the components of trust useful and appropriate? If not, what modifications should be considered?

Question 10: Are the components of trust comprehensive? If not, what additional components should be considered?

Question 11: Are some components of trust superfluous? Which ones are not necessary?

Question 12: How important is it to differentiate among the components of trust?

Question 13: Does the relative importance differ depending on the type or size of the financial institution or the financial services or products customers use, or the specific segment of the population?

Measuring and Tracking Trust

Surveys may be designed to either *directly* measure trust (*e.g.,* rank level of trust from 1–5) or *indirectly,* by inferring trust from reported behaviors (*e.g.,* closing a bank account, switching financial institutions). Additionally, in measuring trust in financial institutions, it may be important to distinguish between broad scope trust (system-level trust in financial institutions) and narrow scope trust (trust in one's own financial institution) and identify the various drivers that influence the public's level of trust. Research [10] suggests there are four important drivers that may affect customers' trust in financial institutions: (1) economic factors (*e.g.,* unemployment rate, financial crisis), (2) direct personal experience, (*e.g.,* quality of financial services delivered), (3) customers' personal characteristics (*e.g.,* financial literacy, demographic characteristics, economic and political views), and (4) government oversight and policy measures (*e.g.,* financial regulators, laws, government).

Question 14: What are some of the key considerations in determining whether the survey should include questions aimed to measure and monitor trust in financial institutions (*i.e.,* system-level), and/or questions focused on customers'

[5] *See* for example, Kidron, A. and Kreis, Y. (2020), ''Listening to bank customers: the meaning of trust.'' *International Journal of Quality and Service Sciences,* 12(3): 355–370, available at *https://doi.org/10.1108/IJQSS-10-2019-0120;* Ennew, C.T. and Sekhon, H. (2007), ''Measuring trust in financial services: the Trust Index.'' *Consumer Policy Review,* 17(2): 62–68, available at *https://www.researchgate.net/publication/285769675_Measuring_trust_in_financial_services_the_Trust_Index;* and Roy, S.K. and Shekhar, V. (2010), ''Dimensional hierarchy of trustworthiness of financial service providers.'' *International Journal of Bank Marketing,* 28(1): 47–64, available at: *https://doi.org/10.1108/02652321011013580.*

[6] Kidron, A. and Kreis, Y. (2020), ''Listening to bank customers: the meaning of trust.'' *International Journal of Quality and Service Sciences,* 12(3): 355–370, available at: *https://doi.org/10.1108/IJQSS-10-2019-0120.*

[7] Yu, P.L., Balaji, M.S. and Khong, K.W. (2015), ''Building trust in internet banking: a trustworthiness perspective.'' *Industrial Management and Data Systems,* 115(2): 235–252, available at: *https://doi.org/10.1108/IMDS-09-2014-0262.*

[8] van Esterik-Plasmeijer, P.W.J. and van Raaij, W.F. (2017), ''Banking system trust, bank trust, and bank loyalty.'' *International Journal of Bank Marketing,* 35(1): 97–111, available at: *https://doi.org/10.1108/IJBM-12-2015-0195.*

[9] Roy, S.K. and Shekhar, V. (2010), ''Dimensional hierarchy of trustworthiness of financial service providers.'' *International Journal of Bank Marketing,* 28(1): 47–64, available at: *https://doi.org/10.1108/02652321011013580.*

[10] *See,* for example: van der Cruijsen, C., de Haan, J., and Roerink, R. (2020), ''Trust in Financial Institutions: A Survey.'' *De Nederlandsche Bank Working Paper No. 693,* available at: *http://dx.doi.org/10.2139/ssrn.3677835.*

level of trust in the financial institution with which they have an account?

Question 15: To what extent should trust survey measurements be based on direct and/or indirect measures (as described above)?

Question 16: Do the drivers of trust listed above comprehensively identify key factors in measuring and tracking trust in financial institutions over time? If not, what other drivers could be used?

Question 17: How important is understanding the drivers of trust in developing a trust measurement for financial institutions?

Question 18: What are some of the key factors to consider in developing survey questions that capture how personal characteristics influence trust in financial institutions?

Question 19: What are some of the key factors to consider in creating survey questions to capture how trust in bank regulators influence customers' trust in banks?

Question 20: What are some of the key factors to consider in creating survey questions to capture how trust in the government influence customers' trust in financial institutions?

Question 21: What are the key advantages and disadvantages of having a single banking regulator conducting the survey? To what extent should the OCC consider alternative approaches, such as conducting a joint survey with one or more other federal bank regulators?

(Authority: 12 U.S.C. 1)

Michael J. Hsu,

Acting Comptroller of the Currency.

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FEDERAL RESERVE SYSTEM

[Docket No. OP–1752]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA26

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2021–0011]

Interagency Guidance on Third-Party Relationships: Risk Management

AGENCY: The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final interagency guidance.

SUMMARY: The Board, FDIC, and OCC (collectively, the agencies) are issuing final guidance on managing risks associated with third-party relationships. The final guidance offers the agencies' views on sound risk management principles for banking organizations when developing and implementing risk management practices for all stages in the life cycle of third-party relationships. The final guidance states that sound third-party risk management takes into account the level of risk, complexity, and size of the banking organization and the nature of the third-party relationship. The agencies are issuing this joint guidance to promote consistency in supervisory approaches; it replaces each agency's existing general guidance on this topic and is directed to all banking organizations supervised by the agencies.

DATES: The guidance is final as of June 6, 2023.

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I. Introduction

Banking organizations [1] routinely rely on third parties for a range of products, services, and other activities (collectively, activities). The use of third parties can offer banking organizations significant benefits, such as quicker and more efficient access to technologies, human capital, delivery channels, products, services, and markets. Banking organizations' use of third parties does not remove the need for sound risk management. On the contrary, the use of third parties, especially those using new technologies, may present elevated risks to banking organizations and their customers, including operational, compliance, and strategic risks. Importantly, the use of third parties does not diminish or remove banking organizations'

[1] For a description of the banking organizations supervised by each agency, refer to the definition of ''appropriate Federal banking agency'' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). This guidance is relevant to all banking organizations supervised by the agencies.

responsibilities to ensure that activities are performed in a safe and sound manner and in compliance with applicable laws and regulations, including but not limited to those designed to protect consumers (such as fair lending laws and prohibitions against unfair, deceptive or abusive acts or practices) and those addressing financial crimes.

The agencies have each previously issued general guidance for their respective supervised banking organizations to address appropriate risk management practices for third-party relationships, each of which is rescinded and replaced by this final guidance: the Board's 2013 guidance,[2] the FDIC's 2008 guidance,[3] and the OCC's 2013 guidance and its 2020 frequently asked questions (herein, OCC FAQs).[4] By issuing this interagency guidance, the agencies aim to promote consistency in their third-party risk management guidance and to clearly articulate risk-based principles for third-party risk management. Further, the agencies have observed an increase in the number and type of banking organizations' third-party relationships. Accordingly, the final guidance is intended to assist banking organizations in identifying and managing risks associated with third-party relationships and in complying with applicable laws and regulations.[5]

II. Discussion of Comments on the Proposed Guidance

On July 19, 2021, the agencies published for comment proposed guidance on managing risks associated with third-party relationships (proposed guidance).[6] The 60-day comment period initially ended on September 17, 2021. In response to commenters' requests for additional time to analyze and respond to the proposal, the agencies extended the comment period until October 18, 2021.[7]

The agencies invited comment on all aspects of the proposed guidance. To help solicit feedback, the agencies posed 18 questions within the request for comment, organized across the following themes: *General, Scope, Tailored Approach to Third-Party Risk Management, Third-Party Relationships, Due Diligence and Collaborative Arrangements, Subcontractors, Information Security,* and *the OCC's 2020 FAQs.* The agencies collectively received 82 comment letters from banking organizations, financial technology (fintech) companies and other third-party providers, trade associations, consultants, nonprofits, and individuals.[8]

A. General Support for the Proposed Guidance

In general, commenters supported the agencies' efforts to issue joint principles-based guidance on third-party risk management. Commenters agreed with the proposal's overarching message regarding the importance of banking organizations adopting sound risk management practices that are commensurate with the level of risk and complexity of their respective third-party relationships. They agreed that a principles-based approach to third-party risk management can be adapted to a wide range of relationships and scaled for banking organizations of different sizes and complexity.

There were varying views among commenters on the level of detail included in the proposed guidance. While some commenters found the language to be too prescriptive, others noted that it had the right level of detail to enable banking organizations to use the guidance in a risk-based fashion. Other commenters specifically requested that the agencies establish minimum required ''standards'' or incorporate greater specificity on supervisory expectations. Commenters also offered differing perspectives on whether or how to incorporate the concepts from the OCC FAQs.[9]

In response to comments received, the agencies underscore that supervisory guidance does not have the force and effect of law and does not impose any new requirements on banking organizations.[10] The guidance addresses key principles banking organizations can leverage when developing and implementing risk management processes tailored to the risk profile and complexity of their third-party relationships.

B. Terminology and Scope

Commenters offered views on the description of the terms ''business arrangement,'' ''third-party relationship,'' and ''critical activities.''

1. Description of the Terms ''Business Arrangement'' and ''Third-Party Relationship''

Some commenters suggested that the term ''business arrangement'' is overly broad and inconsistent with the risk-based approach of the guidance. For example, some commenters believed that without narrowing the term, banking organizations may face an undue burden when implementing their risk management processes. Several commenters offered suggestions to narrow or modify the term ''business arrangement.'' These suggestions included focusing on material relationships, scoping out low-risk activities, and limiting arrangements to only those that are continuous and/or governed by a written contract.

Similarly, some commenters suggested that the term ''third-party relationship'' was overly broad and may divert banking organizations from focusing sufficiently on those relationships that present higher risk. These commenters suggested applying a materiality standard (for example, those third parties supporting critical activities) or excluding certain categories of third-party relationships (for example, affiliates or bank-to-bank relationships).

A few commenters recommended incorporating some of the more detailed discussions from OCC FAQs 1 and 2 elaborating on and providing examples of ''business arrangements'' and ''third-party relationships.''

With respect to these comments, the agencies believe the scope of the term

[2] SR Letter 13–19/CA Letter 13–21, ''Guidance on Managing Outsourcing Risk'' (December 5, 2013, updated February 26, 2021).

[3] FIL–44–2008, ''Guidance for Managing Third-Party Risk'' (June 6, 2008).

[4] OCC Bulletin 2013–29, ''Third-Party Relationships: Risk Management Guidance,'' and OCC Bulletin 2020–10, ''Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29.'' Additionally, the OCC also issued foreign-based third-party guidance, OCC Bulletin 2002–16, ''Bank Use of Foreign-Based Third-Party Service Providers: Risk Management Guidance,'' which is not being rescinded but instead supplements the final guidance.

[5] These include the ''Interagency Guidelines Establishing Standards for Safety and Soundness,'' and the ''Interagency Guidelines Establishing Information Security Standards,'' which were adopted pursuant to the procedures of section 39 of the Federal Deposit Insurance Act and section 505 of the Graham Leach Bliley Act, respectively. *See* 12 CFR part 30, appendices A and B (OCC); part 208, appendices D–1 and D–2 (Board); and part 364, appendices A and B (FDIC).

[6] ''Proposed Interagency Guidance on Third-Party Relationships: Risk Management,'' 86 FR 38182 (July 19, 2021).

[7] ''Proposed Interagency Guidance on Third-Party Relationships: Risk Management,'' 86 FR 50789 (September 10, 2021).

[8] Comments can be accessed at: *https://www.regulations.gov/document/OCC-2021-0011-0001/comment* (OCC); *https://www.federalreserve.gov/apps/foia/ViewComments.aspx?doc_id=OP-1752&doc_ver=1* (Board); and *https://www.fdic.gov/resources/regulations/federal-register-publications/2021/2021-proposed-interagency-guidance-third-party-rel-rm-3064-za26.html* (FDIC).

[9] The agencies included the OCC's 2020 FAQs as an exhibit when issuing the proposed guidance and sought comment on whether any of the concepts in the OCC FAQs should be incorporated into the interagency guidance. *See* 86 FR 38196.

[10] *See* 12 CFR part 4, appendix A to subpart F (OCC); 12 CFR part 262, appendix A (Board); and 12 CFR part 302, appendix A (FDIC).

''business arrangement'' in the proposed guidance captures the full range of third-party relationships that may pose risk to banking organizations, and the final guidance does not change that scope. These relationships have evolved, and may continue to evolve, over time to encompass a large range of activities, justifying the use of broad terminology. The agencies have incorporated concepts from OCC FAQs 1 and 2. Although the terms ''business arrangement'' and ''third-party relationship'' are broad, the guidance does not suggest that all relationships require the same level or type of oversight or risk management, since different relationships present varying levels of risk. The guidance states that, as part of sound risk management, a banking organization analyzes the risks associated with each third-party relationship and adjusts its risk management practices, commensurate with the banking organization's size, complexity, and risk profile and with the nature of its third-party relationships. The agencies have removed from the final guidance the proposed text, which stated that the term ''business arrangement'' generally excludes customer relationships. Since some business relationships may incorporate elements or features of a customer relationship, the removal of the proposed text is intended to reduce ambiguity.

2. Description of the Term ''Critical Activities''

Commenters expressed views on the term ''critical activities,'' suggesting that the agencies provide banking organizations flexibility in determining which activities are higher risk and critical in nature or requested clarification on or limitation of the scope and application of the term. Some commenters requested the agencies provide further examples of critical activities or clarify whether banking organizations could employ risk-tiering processes to identify critical activities.

Commenters provided other suggestions that they thought would improve the description of ''critical activities,'' such as:

- Merging the concepts of ''critical activities'' and ''significant bank functions;''
- Reconsidering whether certain factors articulated within the proposed guidance should be determinative of criticality;
- Clarifying whether a certain monetary threshold would determine whether an activity requires a ''significant investment in resources to implement the third-party relationship and manage the risk;'' [11]
- Incorporating the concept from OCC FAQ 8 that not every relationship involving critical activities is necessarily a critical third-party relationship; and
- Aligning the concept of criticality in the proposed guidance with similar concepts in existing, related guidance (for example, the definitions for ''critical operations'' and ''core business line'' used in the Interagency Paper on Sound Practices to Strengthen Operational Resilience [12] (Sound Practices Paper)) to facilitate banking organizations' adoption of comprehensive risk management strategies.

The agencies considered the range of comments on the term ''critical activities'' and have made certain revisions to improve clarity and emphasize flexibility. The revised term eliminates imprecise concepts like ''significant investment'' and ''significant bank function,'' instead focusing on illustrative, risk-based characteristics, such as activities that could cause significant risk to the banking organization if the third party fails to meet expectations or that have significant impacts on customers or the banking organization's financial condition or operation. The agencies have incorporated concepts from OCC FAQs 7, 8, and 9, recognizing that an activity that is critical for one banking organization may not be critical for another. Some banking organizations may assign a criticality or risk level to each third-party relationship, while others may identify critical activities and those third parties associated with such activities. Regardless of a banking organization's approach, applying a sound methodology to designate which activities and third-party relationships receive more comprehensive oversight is key for effective risk management.

In response to the comments requesting alignment with other issuances, the agencies note that this guidance is intended to provide examples of considerations that may be helpful to all banking organizations, regardless of size. It is important for each banking organization to assess risks presented by each of its third-party relationships and tailor its risk management processes accordingly. To the extent that specific laws and regulations may be applicable, for example, recovery or resolution planning to large banking organizations,[13] those banking organizations may desire to leverage definitions and approaches in those laws and regulations when developing and implementing third-party risk management, such as identifying third-party relationships that that support higher-risk activities, including critical activities. Moreover, to the extent that other guidance may be relevant to certain banking organizations, such as the Sound Practices Paper, which is intended for the largest and most complex banking organizations,[14] such organizations may choose to reference relevant terms and concepts contained in those other issuances when implementing their third-party risk management processes.

C. Tailored Approach to Third-Party Risk Management

Commenters offered views on appropriately tailoring the risk management principles discussed in the guidance to meet the different needs of individual banking organizations, and particularly community banking organizations. For example, some commenters asserted that smaller, less complex banking organizations do not need to adopt the same risk management approaches adopted by larger, more complex banking organizations. As such, they asked that the guidance include language either to clarify the flexibility of the guidance with respect to the size of banking organizations or to the risk presented by certain third-party relationships. Some commenters suggested that the guidance make allowances for banking organizations to explicitly accept the risk of the relationship, in lieu of establishing full due diligence practices, based on the banking organization's risk profile and individual circumstances of the relationship.

Commenters also suggested that the agencies could provide examples of appropriate practices specific to smaller banking organizations or of the specific risks that certain categories of third parties or critical activities may pose to smaller banking organizations. Several commenters requested some form of acknowledgment that smaller banking organizations may lack the necessary

[11] ''Proposed Interagency Guidance on Third-Party Relationships: Risk Management'', 86 FR 38182, at 38187 (July 19, 2021); *https://www.federalregister.gov/documents/2021/07/19/2021-15308/proposed-interagency-guidance-on-third-party-relationships-risk-management.*

[12] ''Interagency Paper on Sound Practices to Strengthen Operational Resilience,'' Federal Reserve SR 20–24 (November 2, 2020); OCC Bulletin 2020–94 (October 30, 2020); and FDIC FIL–103–2020 (November 2, 2020).

[13] *See* 12 CFR part 243 (Regulation QQ); 12 CFR part 30, appendix E.

[14] The practices are addressed to domestic banks with more than $250 billion in total consolidated assets or banks with more than $100 billion in total assets and other risk characteristics. *See* note 12.

resources to thoroughly vet third parties, and thus should be afforded some form of ''safe harbor'' relating to third-party risk management to allow them to compete in the digital era.

In addition, commenters suggested incorporating concepts from OCC FAQs 5, 6, and 7 to help reinforce flexibility for community banking organizations (acknowledging, for example, that banking organizations may have limited negotiating power, that there is no one way for banks to structure their third-party risk management processes, and that not all relationships warrant the same level of oversight or risk management).

In response to these comments, the agencies reiterate that the guidance is relevant to all banking organizations. The agencies have incorporated concepts from OCC FAQ 9, clarifying language in the guidance about tailoring third-party risk management processes based on risk. The guidance notes that not all third-party relationships present the same level or type of risk and therefore not all relationships require the same extent of oversight or risk management. It also states that as part of sound risk management, it is the responsibility of each banking organization to analyze the risks associated with each third-party relationship and to calibrate its risk management processes, commensurate with the banking organization's size, complexity, and risk profile and with the nature of its third-party relationships.

Banking organizations have flexibility in their approach to assessing the risk posed by each third-party relationship and deciding the relevance of the considerations discussed in the guidance. To reinforce this flexibility and provide clarity on third-party risk management implementation, especially for community banking organizations, the agencies have streamlined and simplified certain sections of the guidance. The agencies have also incorporated into the final guidance concepts from OCC FAQs 5, 6, and 7 discussed above.

D. Specific Types of Third-Party Relationships

Commenters pointed to types of third-party relationships that may pose heightened or novel risk management considerations. A number of commenters discussed a banking organization's use of third parties for technological advances and innovations, including relationships with fintech companies. Some commenters raised particular risks presented by data aggregators and suggested a range of approaches to address these risks. Suggestions included interagency coordination on a Consumer Financial Protection Bureau (CFPB) rulemaking on consumer access to financial records.[15] In addition, some commenters expressed concern that the discussion in OCC FAQ 4 on third-party risk management expectations related to data aggregators may unintentionally result in outsized burdens on banking organizations. Other commenters asked for additional flexibility for banking organizations to manage relationships with third parties in relatively concentrated industries, mentioning cloud computing as an example.

Some commenters also noted that third-party risk management processes may be applied differently, based on the specific type of relationship. For example, several commenters stated that arrangements with affiliates may present different or lower risks than those with unaffiliated third parties, and suggested that, as a result, a banking organization's third-party risk management may differ for affiliates and non-affiliates. Certain commenters also suggested that third parties that are already supervised or regulated (including some foreign-regulated entities) present less risk to banking organizations such that a banking organization's risk management could be tailored accordingly (for example, through reduced due diligence).

Commenters also suggested the agencies enhance discussion in the proposed guidance on foreign-based third parties, including clearly explaining this term, describing typical risks and accompanying risk management strategies, and addressing the possibility of incompatible legal obligations between jurisdictions. In the final guidance, the agencies have included a footnote to address questions surrounding the term ''foreign-based third party'' and have retained applicable considerations for foreign-based third parties within relevant sections of the risk management life cycle.

With respect to comments about technological advances and innovation, the agencies recognize that some banking organizations are forming relationships with fintech companies, including under new or novel structures and arrangements. Depending on the specific circumstances, including the activities performed, such relationships may introduce new or increase existing risks to a banking organization, such as those risks identified by some commenters. For example, in some third-party relationships, the respective roles and responsibilities of a banking organization and a third party may differ from those in other third-party relationships. Additionally, depending on how the business arrangement is structured, the banking organization and the third party each may have varying degrees of interaction with customers. Longstanding principles of third-party risk management set forth in this guidance are applicable to all third-party relationships, including those with fintech companies. Therefore, it is important for a banking organization to understand how the arrangement with a third party, including a fintech company, is structured so that the banking organization may assess the types and levels of risks posed and determine how to manage those third-party relationships accordingly. The agencies did not incorporate concepts from OCC FAQ 4, opting to provide broad risk management guidance.

The agencies considered other comments in relation to specific types of third-party relationships but decided not to exclude any specific third-party relationships from the scope of the guidance; rather, the guidance is relevant to managing all third-party relationships. Because third-party relationships present varying levels and types of risk, the guidance notes that not all relationships require the same level or type of oversight or risk management.

This principles-based guidance provides a flexible, risk-based approach to third-party risk management that can be adjusted to the unique circumstances of each third-party relationship. The agencies do not believe it would be appropriate to prescribe alternative approaches or to broadly assume lower levels of risk based solely on the type of a third party. For example, while a third-party relationship with an affiliate may have different characteristics and risks as compared to those with non-affiliated third parties, affiliate relationships may not always present lower risks. The same is true for third parties that are subject to some form of regulation.

The agencies also incorporated concepts from OCC FAQs 7 and 9, reiterating that as part of sound risk management, it is the responsibility of each banking organization to analyze the risks associated with each third-party relationship and to calibrate its risk management practices, commensurate with the banking organization's size, complexity, and risk

[15] *See* 12 U.S.C. 5533. As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the agencies are participating in consultations with the CFPB related to the rulemaking.

profile and with the nature of its third-party relationships.

E. Risk Management Life Cycle

Commenters made a wide range of suggestions in the risk management life cycle section of the proposed guidance. Commenters expressed mixed views on the level of detail provided with respect to the various aspects of the risk management life cycle as well as the meaning of certain concepts. Some commenters raised concerns that the level of detail made the guidance overly burdensome on smaller banks. Other commenters recommended that the agencies expand the discussion to include additional stages within the risk management life cycle; a risk management matrix; or practical, illustrative examples throughout all stages of the life cycle.

In response to these comments, the agencies have clarified and streamlined the guidance and removed details that were duplicative, not useful, or that could be interpreted as prescriptive. The agencies also reiterate that the guidance is principles-based. Examples of considerations are merely illustrative, not requirements, and may not be applicable or material to each banking organization or each third-party relationship. The examples are not intended to be interpreted as exhaustive or to be used as a checklist. The agencies support a risk-based approach for banking organizations to assess the risk posed by a third-party relationship and tailor their third-party risk management processes accordingly.

In addition to these general comments, commenters provided thoughts on specific stages of the risk management life cycle, which are addressed below:

1. Due Diligence and Collaborative Arrangements

The due diligence and third-party selection stage of the risk management life cycle drew particular attention from commenters. Some raised concerns with the feasibility of banking organizations performing the full range of due diligence outlined in the proposal, noting that third parties or their related subcontractors may be unable or unwilling to disclose certain information. These commenters stated that the extent of due diligence described may be beyond certain banking organizations' expertise or not be fully applicable for most relationships. Other commenters suggested that banking organizations could engage in less stringent due diligence for certain types of third parties. Suggestions to address these concerns included revising the guidance to scale due diligence to the risk posed by the third party, limiting the burden of certain due diligence practices, and acknowledging shortcomings in accessing certain information.

Other commenters focused on steps to reduce the burdens of due diligence, by facilitating collaboration among banking organizations and reliance on certifications. For example, many commenters expressed support for proposed language on shared due diligence or collaboration between banking organizations.

In some cases, commenters noted challenges with shared due diligence or collaboration among banking organizations, such as antitrust or privacy considerations and the ability to meet due diligence needs in a shared framework. Some commenters recommended solutions, such as joint data collections and assessments across banking organizations and third parties. Other commenters asked the agencies to incorporate and expand upon the discussions in OCC FAQs 14 and 24 that banking organizations may rely on industry-accepted certifications and/or other reports.

Commenters also suggested that the guidance address due diligence options when banking organizations have difficulty gaining access to information necessary to perform due diligence and audits. Several commenters recommended that the guidance be tailored for or scope out certain third parties that may be resistant to due diligence efforts. Banking organizations may not be able to seek out alternatives to these third parties, especially where the industry is particularly concentrated. Another commenter noted that the use of on-site audits or visits has declined over time and could be inefficient and costly, especially for third parties with operations in several physical locations (such as cloud computing service providers).

With respect to commenters focused on specific third-party relationships, the agencies reiterate that relationships present varying levels of risk and not all relationships require the same level or type of oversight or risk management. However, the agencies do not believe it would be appropriate for banking organizations to conduct reduced due diligence based solely on a third party's entity type.

With respect to commenters focused on steps to limit the burdens of due diligence, including collaboration with other banking organizations and engaging with third parties that specialize in conducting due diligence, the agencies note that such collaborative efforts could be beneficial and reduce burden, especially for community banking organizations, and have made certain clarifying revisions to the guidance in that regard. However, use of any collaborative efforts does not abrogate the responsibility of banking organizations to manage third-party relationships in a safe and sound manner and consistent with applicable laws and regulations (including antitrust laws). It is important for the banking organization to evaluate the conclusions from such collaborative efforts based on the banking organization's own specific circumstances and performance criteria for the activity. A banking organization engaging an external party to supplement risk management, including due diligence, constitutes establishing a business arrangement; such a relationship would typically be covered by the banking organization's third-party risk management processes. The agencies have incorporated into the final guidance concepts from OCC FAQs 12, 13, and 25.

With respect to those commenters focused on circumstances in which banking organizations may have difficulty gaining access to information, the agencies acknowledge challenges in some circumstances. Consistent with the concepts from OCC FAQs 1, 5, and 17, the guidance provides that in such circumstances, banking organizations should consider taking steps to mitigate the risks or, if the risks cannot be mitigated, to determine whether the residual risks are acceptable. The guidance also states that when assessing the risk of a third-party relationship, banking organizations may consider information available from various sources. For example, the agencies incorporated concepts from OCC FAQs 14 and 24, recognizing that banking organizations may consider public regulatory disclosures when considering the risks presented by the specific third party. If the banking organization has concerns that the relationship falls outside of its risk appetite, it should consider making alternative choices.

As the guidance emphasizes, it is the responsibility of the banking organization to identify and evaluate the risks associated with each third-party relationship and to tailor its risk management practices, commensurate with the banking organization's size, complexity, and risk profile, as well as with the nature of its third-party relationships. As such, the agencies have not excluded any specific third-party relationships from the scope of the guidance.

2. Contract Negotiation

Commenters identified a range of suggestions on how the guidance approaches contract negotiations. Several commenters expressed concern that the section was overly detailed, that many contracts may not contain all of the contractual considerations discussed in the proposed guidance, and that such considerations might be treated as a mandatory checklist. Other commenters found the nature and extent of contractual language in the proposed guidance helpful in practice for informing a banking organization's contract negotiations.

Several commenters stated that the guidance should acknowledge the need for greater flexibility in certain contract negotiations. For example, some commenters requested that the guidance recognize that banking organizations may lack sufficient leverage in negotiations with larger third parties and may struggle to get certain ''typical'' provisions into the contract.

Further, several commenters recommended that the agencies provide additional support to smaller institutions to increase their collective negotiating power with respect to third parties, such as by creating a tool or supporting a collective group to facilitate negotiations. Some commenters proposed that the guidance include language from several of the OCC FAQs to clarify additional considerations regarding limited negotiating power and use of collaborative efforts when negotiating contracts.

In response to these comments, the agencies have incorporated concepts from OCC FAQs 5 and 13, acknowledging that a banking organization may have limited negotiating power in certain instances and should understand any resulting limitations. As the guidance states, many of the same considerations for collaborative arrangements apply throughout the risk management life cycle.

The agencies have streamlined some of the considerations in this section but believe that the overall scope of the discussion would be useful to banking organizations in understanding and preparing for contract negotiations.

3. Ongoing Monitoring

Several commenters recommended that the agencies revise the proposed guidance to encourage banks to adopt active, continuous, real-time monitoring, arguing that this approach is preferable to engaging in periodic assessments. Others requested the guidance provide additional information on alternative monitoring arrangements (such as certifications), collaborative monitoring arrangements, and reliance on external parties to supplement ongoing monitoring.

The agencies are not encouraging any specific approach to ongoing monitoring. Rather, the guidance continues to state that a banking organization's ongoing monitoring, like other third-party risk management processes, should be appropriate for the risks associated with each third-party relationship, commensurate with the banking organization's size, complexity, and risk profile and with the nature of its third-party relationships. Additionally, the guidance states that banking organizations may consider collaborative arrangements or the use of external parties to supplement ongoing monitoring.

F. Subcontractors

Commenters expressed a variety of views on banking organizations' relationships with subcontractors. These comments largely focused on whether the guidance could be clarified to promote additional flexibility in how banking organizations manage the risks associated with subcontractors, which pose challenges not necessarily present in a direct third-party relationship.

Various commenters emphasized the importance of managing risks posed by subcontractors, especially those that are material to a service being provided to a banking organization; those with access to sensitive, nonpublic information; those that perform higher-risk activities, including critical activities; those with access to the banking organization's infrastructure; and those within extended chains of subcontractors. However, many of these commenters expressed concern regarding the potential challenges in overseeing and conducting effective due diligence on subcontractors, such as a banking organization's lack of a relationship with (contractually or otherwise), and leverage over, subcontractors. These commenters suggested either narrowing the guidance's discussion on subcontractors (for example, excluding relationships beyond third parties) or refocusing a banking organization's oversight to a third party's ability to manage its subcontractors. Commenters also suggested that, in line with OCC FAQ 11, a banking organization could require a third party to bind its subcontractors to any obligations and standards of the third party.

With respect to these comments, the agencies acknowledge the risks and added complexity that may be involved with respect to a third party's use of subcontractors. The agencies also recognize concerns by commenters interpreting the guidance to mean banking organizations are expected to assess or oversee all subcontractors of a third party. Accordingly, consistent with the concepts in OCC FAQ 11, the agencies have revised the guidance, focusing on a banking organization's approach to evaluating its third party's own processes for overseeing subcontractors and managing risks. As the guidance clarifies, relationships with a third party, including a third party's use of subcontractors, should be evaluated based on the risk the relationship poses to the banking organization, which may include assessing whether a third party's use of subcontractors may heighten or raise additional risk to the banking organization and applying mitigating factors, as appropriate. The agencies have also made streamlining changes to improve clarity and promote flexibility, including by removing use of the term ''critical subcontractor.''

G. Oversight and Accountability

Commenters provided suggestions as to the proper role of a banking organization's board of directors and management with respect to effective third-party risk management. Some commenters, for example, stated that the proposed guidance implied excessive board involvement in day-to-day management activity. Others suggested that the guidance could further clarify the role of the board of directors in risk management activities, specifically those aspects of third-party risk management that could appropriately be executed and overseen by senior management. Some commenters similarly suggested the guidance clarify the authority of management to establish policies governing third-party relationships. A few commenters requested the guidance provide granularity on the types, depth, and frequency of information necessary for board review, including for ongoing monitoring. Additionally, several commenters suggested incorporating into the guidance and elaborating upon OCC FAQs 6 and 26, which discuss the board's responsibility for overseeing the development of an effective third-party risk management process, and its role in contract approval. Some commenters also requested ''Oversight and Accountability'' and its related subsections in the proposed guidance be better differentiated from the phases of the risk management life cycle, as the concepts and related activities occur

throughout the risk management life cycle.

The agencies have incorporated concepts from OCC FAQs 6 and 26, reorganizing the guidance to make clear that oversight and accountability happens throughout the risk management life cycle and is not a specific stage. Further, the agencies have made changes to clarify and distinguish the board's responsibilities from management's responsibilities and to avoid the appearance of a prescriptive approach to the board's role in the risk management life cycle, while still emphasizing that the board has ultimate oversight responsibility to ensure that the banking organization operates in a safe and sound manner and in compliance with applicable laws and regulations.

H. Other Matters Raised

Commenters also offered other thoughts and suggestions relating to the guidance. Commenters noted that it would be helpful to have a period prior to the guidance taking effect to permit banking organizations to adapt processes accordingly. Several commenters also recommended that the agencies leverage, refer to, or combine recent, relevant regulations and policy issuances (such as the ''Computer-Security Incident Notification rule,'' [16] ''Third-Party Due Diligence Guide for Community Banks,'' [17] and the ''Model Risk Management'' booklet of the *Comptroller's Handbook* [18]) as part of any final third-party risk management guidance. A few commenters made reference to the FDIC's 2016 proposed examination guidance for third-party lending,[19] stating that, although not finalized, the 2016 proposed guidance set forth meaningful concepts about third-party lending relationships that could be useful in developing the final guidance.

Several commenters shared considerations regarding, and requested insight into, the agencies' examinations of banking organizations' third-party risk management processes. Some commenters suggested that any final guidance include a separate section outlining specific examination procedures to set clear and consistent expectations regarding the examination process.

Commenters provided thoughts on incorporating any or all of the OCC's FAQs. Several commenters suggested including relevant FAQs as an appendix or separate section rather than incorporating them throughout any final guidance, complementing principle-based guidance with more issue-specific FAQs to provide practical context. Others thought that the existence of a separate set of FAQs would create unnecessary confusion for examiners and the industry. In response, the agencies have not incorporated issue-specific FAQs where it was determined the matters are adequately reflected in other issuances published since the OCC FAQs were last updated.

Several commenters requested greater coordination among federal, state, and foreign regulators with respect to this guidance. Specifically, a few commenters suggested that other federal government agencies, such as the National Credit Union Administration, join the agencies in issuing this guidance. Another commenter urged the agencies to support federal legislative proposals that would clarify the authority of state regulators to examine third-party service providers together with the agencies.

Some commenters suggested that the agencies develop additional guidance and educational resources on a wide array of separate topics that a banking organization's third-party risk management processes could touch upon, such as consumer protection issues, artificial intelligence, alternative data uses, and other novel developments, citing the agencies' crypto-asset ''policy sprints'' as an example. For example, as to consumer protection issues, some commenters expressed concern with certain third-party relationships, such as so-called ''rent-a-charter'' arrangements that they believe are improperly used by non-bank third parties to preempt state usury laws. Multiple commenters requested that the agencies update the guidance to warn or discourage banking organizations about certain risks, such as high-interest loans or conflicts with state laws. Several commenters also suggested that the agencies use their existing authorities (such as under the Bank Service Company Act [20]) to address the risks of what those commenters perceived as ''systemically important'' third-party service providers, or to otherwise assist banking organizations' third-party risk management efforts. Other commenters suggested the agencies and the CFPB provide for automatic sharing of service provider reports of examination with service providers' client banking organizations or provide certifications relevant to a banking organization's due diligence.

In response to these comments, given the broad, principles-based approach of this guidance, the agencies have not revised the guidance to address specific topics or types of relationships. Separate guidance on certain topics or relationships already exists; these types of specific guidance issuances, unless expressly rescinded, would remain unaffected by this guidance. While certain topics (including those raised by commenters) are not explicitly discussed in the final guidance, the broad-based scope of the guidance captures the full range of third-party relationships. With respect to requests that would require statutory or regulatory changes, or may be outside the authority of the agencies, such requests cannot be addressed by this guidance.

The agencies actively monitor trends and developments in the financial services industry and will consider issuing additional guidance or educational resources as necessary and appropriate to convey the agencies' views. The agencies plan to develop additional resources to assist smaller, non-complex community banking organizations in managing relevant third-party risks. The agencies will continue to coordinate closely about risk management matters, including third-party risk management, to help promote consistency across banking organizations and across the agencies.

Regarding questions about each agency's approach to examining third-party risk management, each agency has its own processes and procedures for conducting supervisory activities, including examination work. The final guidance includes a brief discussion of the agencies' supervisory reviews, the scope of which is tailored to evaluate the risks inherent in a banking organization's third-party relationships and the effectiveness of a banking organization's third-party risk management processes.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of

[16] 12 CFR part 53 (OCC); 12 CFR 225, subpart N (Board); 12 CFR 304, subpart C (FDIC).

[17] ''Conducting Due Diligence on Financial Technology Companies A Guide for Community Banks,'' Board, FDIC, OCC (August 2021), available at: *https://www.occ.gov/news-issuances/news-releases/2021/nr-ia-2021-85a.pdf.*

[18] ''Comptroller's Handbook: Model Risk Management,'' OCC (August 2021), available at: *https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/model-risk-management/pub-ch-model-risk.pdf.*

[19] FDIC FIL–50–2016, ''Examination Guidance for Third-Party Lending'' (July 29, 2016). This proposed examination guidance was not finalized.

[20] 12 U.S.C. 1861 *et seq.*

Management and Budget (OMB) control number.

The guidance does not revise any existing, or create any new, information collections pursuant to the PRA. Rather, any reporting, recordkeeping, or disclosure activities mentioned in the guidance are usual and customary and should occur in the normal course of business as defined in the PRA.[21] Consequently, no submissions will be made to the OMB for review.

IV. Text of Final Interagency Guidance on Third-Party Relationships

A. Overview

The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) have issued this guidance to provide sound risk management principles supervised banking organizations [1] can leverage when developing and implementing risk management practices to assess and manage risks associated with third-party relationships.[2]

Whether activities are performed internally or via a third party, banking organizations are required to operate in a safe and sound manner [3] and in compliance with applicable laws and regulations.[4] A banking organization's use of third parties does not diminish its responsibility to meet these requirements to the same extent as if its activities were performed by the banking organization in-house. To operate in a safe and sound manner, a banking organization establishes risk management practices to effectively manage the risks arising from its activities, including from third-party relationships.[5]

This guidance addresses any business arrangement [6] between a banking organization and another entity, by contract or otherwise. A third-party relationship may exist despite a lack of a contract or remuneration. Third-party relationships can include, but are not limited to, outsourced services, use of independent consultants, referral arrangements, merchant payment processing services, services provided by affiliates and subsidiaries, and joint ventures. Some banking organizations may form third-party relationships with new or novel structures and features—such as those observed in relationships with some financial technology (fintech) companies. The respective roles and responsibilities of a banking organization and a third party may differ, based on the specific circumstances of the relationship. Where the third-party relationship involves the provision of products or services to, or other interaction with, customers, the banking organization and the third party may have varying degrees of interaction with those customers.

The use of third parties can offer banking organizations significant benefits, such as access to new technologies, human capital, delivery channels, products, services, and markets. However, the use of third parties can reduce a banking organization's direct control over activities and may introduce new risks or increase existing risks, such as operational, compliance, and strategic risks. Increased risk often arises from greater operational or technological complexity, newer or different types of relationships, or potential inferior performance by the third party. A banking organization can be exposed to adverse impacts, including substantial financial loss and operational disruption, if it fails to appropriately manage the risks associated with third-party relationships. Therefore, it is important for a banking organization to identify, assess, monitor, and control risks related to third-party relationships.

The principles set forth in this guidance can support effective third-party risk management for all types of third-party relationships, regardless of how they may be structured. It is important for a banking organization to understand how the arrangement with a particular third party is structured so that the banking organization may assess the types and levels of risks posed and determine how to manage the third-party relationship accordingly.

B. Risk Management

Not all relationships present the same level of risk, and therefore not all relationships require the same level or type of oversight or risk management. As part of sound risk management, a banking organization analyzes the risks associated with each third-party relationship and tailors risk management practices, commensurate with the banking organization's size, complexity, and risk profile and with the nature of the third-party relationship. Maintaining a complete inventory of its third-party relationships and periodically conducting risk assessments for each third-party relationship supports a banking organization's determination of whether risks have changed over time and to update risk management practices accordingly.

As part of sound risk management, banking organizations engage in more comprehensive and rigorous oversight and management of third-party relationships that support higher-risk activities, including critical activities. Characteristics of critical activities may include those activities that could:

- Cause a banking organization to face significant risk if the third party fails to meet expectations;
- Have significant customer impacts; or
- Have a significant impact on a banking organization's financial condition or operations.

It is up to each banking organization to identify its critical activities and third-party relationships that support these critical activities. Notably, an activity that is critical for one banking organization may not be critical for another. Some banking organizations may assign a criticality or risk level to each third-party relationship, whereas others identify critical activities and those third parties that support such activities. Regardless of a banking organization's approach, a key element

[21] 5 CFR 1320.3(b)(2).

[1] For a description of the banking organizations supervised by each agency, refer to the definition of ''appropriate Federal banking agency'' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). This guidance is relevant to all banking organizations supervised by the agencies.

[2] Supervisory guidance does not have the force and effect of law and does not impose any new requirements on banking organizations. See 12 CFR 4, subpart F, appendix A (OCC); 12 CFR 262, appendix A (FRB) 12 CFR 302, appendix A (FDIC).

[3] *See* 12 U.S.C. 1831p–1. The agencies implemented section 1831p–1 by regulation through the ''Interagency Guidelines Establishing Standards for Safety and Soundness.'' *See* 12 CFR part 30, appendix A (OCC), 12 CFR part 208, appendix D–1 (Board); and 12 CFR part 364, appendix A (FDIC).

[4] References to applicable laws and regulations throughout this guidance include but are not limited to those designed to protect consumers (such as fair lending laws and prohibitions against unfair, deceptive or abusive acts or practices) and those addressing financial crimes.

[5] This guidance is relevant for all third-party relationships, including situations in which a supervised banking organization provides services to another supervised banking organization.

[6] The term ''business arrangement'' is meant to be interpreted broadly and is synonymous with the term ''third-party relationship.''

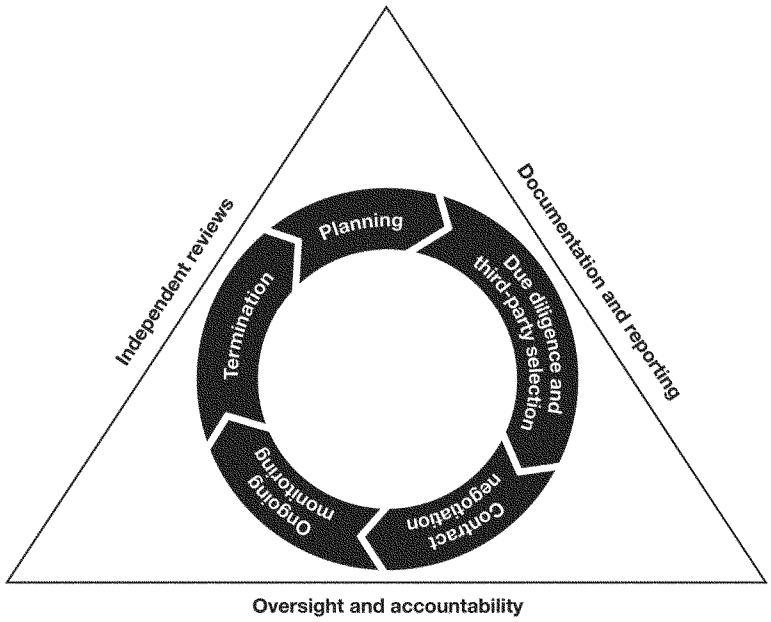
of effective risk management is applying a sound methodology to designate which activities and third-party relationships receive more comprehensive oversight.

C. Third-Party Relationship Life Cycle

Effective third-party risk management generally follows a continuous life cycle for third-party relationships. The stages of the risk management life cycle of third-party relationships are shown in Figure 1 and detailed below. The degree to which the examples of considerations discussed in this guidance are relevant to each banking organization is based on specific facts and circumstances and these examples may not apply to all of a banking organization's third-party relationships.

It is important to involve staff with the requisite knowledge and skills in each stage of the risk management life cycle. A banking organization may involve experts across disciplines, such as compliance, risk, or technology, as well as legal counsel, and may engage external support when helpful to supplement the qualifications and technical expertise of in-house staff.[7]

Figure 1: Stages of the Risk Management Life Cycle



Source: Board, FDIC, and OCC

1. Planning

As part of sound risk management, effective planning allows a banking organization to evaluate and consider how to manage risks before entering into a third-party relationship. Certain third parties, such as those that support a banking organization's higher-risk activities, including critical activities, typically warrant a greater degree of planning and consideration. For example, when critical activities are involved, plans may be presented to and approved by a banking organization's board of directors (or a designated board committee).

Depending on the degree of risk and complexity of the third-party relationship, a banking organization typically considers the following factors, among others, in planning:

- Understanding the strategic purpose of the business arrangement and how the arrangement aligns with a banking organization's overall strategic goals, objectives, risk appetite, risk profile, and broader corporate policies;
- Identifying and assessing the benefits and the risks associated with the business arrangement and determining how to appropriately manage the identified risks;
- Considering the nature of the business arrangement, such as volume of activity, use of subcontractor(s), technology needed, interaction with customers, and use of foreign-based third parties;[8]
- Evaluating the estimated costs, including estimated direct contractual costs and indirect costs expended to augment or alter banking organization staffing, systems, processes, and technology;
- Evaluating how the third-party relationship could affect banking organization employees, including dual

[7] When a banking organization uses a third-party assessment service or utility, it has a business arrangement with that entity. Therefore, the arrangement should be incorporated into the banking organization's third-party risk management processes.

[8] The term ''foreign-based third-party'' refers to third parties whose servicing operations are located in a foreign country and subject to the law and jurisdiction of that country. Accordingly, this term does not include a U.S.-based subsidiary of a foreign firm because its servicing operations are subject to U.S. laws. This term does include U.S. third parties to the extent that their actual servicing operations are located in or subcontracted to entities domiciled in a foreign country and subject to the law and jurisdiction of that country.

employees,[9] and what transition steps are needed for the banking organization to manage the impacts when activities currently conducted internally are outsourced;

- Assessing a potential third party's impact on customers, including access to or use of those customers' information, third-party interaction with customers, potential for consumer harm, and handling of customer complaints and inquiries;
- Understanding potential information security implications, including access to the banking organization's systems and to its confidential information;
- Understanding potential physical security implications, including access to the banking organization's facilities;
- Determining how the banking organization will select, assess, and oversee the third party, including monitoring the third party's compliance with applicable laws, regulations, and contractual provisions, and requiring remediation of compliance issues that may arise;
- Determining the banking organization's ability to provide adequate oversight and management of the proposed third-party relationship on an ongoing basis (including whether staffing levels and expertise, risk management and compliance management systems, organizational structure, policies and procedures, or internal control systems need to be adapted over time for the banking organization to effectively address the business arrangement); and
- Outlining the banking organization's contingency plans in the event the banking organization needs to transition the activity to another third party or bring it in-house.

2. Due Diligence and Third-Party Selection

Conducting due diligence on third parties before selecting and entering into third-party relationships is an important part of sound risk management. It provides management with the information needed about potential third parties to determine if a relationship would help achieve a banking organization's strategic and financial goals. The due diligence process also provides the banking organization with the information needed to evaluate whether it can appropriately identify, monitor, and control risks associated with the particular third-party relationship. Due diligence includes assessing the third party's ability to: perform the activity as expected, adhere to a banking organization's policies related to the activity, comply with all applicable laws and regulations, and conduct the activity in a safe and sound manner. Relying solely on experience with or prior knowledge of a third party is not an adequate proxy for performing appropriate due diligence, as due diligence should be tailored to the specific activity to be performed by the third party.

The scope and degree of due diligence should be commensurate with the level of risk and complexity of the third-party relationship. More comprehensive due diligence is particularly important when a third party supports higher-risk activities, including critical activities. If a banking organization uncovers information that warrants additional scrutiny, the banking organization should consider broadening the scope or assessment methods of the due diligence.

In some instances, a banking organization may not be able to obtain the desired due diligence information from a third party. For example, the third party may not have a long operational history, may not allow on-site visits, or may not share (or be permitted to share) information that a banking organization requests. While the methods and scope of due diligence may differ, it is important for the banking organization to identify and document any limitations of its due diligence, understand the risks from such limitations, and consider alternatives as to how to mitigate the risks. In such situations, a banking organization may, for example, obtain alternative information to assess the third party, implement additional controls on or monitoring of the third party to address the information limitation, or consider using a different third party.

A banking organization may use the services of industry utilities or consortiums, consult with other organizations,[10] or engage in joint efforts to supplement its due diligence. As the activity to be performed by the third party may present a different level of risk to each banking organization, it is important to evaluate the conclusions from such supplemental efforts based on the banking organization's own specific circumstances and performance criteria for the activity. Effective risk management processes include evaluating the capabilities of any external party conducting the supplemental efforts, understanding how such supplemental efforts relate to the banking organization's planned use of the third party, and assessing the risks of relying on the supplemental efforts. Use of such external parties to conduct supplemental due diligence does not abrogate the responsibility of the banking organization to manage third-party relationships in a safe and sound manner and consistent with applicable laws and regulations.

Depending on the degree of risk and complexity of the third-party relationship, a banking organization typically considers the following factors, among others, as part of due diligence:

a. Strategies and Goals

A review of the third party's overall business strategy and goals helps the banking organization to understand: (1) how the third party's current and proposed strategic business arrangements (such as mergers, acquisitions, and partnerships) may affect the activity; and (2) the third party's service philosophies, quality initiatives, and employment policies and practices (including its diversity policies and practices). Such information may assist a banking organization to determine whether the third party can perform the activity in a manner that is consistent with the banking organization's broader corporate policies and practices.

b. Legal and Regulatory Compliance

A review of any legal and regulatory compliance considerations associated with engaging a third party allows a banking organization to evaluate whether it can appropriately mitigate risks associated with the third-party relationship. This may include (1) evaluating the third party's ownership structure (including identifying any beneficial ownership, whether public or private, foreign, or domestic ownership) and whether the third party has the necessary legal authority to perform the activity, such as any necessary licenses or corporate powers; (2) determining whether the third party itself or any owners are subject to sanctions by the Office of Foreign Assets Control; (3) determining whether the third party has the expertise, processes, and controls to enable the banking organization to remain in compliance with applicable domestic and international laws and

[9] Dual employees are employed by both the banking organization and the third party.

[10] Any collaborative activities among banks must comply with antitrust laws. Refer to the Federal Trade Commission and U.S. Department of Justice's ''Antitrust Guidelines for Collaborations Among Competitors'' (April 2000), available at *https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf*.

regulations; (4) considering the third party's responsiveness to any compliance issues (including violations of law or regulatory actions) with applicable supervisory agencies and self-regulatory organizations, as appropriate; and (5) considering whether the third party has identified, and articulated a process to mitigate, areas of potential consumer harm.

c. Financial Condition

An assessment of a third party's financial condition through review of available financial information, including audited financial statements, annual reports, and filings with the U.S. Securities and Exchange Commission (SEC), among others, helps a banking organization evaluate whether the third party has the financial capability and stability to perform the activity. Where relevant and available, a banking organization may consider other types of information such as access to funds, expected growth, earnings, pending litigation, unfunded liabilities, reports from debt rating agencies, and other factors that may affect the third party's overall financial condition.

d. Business Experience

An evaluation of a third party's: (1) depth of resources (including staffing); (2) previous experience in performing the activity; and (3) history of addressing customer complaints or litigation and subsequent outcomes, helps to inform a banking organization's assessment of the third party's ability to perform the activity effectively. Another consideration may include whether there have been significant changes in the activities offered or in its business model. Likewise, a review of the third party's websites, marketing materials, and other information related to banking products or services may help determine if statements and assertions accurately represent the activities and capabilities of the third party.

e. Qualifications and Backgrounds of Key Personnel and Other Human Resources Considerations

An evaluation of the qualifications and experience of a third party's principals and other key personnel related to the activity to be performed provides insight into the capabilities of the third party to successfully perform the activities. An important consideration is whether the third party and the banking organization, as appropriate, periodically conduct background checks on the third party's key personnel and contractors who may have access to information technology systems or confidential information. Another important consideration is whether there are procedures in place for identifying and removing the third party's employees who do not meet minimum suitability requirements or are otherwise barred from working in the financial services sector. Another consideration is whether the third party has training to ensure that its employees understand their duties and responsibilities and are knowledgeable about applicable laws and regulations as well as other factors that could affect performance or pose risk to the banking organization. Finally, an evaluation of the third party's succession and redundancy planning for key personnel, and of the third party's processes for holding employees accountable for compliance with policies and procedures, provides valuable information to the banking organization.

f. Risk Management

Appropriate due diligence includes an evaluation of the effectiveness of a third party's overall risk management, including policies, processes, and internal controls, and alignment with applicable policies and expectations of the banking organization surrounding the activity. This would include an assessment of the third party's governance processes, such as the establishment of clear roles, responsibilities, and segregation of duties pertaining to the activity. It is also important to consider whether the third party's controls and operations are subject to effective audit assessments, including independent testing and objective reporting of results and findings. Banking organizations also gain important insight by evaluating processes for escalating, remediating, and holding management accountable for concerns identified during audits, internal compliance reviews, or other independent tests, if available. When relevant and available, a banking organization may consider reviewing System and Organization Control (SOC) reports and any conformity assessment or certification by independent third parties related to relevant domestic or international standards.[11] In such cases, the banking organization may also consider whether the scope and the results of the SOC reports, certifications, or assessments are relevant to the activity to be performed or suggest that additional scrutiny of the third party or any of its contractors may be appropriate.

[11] For example, those of the National Institute of Standards and Technology, Accredited Standards Committee X9, and the International Standards Organization.

g. Information Security

Understanding potential information security implications, including access to a banking organization's systems and information, can help a banking organization decide whether or not to engage with a third party. Due diligence in this area typically involves assessing the third party's information security program, including its consistency with the banking organization's information security program, such as its approach to protecting the confidentiality, integrity, and availability of the banking organization's data. It may also involve determining whether there are any gaps that present risk to the banking organization or its customers and considering the extent to which the third party applies controls to limit access to the banking organization's data and transactions, such as multifactor authentication, end-to-end encryption, and secure source code management. It also aids a banking organization when determining whether the third party keeps informed of, and has sufficient experience in identifying, assessing, and mitigating, known and emerging threats and vulnerabilities. As applicable, assessing the third party's data, infrastructure, and application security programs, including the software development life cycle and results of vulnerability and penetration tests, can provide valuable information regarding information technology system vulnerabilities. Finally, due diligence can help a banking organization evaluate the third party's implementation of effective and sustainable corrective actions to address any deficiencies discovered during testing.

h. Management of Information Systems

It is important to review and understand the third party's business processes and information systems that will be used to support the activity. When technology is a major component of the third-party relationship, an effective practice is to review both the banking organization's and the third party's information systems to identify gaps in service-level expectations, business process and management, and interoperability issues. It is also important to review the third party's processes for maintaining timely and accurate inventories of its technology and its contractor(s). A banking organization also benefits from understanding the third party's measures for assessing the performance of its information systems.

i. Operational Resilience

An assessment of a third party's operational resilience practices supports a banking organization's evaluation of a third party's ability to effectively operate through and recover from any disruption or incidents, both internal and external.[12] Such an assessment is particularly important where the impact of such disruption could have an adverse effect on the banking organization or its customers, including when the third party interacts with customers. It is important to assess options to employ if the third party's ability to perform the activity is impaired and to determine whether the third party maintains appropriate operational resilience and cybersecurity practices, including disaster recovery and business continuity plans that specify the time frame to resume activities and recover data. To gain additional insight into a third party's resilience capabilities, a banking organization may review (1) the results of operational resilience and business continuity testing and performance during actual disruptions; (2) the third party's telecommunications redundancy and resilience plans; and (3) preparations for known and emerging threats and vulnerabilities, such as wide-scale natural disasters, pandemics, distributed denial of service attacks, or other intentional or unintentional events. Other considerations related to operational resilience include (1) dependency on a single provider for multiple activities; and (2) interoperability or potential end of life issues with the software programming language, computer platform, or data storage technologies used by the third party.

j. Incident Reporting and Management Processes

Review and consideration of a third party's incident reporting and management processes is helpful to determine whether there are clearly documented processes, timelines, and accountability for identifying, reporting, investigating, and escalating incidents. Such review assists in confirming that the third party's escalation and notification processes meet the banking organization's expectations and regulatory requirements.[13]

k. Physical Security

It is important to evaluate whether the third party has sufficient physical and environmental controls to protect the safety and security of people (such as employees and customers), its facilities, technology systems, and data, as applicable. This would typically include a review of the third party's employee on- and off-boarding procedures to ensure that physical access rights are managed appropriately.

l. Reliance on Subcontractors [14]

An evaluation of the volume and types of subcontracted activities and the degree to which the third party relies on subcontractors helps inform whether such subcontracting arrangements pose additional or heightened risk to a banking organization. This typically includes an assessment of the third party's ability to identify, manage, and mitigate risks associated with subcontracting, including how the third party selects and oversees its subcontractors and ensures that its subcontractors implement effective controls. Other important considerations include whether additional risk is presented by the geographic location of a subcontractor or dependency on a single provider for multiple activities.

m. Insurance Coverage

An evaluation of whether the third party has existing insurance coverage helps a banking organization determine the extent to which potential losses are mitigated, including losses posed by the third party to the banking organization or that might prevent the third party from fulfilling its obligations to the banking organization. Such losses may be attributable to dishonest or negligent acts; fire, floods, or other natural disasters; loss of data; and other matters. Examples of insurance coverage may include fidelity bond; liability; property hazard and casualty; and areas that may not be covered under a general commercial policy, such as cybersecurity or intellectual property.

n. Contractual Arrangements With Other Parties

A third party's commitments to other parties may introduce potential legal, financial, or operational implications to the banking organization. Therefore, it is important to obtain and evaluate information regarding the third party's legally binding arrangements with subcontractors or other parties to determine whether such arrangements may create or transfer risks to the banking organization or its customers.

3. Contract Negotiation

When evaluating whether to enter into a relationship with a third party, a banking organization typically determines whether a written contract is needed, and if the proposed contract can meet the banking organization's business goals and risk management needs. After such determination, a banking organization typically negotiates contract provisions that will facilitate effective risk management and oversight and that specify the expectations and obligations of both the banking organization and the third party. A banking organization may tailor the level of detail and comprehensiveness of such contract provisions based on the risk and complexity posed by the particular third-party relationship.

While third parties may initially offer a standard contract, a banking organization may seek to request modifications, additional contract provisions, or addendums to satisfy its needs. In difficult contract negotiations, including when a banking organization has limited negotiating power, it is important for the banking organization to understand any resulting limitations and consequent risks. Possible actions that a banking organization might take in such circumstances include determining whether the contract can still meet the banking organization's needs, whether the contract would result in increased risk to the banking organization, and whether residual risks are acceptable. If the contract is unacceptable for the banking organization, it may consider other approaches, such as employing other third parties or conducting the activity in-house. In certain circumstances, banking organizations may gain an advantage by negotiating contracts as a group with other organizations.

It is important that a banking organization understand the benefits and risks associated with engaging third parties and particularly before executing contracts involving higher-risk activities, including critical activities. As part of its oversight responsibilities, the board of directors should be aware of and, as appropriate, may approve or delegate approval of contracts involving higher-risk activities. Legal counsel review may also be warranted prior to finalization.

Periodic reviews of executed contracts allow a banking organization to confirm that existing provisions continue to address pertinent risk controls and legal

[12] Disruptive events could include technology-based failures, human error, cyber incidents, pandemic outbreaks, and natural disasters.

[13] For example, regulatory requirements regarding incident notification include the FBAs' ''Computer Security Incident Notification Rule.'' *See* 12 CFR 53 (OCC); 12 CFR 225, subpart N (Board); 12 CFR 304, subpart C (FDIC).

[14] Third parties may enlist the help of suppliers, service providers, or other organizations, which this guidance collectively refers to as subcontractors.

protections. If new risks are identified, a banking organization may consider renegotiating a contract.

Depending on the degree of risk and complexity of the third-party relationship, a banking organization typically considers the following factors, among others, during contract negotiations:

a. Nature and Scope of Arrangement

In negotiating a contract, it is helpful for a banking organization to clearly identify the rights and responsibilities of each party. This typically includes specifying the nature and scope of the business arrangement. Additional considerations may also include, as applicable, a description of (1) ancillary services such as software or other technology support, maintenance, and customer service; (2) the activities the third party will perform; and (3) the terms governing the use of the banking organization's information, facilities, personnel, systems, intellectual property, and equipment, as well as access to and use of the banking organization's or customers' information. If dual employees will be used, it may also be helpful to specify their responsibilities and reporting lines. It is also important for a banking organization to understand how changes in business and other circumstances may give rise to the third party's rights to terminate or renegotiate the contract.

b. Performance Measures or Benchmarks

For certain relationships, clearly defined performance measures can assist a banking organization in evaluating the performance of a third party. In particular, a service-level agreement between the banking organization and the third party can help specify the measures surrounding the expectations and responsibilities for both parties, including conformance with policies and procedures and compliance with applicable laws and regulations. Such measures can be used to monitor performance, penalize poor performance, or reward outstanding performance. It is important to negotiate performance measures that do not incentivize imprudent performance or behavior, such as encouraging processing volume or speed without regard for accuracy, compliance requirements, or adverse effects on the banking organization or customers.

c. Responsibilities for Providing, Receiving, and Retaining Information

It is important to consider contract provisions that specify the third party's obligation for retention and provision of timely, accurate, and comprehensive information to allow the banking organization to monitor risks and performance and to comply with applicable laws and regulations. Such provisions typically address:

- The banking organization's ability to access its data in an appropriate and timely manner;
- The banking organization's access to, or use of, the third-party's data and any supporting documentation, in connection with the business arrangement;
- The banking organization's access to, or use of, its own or the third-party's data and how such data and supporting documentation may be shared with regulators in a timely manner as part of the supervisory process;
- Whether the third party is permitted to resell, assign, or permit access to customer data, or the banking organization's data, metadata, and systems, to other entities;
- Notification to the banking organization whenever compliance lapses, enforcement actions, regulatory proceedings, or other events pose a significant risk to the banking organization or customers;
- Notification to the banking organization of significant strategic or operational changes, such as mergers, acquisitions, divestitures, use of subcontractors, key personnel changes, or other business initiatives that could affect the activities involved; and
- Specification of the type and frequency of reports to be received from the third party, as appropriate. This may include performance reports, financial reports, security reports, and control assessments.

d. The Right To Audit and Require Remediation

To help ensure that a banking organization has the ability to monitor the performance of a third party, a contract often establishes the banking organization's right to audit and provides for remediation when issues are identified. Generally, a contract includes provisions for periodic, independent audits of the third party and its relevant subcontractors, consistent with the risk and complexity of the third-party relationship. Therefore, it would be appropriate to consider whether contract provisions describe the types and frequency of audit reports the banking organization is entitled to receive from the third party (for example, SOC reports, Payment Card Industry (PCI) compliance reports, or other financial and operational reviews). Such contract provisions may also reserve the banking organization's right to conduct its own audits of the third party's activities or to engage an independent party to perform such audits.

e. Responsibility for Compliance With Applicable Laws and Regulations

A banking organization is responsible for conducting its activities in compliance with applicable laws and regulations, including those activities involving third parties. The use of third parties does not abrogate these responsibilities. Therefore, it is important for a contract to specify the obligations of the third party and the banking organization to comply with applicable laws and regulations. It is also important for the contract to provide the banking organization with the right to monitor and be informed about the third party's compliance with applicable laws and regulations, and to require timely remediation if issues arise. Contracts may also reflect considerations of relevant guidance and self-regulatory standards, where applicable.

f. Costs and Compensation

Contracts that clearly describe all costs and compensation arrangements help reduce misunderstandings and disputes over billing and help ensure that all compensation arrangements are consistent with sound banking practices and applicable laws and regulations. Contracts commonly describe compensation and fees, including cost schedules, calculations for base services, and any fees based on volume of activity and for special requests. Contracts also may specify the conditions under which the cost structure may be changed, including limits on any cost increases. During negotiations, a banking organization should confirm that a contract does not include incentives that promote inappropriate risk taking by the banking organization or the third party. A banking organization should also consider whether the contract includes burdensome upfront or termination fees, or provisions that may require the banking organization to reimburse the third party. Appropriate provisions indicate which party is responsible for payment of legal, audit, and examination fees associated with the activities involved. Another consideration is outlining cost and responsibility for purchasing and maintaining hardware and software, where applicable.

g. Ownership and License

In order to prevent disputes between the parties regarding the ownership and licensing of a banking organization's

property, it is common for a contract to state the extent to which the third party has the right to use the banking organization's information, technology, and intellectual property, such as the banking organization's name, logo, trademark, and copyrighted material. Provisions that indicate whether any data generated by the third party become the banking organization's property help avert misunderstandings. It is also important to include appropriate warranties on the part of the third party related to its acquisition of licenses or subscriptions for use of any intellectual property developed by other third parties. When the banking organization purchases software, it is important to consider a provision to establish escrow agreements to provide for the banking organization's access to source code and programs under certain conditions (for example, insolvency of the third party).

h. Confidentiality and Integrity

With respect to contracts with third parties, there may be increased risks related to the sensitivity of non-public information or access to infrastructure. Effective contracts typically prohibit the use and disclosure of banking organization and customer information by a third party and its subcontractors, except as necessary to provide the contracted activities or comply with legal requirements. If the third party receives personally identifiable information, contract provisions are important to ensure that the third party implements and maintains appropriate security measures to comply with applicable laws and regulations.

Another important provision is one that specifies when and how the third party will disclose, in a timely manner, information security breaches or unauthorized intrusions. Considerations may include the types of data stored by the third party, legal obligations for the banking organization to disclose the breach to its regulators or customers, the potential for consumer harm, or other factors. Such provisions typically stipulate that the data intrusion notification to the banking organization include estimates of the effects on the banking organization and its customers and specify corrective action to be taken by the third party. They also address the powers of each party to change security and risk management procedures and requirements and resolve any confidentiality and integrity issues arising out of shared use of facilities owned by the third party. Typically, such provisions stipulate whether and how often the banking organization and the third party will jointly practice incident management exercises involving unauthorized intrusions or other breaches of confidentiality and integrity.

i. Operational Resilience and Business Continuity

Both internal and external factors or incidents (for example, natural disasters or cyber incidents) may affect a banking organization or a third party and thereby disrupt the third party's performance of the activity. Consequently, an effective contract provides for continuation of the activity in the event of problems affecting the third party's operations, including degradations or interruptions in delivery. As such, it is important for the contract to address the third party's responsibility for appropriate controls to support operational resilience of the services, such as protecting and storing programs, backing up datasets, addressing cybersecurity issues, and maintaining current and sound business resumption and business continuity plans.

To help ensure maintenance of operations, contracts often require the third party to provide the banking organization with operating procedures to be carried out in the event business continuity plans are implemented, including specific recovery time and recovery point objectives. Contracts may also stipulate whether and how often the banking organization and the third party will jointly test business continuity plans. Another consideration is whether the contract provides for the transfer of the banking organization's accounts, data, or activities to another third party without penalty in the event of the third party's bankruptcy, business failure, or business interruption.

j. Indemnification and Limits on Liability

Incorporating indemnification provisions into a contract may reduce the potential for a banking organization to be held liable for claims and be reimbursed for damages arising from a third party's misconduct, including negligence and violations of laws and regulations. As such, it is important to consider whether indemnification clauses specify the extent to which the banking organization will be held liable for claims or be reimbursed for damages based on the failure of the third party or its subcontractor to perform, including failure of the third party to obtain any necessary intellectual property licenses. Such consideration typically includes an assessment of whether any limits on liability are in proportion to the amount of loss the banking organization might experience as a result of third-party failures, or whether indemnification clauses require the banking organization to hold the third party harmless from liability.

k. Insurance

One way in which a banking organization can protect itself against losses caused by or related to a third party and the products and services provided through third-party relationships is by including insurance requirements in a contract. These provisions typically require the third party to (1) maintain specified types and amounts of insurance (including, if appropriate, naming the banking organization as insured or additional insured); (2) notify the banking organization of material changes to coverage; and (3) provide evidence of coverage, as appropriate. The type and amount of insurance coverage should be commensurate with the risk of possible losses, including those caused by the third party to the banking organization or that might prevent the third party from fulfilling its obligations to the banking organization, and the activities performed.

l. Dispute Resolution

Disputes regarding a contract can delay or otherwise have an adverse impact upon the activities performed by a third party, which may negatively affect the banking organization. Therefore, a banking organization may want to consider whether the contract should establish a dispute resolution process to resolve problems between the banking organization and the third party in an expeditious manner, and whether the third party should continue to provide activities to the banking organization during the dispute resolution period. It is important to also understand whether the contract contains provisions that may impact the banking organization's ability to resolve disputes in a satisfactory manner, such as provisions addressing arbitration or forum selection.

m. Customer Complaints

Where customer interaction is an important aspect of the third-party relationship, a banking organization may find it useful to include a contract provision to ensure that customer complaints and inquiries are handled properly. Effective contracts typically specify whether the banking organization or the third party is responsible for responding to customer complaints or inquiries. If it is the third party's responsibility, it is important to include provisions for the third party to receive and respond to customer

complaints and inquiries in a timely manner and to provide the banking organization with sufficient, timely, and usable information to analyze customer complaint and inquiry activity and associated trends. If it is the banking organization's responsibility, it is important to include provisions for the banking organization to receive prompt notification from the third party of any complaints or inquiries received by the third party.

n. Subcontracting

Third-party relationships may involve subcontracting arrangements, which can result in risk due to the absence of a direct relationship between the banking organization and the subcontractor, further lessening the banking organization's direct control of activities. The impact on a banking organization's ability to assess and control risks may be especially important if the banking organization uses third parties for higher-risk activities, including critical activities. For this reason, a banking organization may want to address when and how the third party should notify the banking organization of its use or intent to use a subcontractor and whether specific subcontractors are prohibited by the banking organization. Another important consideration is whether the contract should prohibit assignment, transfer, or subcontracting of the third party's obligations to another entity without the banking organization's consent. Where subcontracting is integral to the activity being performed for the banking organization, it is important to consider more detailed contractual obligations, such as reporting on the subcontractor's conformance with performance measures, periodic audit results, and compliance with laws and regulations. Where appropriate, a banking organization may consider including a provision that states the third party's liability for activities or actions by its subcontractors and which party is responsible for the costs and resources required for any additional monitoring and management of the subcontractors. It may also be appropriate to reserve the right to terminate the contract without penalty if the third party's subcontracting arrangements do not comply with contractual obligations.

o. Foreign-Based Third Parties

In contracts with foreign-based third parties, it is important to consider choice-of-law and jurisdictional provisions that provide dispute adjudication under the laws of a single jurisdiction, whether in the United States or elsewhere. When engaging with foreign-based third parties, or where contracts include a choice-of-law provision that includes a jurisdiction other than the United States, it is important to understand that such contracts and covenants may be subject to the interpretation of foreign courts relying on laws in those jurisdictions. It may be warranted to seek legal advice on the enforceability of the proposed contract with a foreign-based third party and other legal ramifications, including privacy laws and cross-border flow of information.

p. Default and Termination

Contracts can protect the ability of the banking organization to change third parties when appropriate without undue restrictions, limitations, or cost. An effective contract stipulates what constitutes default, identifies remedies, allows opportunities to cure defaults, and establishes the circumstances and responsibilities for termination. Therefore, it is important to consider including contractual provisions that:

- Provide termination and notification requirements with reasonable time frames to allow for the orderly transition of the activity, when desired or necessary, without prohibitive expense;
- Provide for the timely return or destruction of the banking organization's data, information, and other resources;
- Assign all costs and obligations associated with transition and termination; and
- Enable the banking organization to terminate the relationship with reasonable notice and without penalty, if formally directed by the banking organization's primary federal banking regulator.

q. Regulatory Supervision

For relevant third-party relationships, it is important for contracts to stipulate that the performance of activities by third parties for the banking organization is subject to regulatory examination and oversight, including appropriate retention of, and access to, all relevant documentation and other materials.[15] This can help ensure that a third party is aware of its role and potential liability in its relationship with a banking organization.

4. Ongoing Monitoring

Ongoing monitoring enables a banking organization to: (1) confirm the quality and sustainability of a third party's controls and ability to meet contractual obligations; (2) escalate significant issues or concerns, such as material or repeat audit findings, deterioration in financial condition, security breaches, data loss, service interruptions, compliance lapses, or other indicators of increased risk; and (3) respond to such significant issues or concerns when identified.

Effective third-party risk management includes ongoing monitoring throughout the duration of a third-party relationship, commensurate with the level of risk and complexity of the relationship and the activity performed by the third party. Ongoing monitoring may be conducted on a periodic or continuous basis, and more comprehensive or frequent monitoring is appropriate when a third-party relationship supports higher-risk activities, including critical activities. Because both the level and types of risks may change over the lifetime of third-party relationships, banking organizations may adapt their ongoing monitoring practices accordingly, including changes to the frequency or type of information used in monitoring.

Typical monitoring activities include: (1) review of reports regarding the third party's performance and the effectiveness of its controls; (2) periodic visits and meetings with third-party representatives to discuss performance and operational issues; and (3) regular testing of the banking organization's controls that manage risks from its third-party relationships, particularly when supporting higher-risk activities, including critical activities. In certain circumstances, based on risk, a banking organization may also perform direct testing of the third party's own controls. To gain efficiencies or leverage specialized expertise, banking organizations may engage external resources, refer to conformity assessments or certifications, or collaborate when performing ongoing monitoring.[16] To support effective monitoring, a banking organization dedicates sufficient staffing with the necessary expertise, authority, and accountability to perform a range of ongoing monitoring activities, such as those described above.

Depending on the degree of risk and complexity of the third-party relationship, a banking organization typically considers the following factors, among others, as part of ongoing monitoring:

[15] *See* 12 U.S.C. 1464(d)(7)(D) and 1867(c)(1).

[16] Refer to important considerations discussed in ''Due Diligence and Third-Party Selection'' of this guidance when a banking organization chooses to engage external resources to supplement its third-party risk management.

- The overall effectiveness of the third-party relationship, including its consistency with the banking organization's strategic goals, business objectives, risk appetite, risk profile, and broader corporate policies;
- Changes to the third party's business strategy and its agreements with other entities that may pose new or increased risks or impact the third party's ability to meet contractual obligations;
- Changes in the third party's financial condition, including its financial obligations to others;
- Changes to, or lapses in, the third party's insurance coverage;
- Relevant audits, testing results, and other reports that address whether the third party remains capable of managing risks and meeting contractual obligations and regulatory requirements;
- The third party's ongoing compliance with applicable laws and regulations and its performance as measured against contractual obligations;
- Changes in the third party's key personnel involved in the activity;
- The third party's reliance on, exposure to, and use of subcontractors, the location of subcontractors (and any related data), and the third party's own risk management processes for monitoring subcontractors;
- Training provided to employees of the banking organization and the third party;
- The third party's response to changing threats, new vulnerabilities, and incidents impacting the activity, including any resulting adjustments to the third party's operations or controls;
- The third party's ability to maintain the confidentiality, availability, and integrity of the banking organization's systems, information, and data, as well as customer data, where applicable;
- The third party's response to incidents, business continuity and resumption plans, and testing results to evaluate the third party's ability to respond to and recover from service disruptions or degradations;
- Factors and conditions external to the third party that could affect its performance and financial and operational standing, such as changing laws, regulations, and economic conditions; and
- The volume, nature, and trends of customer inquiries and complaints, the adequacy of the third party's responses (if responsible for handling customer inquiries or complaints), and any resulting remediation.

5. Termination

A banking organization may terminate a relationship for various reasons, such as expiration or breach of the contract, the third party's failure to comply with applicable laws or regulations, or a desire to seek an alternate third party, bring the activity in-house, or discontinue the activity. When this occurs, it is important for management to terminate relationships in an efficient manner, whether the activities are transitioned to another third party, brought in-house, or discontinued. Depending on the degree of risk and complexity of the third-party relationship, a banking organization typically considers the following factors, among others, to facilitate termination:

- Options for an effective transition of services, such as potential alternate third parties to perform the activity;
- Relevant capabilities, resources, and the time frame required to transition the activity to another third party or bring in-house while still managing legal, regulatory, customer, and other impacts that might arise;
- Costs and fees associated with termination;
- Managing risks associated with data retention and destruction, information system connections and access control, or other control concerns that require additional risk management and monitoring after the end of the third-party relationship;
- Handling of joint intellectual property; and
- Managing risks to the banking organization, including any impact on customers, if the termination happens as a result of the third party's inability to meet expectations.

D. Governance

There are a variety of ways for banking organizations to structure their third-party risk management processes. Some banking organizations disperse accountability for their third-party risk management processes among their business lines.[17] Other banking organizations may centralize the processes under their compliance, information security, procurement, or risk management functions. Regardless of how a banking organization structures its process, the following practices are typically considered throughout the third-party risk management life cycle,[18] commensurate with risk and complexity.

1. Oversight and Accountability

Proper oversight and accountability are important aspects of third-party risk management because they help enable a banking organization to minimize adverse financial, operational, or other consequences. A banking organization's board of directors has ultimate responsibility for providing oversight for third-party risk management and holding management accountable. The board also provides clear guidance regarding acceptable risk appetite, approves appropriate policies, and ensures that appropriate procedures and practices have been established. A banking organization's management is responsible for developing and implementing third-party risk management policies, procedures, and practices, commensurate with the banking organization's risk appetite and the level of risk and complexity of its third-party relationships.

In carrying out its responsibilities, the board of directors (or a designated board committee) typically considers the following factors, among others:

- Whether third-party relationships are managed in a manner consistent with the banking organization's strategic goals and risk appetite and in compliance with applicable laws and regulations;
- Whether there is appropriate periodic reporting on the banking organization's third-party relationships, such as the results of management's planning, due diligence, contract negotiation, and ongoing monitoring activities; and
- Whether management has taken appropriate actions to remedy significant deterioration in performance or address changing risks or material issues identified, including through ongoing monitoring and independent reviews.

When carrying out its responsibilities, management typically performs the following activities, among others:

- Integrating third-party risk management with the banking organization's overall risk management processes;
- Directing planning, due diligence, and ongoing monitoring activities;
- Reporting periodically to the board (or designated committee), as appropriate, on third-party risk management activities;
- Providing that contracts with third parties are appropriately reviewed, approved, and executed;

[17] Each applicable business line can provide valuable input into the third-party risk management process, for example, by completing risk assessments, reviewing due diligence information, and evaluating the controls over the third-party relationship.

[18] Refer to Figure 1: Stages of the Risk Management Life Cycle.

- Establishing appropriate organizational structures and staffing (level and expertise) to support the banking organization's third-party risk management processes;
- Implementing and maintaining an appropriate system of internal controls to manage risks associated with third-party relationships;
- Assessing whether the banking organization's compliance management system is appropriate to the nature, size, complexity, and scope of its third-party relationships;
- Determining whether the banking organization has appropriate access to data and information from its third parties;
- Escalating significant issues to the board and monitoring any resulting remediation, including actions taken by the third party; and
- Terminating business arrangements with third parties when they do not meet expectations or no longer align with the banking organization's strategic goals, objectives, or risk appetite.

2. Independent Reviews

It is important for a banking organization to conduct periodic independent reviews to assess the adequacy of its third-party risk management processes. Such reviews typically consider the following factors, among others:

- Whether the third-party relationships align with the banking organization's business strategy, and with internal policies, procedures, and standards;
- Whether risks of third-party relationships are identified, measured, monitored, and controlled;
- Whether the banking organization's processes and controls are designed and operating adequately;
- Whether appropriate staffing and expertise are engaged to perform risk management activities throughout the third-party risk management life cycle, including involving multiple disciplines across the banking organization, as appropriate; and
- Whether conflicts of interest or appearances of conflicts of interest are avoided or eliminated when selecting or overseeing third parties.

A banking organization may use the results of independent reviews to determine whether and how to adjust its third-party risk management process, including its policies, reporting, resources, expertise, and controls. It is important that management respond promptly and thoroughly to issues or concerns identified and escalate them to the board, as appropriate.

3. Documentation and Reporting

It is important that a banking organization properly document and report on its third-party risk management process and specific third-party relationships throughout their life cycle. Documentation and reporting, key elements that assist those within or outside the banking organization who conduct control activities, will vary among banking organizations depending on the risk and complexity of their third-party relationships. Examples of processes that support effective documentation and internal reporting that the agencies have observed include, but are not limited to:

- A current inventory of all third-party relationships (and, as appropriate to the risk presented, related subcontractors) that clearly identifies those relationships associated with higher-risk activities, including critical activities;
- Planning and risk assessments related to the use of third parties;
- Due diligence results and recommendations;
- Executed contracts;
- Remediation plans and related reports addressing the quality and sustainability of the third party's controls;
- Risk and performance reports required and received from the third party as part of ongoing monitoring;
- If applicable, reports related to customer complaint and inquiry monitoring, and any subsequent remediation reports;
- Reports from third parties of service disruptions, security breaches, or other events that pose, or may pose, a material risk to the banking organization;
- Results of independent reviews; and
- Periodic reporting to the board (including, as applicable, dependency on a single provider for multiple activities).

E. Supervisory Reviews of Third-Party Relationships

The concepts discussed in this guidance are relevant for all third-party relationships and are provided to banking organizations to assist in the tailoring and implementation of risk management practices commensurate to each banking organization's size, complexity, risk profile, and the nature of its third-party relationships. Each agency will review its supervised banking organizations' risk management of third-party relationships as part of its standard supervisory processes. Supervisory reviews will evaluate risks and the effectiveness of risk management to determine whether activities are conducted in a safe and sound manner and in compliance with applicable laws and regulations.

In their evaluations of a banking organization's third-party risk management, examiners consider that banking organizations engage in a diverse set of third-party relationships, that not all third-party risk relationships present the same risks, and that banking organizations accordingly tailor their practices to the risks presented. Thus, the scope of the supervisory review depends on the degree of risk and the complexity associated with the banking organization's activities and third-party relationships. When reviewing third-party risk management processes, examiners typically conduct the following activities, among others:

- Assess the ability of the banking organization's management to oversee and manage the banking organization's third-party relationships;
- Assess the impact of third-party relationships on the banking organization's risk profile and key aspects of financial and operational performance, including compliance with applicable laws and regulations;
- Perform transaction testing or review results of testing to evaluate the activities performed by the third party and assess compliance with applicable laws and regulations;
- Highlight and discuss any material risks and deficiencies in the banking organization's risk management process with senior management and the board of directors as appropriate;
- Review the banking organization's plans for appropriate and sustainable remediation of any deficiencies, particularly those associated with the oversight of third parties that involve critical activities; and
- Consider supervisory findings when assigning the components of the applicable rating system and highlight any material risks and deficiencies in the Report of Examination.

When circumstances warrant, an agency may use its legal authority to examine functions or operations that a third party performs on a banking organization's behalf. Such examinations may evaluate the third party's ability to fulfill its obligations in a safe and sound manner and comply with applicable laws and regulations, including those designed to protect customers and to provide fair access to financial services. The agencies may pursue corrective measures, including enforcement actions, when necessary to address violations of laws and regulations or unsafe or unsound

banking practices by the banking organization or its third party.

Michael J. Hsu,

Acting Comptroller of the Currency.

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

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on June 1, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–12340 Filed 6–8–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Enforcement, Compliance & Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov/*).

Notice of OFAC Action(s)

On June 6, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. DAMGHANI, Davoud (a.k.a. DAMGHANI, Davood; a.k.a. DAMGHANI, Davud; a.k.a. DAMQANI, Davood; a.k.a. DAMQANI, Davoud), Beijing, China; DOB 14 Mar 1971; POB Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport D10003642 (Iran) issued 30 Jun 2018 expires 30 Jun 2023; National ID No. 0053758110 (Iran) (individual) [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'' (''E.O. 13382''), 70 FR 38567, 3 CFR, 2005 Comp., p. 170, for acting or purporting to act for or on behalf of, directly or indirectly, MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. GONG, Jiao, China; DOB 17 Feb 1995; POB Heibei, China; nationality China; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Female; National ID No. 130321199502170121 (China) (individual) [NPWMD] [IFSR] (Linked To: WEI, Zunyi).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, WEI, Zunyi, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. HAGHIGHAT, Ghasem (a.k.a. ''GAO, Shan''), China; Iran; DOB 19 Jun 1961; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport G9302650 (Iran) expires 04 Dec 2012; alt. Passport A0026483 (Iran) expires 25 Nov 2004 (individual) [NPWMD] [IFSR] (Linked To: BEIJING SHINY NIGHTS TECHNOLOGY DEVELOPMENT CO., LTD).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, BEIJING SHINY NIGHTS TECHNOLOGY DEVELOPMENT CO., LTD, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. LI, Zeming, Zhejiang, China; DOB 22 May 1985; POB Zhejiang, China; nationality China; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport EE2360309 (China) issued 24 Aug 2018 expires 23 Aug 2028 (individual) [NPWMD] [IFSR] (Linked To: ZHEJIANG QINGJI IND. CO., LTD).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, ZHEJIANG QINGJI IND. CO., LTD, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. QIN, Xutong, Ji Lin, China; DOB 29 Apr 1994; POB Ji Lin, China; nationality China; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Female; Passport E77862399 (China) issued 19 Apr 2016 expires 18 Apr 2026 (individual) [NPWMD] [IFSR] (Linked To: HONG KONG KE.DO INTERNATIONAL TRADE CO., LIMITED).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, HONG KONG KE.DO INTERNATIONAL TRADE CO., LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. SHEN, Weisheng, Zhejiang, China; DOB 01 Nov 1957; POB Haimen, China; nationality China; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport G23381737 (China) issued 13 Jun 2007 expires 12 Jun 2017; National ID No. 330103195711011317 (China) (individual) [NPWMD] [IFSR] (Linked To: ZHEJIANG QINGJI IND. CO., LTD).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, ZHEJIANG QINGJI IND. CO., LTD, a person whose property and interests in property are blocked pursuant to E.O. 13382.

7. WEI, Zunyi (a.k.a. WEI, Zun Yi; a.k.a. ''WEI, David''), Beijing, China; DOB 20 Dec 1975; POB Shandong, China; nationality China; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport EE1650028 (China) issued 28 Aug 2018 expires 27 Aug 2028; National ID No. 370922197512201811 (China) (individual) [NPWMD] [IFSR] (Linked To: HONG KONG KE.DO INTERNATIONAL TRADE CO., LIMITED).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, HONG KONG KE.DO INTERNATIONAL TRADE CO., LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Entities

1. BEIJING SHINY NIGHTS TECHNOLOGY DEVELOPMENT CO., LTD, Jing An Li 26 Hao Lou 2 Ceng 201 NEI 2091 Shi, Chao Yang Qu, Beijing, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 14 Jun 2013; Registration Number 110000450235669 (China); Unified Social Credit Code (USCC) 91110105069601824J (China) [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

   Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. BLUE CALM MARINE SERVICES COMPANY (a.k.a. BLUE CALM MARINE SERVICES), No. 174, 1st Floor (East Wing), Arian Tower, Mirdamad Blvd., Tehran 15498, Iran; Kian Mehr Bldg., 2nd Floor, Dr. Ebrahimeian Str., Jahan Bar, Eskeleh Ave., Bandar Abbas, Iran; Next to Izugam, Phase 3, 40th Ave., Sarbandar, Bandar Imam Khomeini, Iran; 2nd Floor, Ghanbari Bldg., Shohada Ave., Bandar Bushehr, Iran; BMS Bldg, No. 960, Chah Ghandi Ave., Kharg Island, Iran; Sirri Island, Iran; Lavan Island, Iran; Website https://www.bluecalmmarineservices.net; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 1980; Business Registration Number 29856 (Iran) [NPWMD] [IFSR] (Linked To: P.B. SADR CO.).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, P.B. SADR CO., a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. HONG KONG KE.DO INTERNATIONAL TRADE CO., LIMITED, Room E, 3F, Southtex Building, 51 Tsun Tip Street, Kwun Tong, Kowloon, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 13 Aug 2020; Commercial Registry Number 2967963 (Hong Kong); Business Registration Number 72130415-000 (Hong Kong) [NPWMD] [IFSR] (Linked To: P.B. SADR CO.).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, P.B. SADR CO., a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. LINGOE PROCESS ENGINEERING LIMITED, Rm 1902 Easey Commercial Building, Wan Chai, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 20 Feb 2018; Commercial Registry Number 2657710 (Hong Kong) [NPWMD] [IFSR] (Linked To: ZHEJIANG QINGJI IND. CO., LTD).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, ZHEJIANG QINGJI IND. CO., LTD, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. QINGDAO ZHONGRONGTONG TRADE DEVELOPMENT CO., LTD. (Chinese Simplified: 青岛中融通贸易发展有限公司) (a.k.a. QINGDAO ZHONGRONGTONG TRADING DEVELOPMENT CO., LTD.), No. 314, Floor 3, Office Building, No. 43, Beijing Road, Qianwan Bonded Zone, Qingdaopian District, China Pilot Free Trade Zone, Qingdao, Shandong 266000, China; 207, Office Building 52, Tokyo Road, Free Trade Zone, Qingdao, Shandong 266555, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 18 Mar 2019; Legal Entity Number 655600CBSJ4ZQ7UW6B35 (China); Unified Social Credit Code (USCC) 91370220MA3PBK173K (China) [NPWMD] [IFSR] (Linked To: P.B. SADR CO.).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, P.B. SADR CO., a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. ZHEJIANG QINGJI IND. CO., LTD (Chinese Simplified: 浙江轻机实业有限公司) (a.k.a. ZHEJIANG LIGHT MACHINERY INDUSTRY CO., LTD.; a.k.a. ZHEJIANG QINGJI INDUSTRIAL CO., LTD.), Room 1401, No. 658, Jianguo North Road, Hangzhou, Zhejiang, China; Room 1404, Haihua Plaza, No. 658, Jianguo Road (N), Xiacheng District, Hangzhou, Zhejiang 310004, China; Website http://www.chinaseparator.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 18 Jul 1963; Registration Number 330100000040072 (China); Unified Social Credit Code (USCC) 91330100143036318W (China) [NPWMD] [IFSR] (Linked To: PARCHIN CHEMICAL INDUSTRIES).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, PARCHIN CHEMICAL INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: June 6, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–12352 Filed 6–8–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Nonconventional Source Production Credit Reference Price for Calendar Year 2022

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the reference price for the nonconventional source production credit for calendar year 2022.

FOR FURTHER INFORMATION CONTACT: Alan Tilley, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, Telephone Number (202) 317–6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The credit period for the nonconventional source production credit ended on December 31, 2013 for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under section 43 of title 26 of the U.S.C., the marginal well production credit under section 45I of title 26 of the U.S.C., and the applicable percentage under section 613A of title 26 of the U.S.C. to be used in determining percentage depletion in the case of oil and natural gas produced from marginal properties.

The reference price under section 45K(d)(2)(C) of title 26 of the U.S.C. for calendar year 2022 applies for purposes of sections 43, 45I, and 613A for taxable year 2023.

Reference Price: The reference price under section 45K(d)(2)(C) for calendar year 2022 is $93.97.

Christopher T. Kelley,

Special Counsel (Passthroughs and Special Industries).

[FR Doc. 2023–12328 Filed 6–8–23; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 213, 225, and 252

Defense Federal Acquisition Regulation Supplement: DFARS Buy American Act Requirements (DFARS Case 2022–D019); Proposed Rule

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 213, 225, and 252

[Docket DARS–2023–0024]

RIN 0750–AL74

Defense Federal Acquisition Regulation Supplement: DFARS Buy American Act Requirements (DFARS Case 2022–D019)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to supplement the Federal Acquisition Regulation implementation of an Executive order addressing domestic preferences in DoD procurement.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 8, 2023, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2022–D019, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2022–D019.'' Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''DFARS Case 2022–D019'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2022–D019 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to supplement the Federal Acquisition Regulation (FAR) implementation of Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475, January 28, 2021), by addressing DoD-unique requirements. The FAR final rule, published at 87 FR 12780 on March 7, 2022 (effective October 25, 2022), implemented section 8 of E.O. 14005, which requires increasing the impact of the Buy American Act and provides for the following—

- An increase to the domestic content threshold, a schedule for future increases, and a fallback threshold that would allow for products meeting a specific lower domestic content threshold to qualify as domestic products under certain circumstances; and
- A framework for application of an enhanced price preference for a domestic product that is considered a critical item or made up of critical components.

The proposed revisions to the DFARS will supplement the FAR by making conforming changes that incorporate the DoD-unique requirements.

II. Discussion and Analysis

This proposed rule includes revisions to DFARS part 225 and the associated clauses to make conforming changes associated with implementation of E.O. 14005 that incorporate the DoD-unique requirements (*e.g.,* inclusion of qualifying countries). Revisions are proposed to the definitions of ''domestic end product,'' ''qualifying country end product,'' and ''domestic construction material'' to address the scheduled increases to the domestic content threshold from 55 percent to 60 percent in calendar year 2023, then to 65 percent in calendar year 2024, and to 75 percent in calendar year 2029. See DFARS 225.101(a)(ii)(A) and the conforming changes at DFARS 213.302–5(d)(i) and (ii) to allow use of the appropriate alternate.

A DoD contractor that is awarded a contract with a period of performance that spans the schedule of domestic content threshold increases will be required to comply with each increased threshold for the items in the year of delivery. However, in instances where this requirement to comply with changing domestic content thresholds would not be feasible for a particular contract, FAR 25.101(d) provides for a senior procurement executive to allow the application of an alternate domestic content test in defining ''domestic end product'' after consultation with Office of Management and Budget's Made in America Office (MIAO). The alternate domestic content test will allow the contractor to comply with the domestic content threshold that applies at the time of contract award, for the entire period of performance for that contract. The contracting officer will be required to select one of the newly created alternate clauses for 252.225–7001, Buy American—Balance of Payments Program, prescribed at 225.1101(2)(iv) and (v); and one of the newly created alternate clauses at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, prescribed at 225.1101(10)(i).

This proposed rule also allows for the use of the 55 percent domestic content threshold (*i.e.,* the fallback threshold included in the FAR final rule), until one year after the increase of the domestic content threshold to 75 percent, in instances where an agency has determined that there are no end products or construction materials that meet the new domestic content threshold, or such products are of unreasonable cost. A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content, including qualifying country content (see 225.103(b)(ii) and 225.202(a)(2)). This proposed rule supplements the FAR with a consistent 55 percent threshold available until 2030 for use where domestic products at a higher threshold are not available or the cost to acquire them would be unreasonable. Revisions are proposed to the definition of ''domestic end product'' to authorize the use of the fallback threshold if the award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see 225.103(b)(ii)).

The fallback threshold requires offerors to indicate which of their foreign end products exceed 55 percent domestic content (see proposed revisions to solicitation provisions at DFARS 252.225–7000, Buy American—Balance of Payments Program Certificate, and 252.225–7035, Buy-American—Free Trade Agreements—Balance of Payments Program Certificate). The fallback threshold only applies to construction material that does not consist wholly or predominantly of iron or steel or a combination of both and that are not commercially available off-the-shelf (COTS) items, as well as to end products that do not consist wholly or predominantly of iron or steel or a combination of both and that are not COTS items. For example, if a domestic end product that exceeds the 60 percent domestic content threshold is determined to be of unreasonable cost after application of the price preference, then for evaluation purposes DoD will treat an end product that is manufactured in the United States or a qualifying country and exceeds 55

percent domestic content, instead of 60 percent domestic content, as a domestic end product.

Proposed revisions to DFARS 225.101 implement the alternate domestic content test provided in the FAR final rule. A contract with a period of performance that spans the schedule of domestic content threshold increases will be required to comply with each increased threshold for the items in the year of delivery, unless the senior procurement executive of the contracting agency allows for application of an alternate domestic content test for that contract, under which the domestic content threshold in effect at time of contract award will apply to the entire period of performance for the contract. Therefore, newly created alternates to DFARS clauses are prescribed to reflect the domestic content threshold that will apply to the entire period of performance for that contract.

DFARS 225.1101(2)(iv) and (v) prescribe use of new Alternates II and III of the clause at 252.225–7001, Buy American and Balance of Payments Program. The clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, and its new alternates are prescribed at 225.1101(10)(i). The contracting officer is required to select the correct alternate clause.

DFARS 225.1101(1)(i) and (ii) prescribe use of the basic solicitation provision or alternate at 252.225–7000, Buy American—Balance of Payments Program Certificate, when using an alternate domestic content threshold. DFARS 225.1101(9)(ii) prescribes use of the basic solicitation provision or alternates at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, when using an alternate domestic content threshold.

The FAR final rule provided the framework through which higher price preferences will be applied to end products and construction material deemed to be critical or made up of critical components. A subsequent rulemaking under FAR Case 2022–004, Enhanced Price Preference for Critical Components and Critical Items, will establish and implement the definitive list at FAR 25.105 of critical items and critical components, along with the associated enhanced price preference(s). To align with changes to FAR subpart 25.1, the DFARS renumbers section 225.105 to 225.106. Therefore, cross references are updated at 225.106(b).

Revisions are proposed to implement the enhanced price preference framework in the relevant DFARS provisions and clauses, including the alternates, to add the requirement to list each domestic end product with critical components or critical items and for foreign end products that exceed the required 55 percent (except COTS items), for foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both; and adds a table for the listing of critical components and critical items as applicable (see section III of this preamble).

For the application and use of the DFARS evaluation procedures for the evaluation of foreign offers for supply contracts, the proposed rule includes revisions to DFARS 225.502(c)(ii)(C) to elucidate that a qualifying country offer is subject to the domestic content requirement for end products that are wholly or predominantly of iron or steel or a combination of both if the low offer is a foreign offer exempt from the application of the Buy American statute or Balance of Payments Program evaluation factor.

The proposed rule includes conforming revisions for the definitions of ''critical component'', which means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain, and ''critical item'', which means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The lists of critical components and critical items are at FAR 25.105.

Several clarifying revisions were implemented in the FAR at 52.212–3(f)(1)(ii), Offeror Representations and Certifications—Commercial Products and Commercial Services; 52.225–2(a)(2), Buy American Certificate; and 52.225–4(c), Buy American-Free Trade Agreements—Israeli Trade Act Certificate (see 86 FR 6180 dated January 19, 2021). For consistency with the FAR, conforming revisions were made to remove the following excerpt from the DFARS: ''*i.e.,* an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of ''domestic end product'':''. Accordingly, these revisions were made to the provision at 252.225–7000, Buy American—Balance of Payments Program Certificate, Basic and Alternate I, paragraph (c)(3); the provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, Basic and Alternates I, II, III, IV, and V, paragraph (c)(2)(iii).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule includes amendments to the following solicitation provisions and contract clauses: DFARS 252.225–7000, Buy American and Balance of Payments Program Certificate (Basic and Alternate I); DFARS 252.225–7001, Buy American and Balance of Payments Program (Basic and Alternate I); DFARS 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate (Basic and Alternates I, II, III, IV, and V); DFARS 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program (Basic and Alternates I, II, III, IV, and V); DFARS 252.225–7044, Balance of Payments Program—Construction Material, (Basic and Alternate I); and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements (Basic and Alternates I, II, and III).

In addition, this proposed rule includes new alternates for the clauses at DFARS 252.225–7001, Buy American and Balance of Payments Program, and 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program. This proposed rule does not add any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off the-shelf items, or for commercial services.

IV. Expected Impact of the Rule

This proposed rule includes changes to the DFARS that supplement the FAR's implementation of E.O. 14005 via the final rule for FAR Case 2021–008 (published March 7, 2022 in the **Federal Register** at 87 FR 12780, with an effective date of October 25, 2022). The FAR final rule provided for—

1. An increase to the domestic content threshold that a product must meet to be defined as ''domestic''; a schedule for future increases; and a fallback threshold that would allow products meeting a specific lower domestic content threshold to qualify as a domestic product under certain circumstances; and

2. A framework for the application of an enhanced price preference for a domestic product that is considered a critical product or is made up of critical components.

This proposed rule implements these changes in DFARS part 225 and in the

solicitation provisions and contract clauses that contain DoD-unique requirements such as the inclusion of qualifying countries. A qualifying country is a country that has a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; the memorandum of understanding or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. The DFARS definition of ''domestic end product'', for the purpose of compliance with the domestic content threshold, includes components that are mined, produced, or manufactured in the United States and in qualifying countries. The list of qualifying countries appears in the definition of ''qualifying country'' at DFARS 225.003 and in certain contract clauses.

It is anticipated that those domestic industries making adjustments for the increased domestic content within their supply chains to continue supplying domestic end products are more likely to benefit from a competitive advantage when the rule is implemented. Because the FAR final rule has been in effect since October 2022, potential offerors may already be making those adjustments.

The Buy American statute and the Balance of Payments Program (*e.g.,* certifications required of offerors to demonstrate end products are domestic) remain unchanged and continue to reflect processes that have been in place for decades. Under this proposed rule, as under the FAR final rule, when deciding whether to pursue a procurement and use of products (*i.e.,* domestic or foreign), offerors will have to plan for the future changes to the domestic content threshold during the period of performance of an anticipated contract, unless use of an alternate domestic content threshold, in effect at time of contract award, has been authorized.

As under the FAR final rule, those offerors that do not to modify their supply chains to comply with the scheduled increases to the domestic content threshold will still be able to propose an offer for DoD contracts. However, they may no longer have use of a price preference.

Increased domestic sourcing of content facilitates the reduction of DoD's supply chain risk. Because the FAR final rule has been in effect since October 2022, any increased burden with regard to the timed increases to the domestic content threshold, on contractors in particular, could be minor if not de minimis.

The framework for the enhanced price preference is intended to provide a stable source of demand for domestically produced critical products. This proposed rule merely supplements the FAR with the DoD-unique requirements. A separate rulemaking will be undertaken to add to the FAR critical products and components to establish the associated preferences. Therefore, the associated cost impacts and benefits will be captured in the subsequent FAR rulemaking (FAR case 2022–004, Enhanced Price Preference for Critical Components and Critical Items).

There is an information collection burden associated with offerors identifying when a domestic end product or domestic construction material contains a critical component or critical item (see section VIII of this preamble), but it is anticipated that the information collection will be fully implemented for all agencies that use the FAR in the future rulemaking for the FAR case 2022–004. Any of the associated burden should be offset by the benefits of the larger price preference received for these items. The overall cost impact of this rule is not significant, and any associated impact is anticipated to be primarily positive.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule contains few additional compliance and reporting requirements for certain offerors, including small businesses. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed rule includes amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to supplement the Federal Acquisition Regulation (FAR) implementation of Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475, January 28, 2021), by addressing DoD-unique requirements. The FAR final rule, published at 87 FR 12780 on March 7, 2022 (effective October 25, 2022), implemented section 8 of E.O. 14005, which requires the impact of the Buy American statute to be strengthened by providing—

- An increase to the domestic content threshold required to be met for an end product and construction material to be defined as ''domestic'' and a schedule for future increases;
- A fallback threshold that would allow for end products meeting a specific lower domestic content threshold to qualify as a domestic end product under certain circumstances; and
- A framework for application of an enhanced price preference for a domestic end product that is considered a critical item or is made up of critical components.

The objective of the rule is to make conforming changes associated with the FAR implementation of E.O. 14005 that incorporate the DoD-unique requirements (*e.g.,* inclusion of qualifying countries). E.O. 14005 addresses a series of actions to enable the U.S. Government to maximize the use of goods, products, and materials produced in the United States in order to strengthen and diversify domestic supplier bases and create new opportunities for U.S. firms and workers. The legal basis for this proposed rule is 41 U.S.C. 1303.

Data was obtained from the Federal Procurement Data System (FPDS) for fiscal years 2019, 2020, and 2021 on awards valued over the micro-purchase threshold for construction and for supplies. Based on the data, DoD made an average of 161,686 awards for supplies per year to approximately 14,913 small entities and an average of 177 awards for construction per year to approximately 167 small entities. This proposed rule could apply to those small entities.

The proposed rule will strengthen domestic preferences under the Buy American statute and the Balance of Payments Program and provide small businesses the opportunity and

incentive to deliver U.S.-manufactured products from domestic suppliers. It is expected that this proposed rule generally would benefit U.S. small business manufacturers. Small business manufacturers who do not already meet the increased domestic content requirements of this proposed rule may need to adjust their supply chains. DoD does not have data on how many small business manufacturers may make such adjustments.

This proposed rule includes new reporting, recordkeeping, or other compliance requirements for small businesses. Prior to this rule, small businesses already had to monitor compliance with contract requirements pertaining to the increased domestic content threshold implemented in the FAR for contracted items. This proposed rule makes conforming changes to align the DFARS with the FAR while incorporating the DoD-unique requirements. Due to small businesses' familiarity with the FAR final rule, the increases in the domestic content threshold implemented in this rule are unlikely to result in additional disruption to existing contractor supply chains.

The rule contains a few additional reporting requirements for certain offerors, including small businesses. Small businesses who submit an offer for a solicitation subject to the Buy American statute or the Balance of Payments Program already have to list the foreign end products included in their offer. This proposed rule would require that the offeror also identify which of these foreign end products are not COTS items, do not consist wholly or predominantly of iron or steel or a combination of both, and meet or exceed the fallback domestic content threshold.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the rule that would meet the requirements of the Executive order.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2022–D019), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget Control Number 0704–0229, entitled Defense Federal Acquisition Regulation Supplement (DFARS) Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and Related Clauses at 252.225; DD Form 2139.

List of Subjects in 48 CFR Parts 213, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 213, 225, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 213, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 213—SIMPLIFIED ACQUSITION PROCEDURES

213.302–5 [Amended]

■ 2. Amend section 213.302–5—

■ a. In paragraph (d) introductory text by removing ''Act'' and adding ''statute'' in its place; and

■ b. In paragraphs (d)(i) and (ii) by removing ''Program,'' and adding ''Program, or the appropriate alternate,'' in its place.

PART 225—FOREIGN ACQUISITION

■ 3. Amend section 225.003—

■ a. In the definition of ''Domestic end product'' by revising paragraph (1)(ii)(A) introductory text; and

■ b. In the definition of ''Qualifying country end product'' by revising paragraph (2)(i) introductory text and paragraph (ii).

225.003 Definitions.

* * * * *

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see 225.103(b)(ii)). The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

* * * * *

Qualifying country end product means—

* * * * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * * * *

(ii) The end product is a COTS item.

* * * * *

■ 4. Amend section 225.101 by—

■ a. Revising paragraph (a)(ii)(A); and

■ b. Adding paragraph (d).

225.101 General.

(a) * * *

(ii)(A) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of its U.S. and qualifying country components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, but see paragraph (d) of this section. This test is applied to end products only and not to individual components.

* * * * *

(d)(1) In lieu of the threshold increases in FAR 25.101(a)(2)(i), use the domestic content threshold increases in paragraph (a)(ii) of this section. The senior procurement executive may approve application of an alternate domestic content test, under which the domestic content threshold in effect at the time of contract award will apply to the entire period of performance of the

contract, following consultation with the Office of Management and Budget's Made in America Office. See PGI 225.101 for guidance on documentation requirements when the senior procurement executive approves application of an alternate domestic content test.

(2) When the senior procurement executive allows for application of an alternate domestic content test for the contract pursuant to FAR 25.101(d)(1) (but see paragraph (d)(1) of this section)—

(A) See 225.1101(2)(iv) for use of alternate II of the clause at 252.225–7001, Buy American and Balance of Payments Program;

(B) See 225.1101(2)(v) for use of alternate III of the clause at 252.225–7001, Buy American and Balance of Payments Program;

(C) See 225.1101(9) for use of the basic or alternate provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, or the basic or alternate clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program; and

(D) See 225.1101(10)(i) for use of the basic or alternate clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program.

■ 5. Amend section 225.103—

■ a. By revising paragraph (b)(ii) introductory text; and

■ b. In paragraph (c) by removing ''Subpart'' and adding ''subpart'' in its place.

225.103 Exceptions.

* * * * *

(b) * * *

(ii) A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content. Except as provided in FAR 25.103(b)(3), the determination shall be approved—

* * * * *

■ 6. Redesignate section 225.105 as section 225.106 and revise newly redesignated section 225.106 to read as follows:

225.106 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.106(b)(1)(i) and (c)(1)(i).

225.170 [Amended]

■ 7. Amend section 225.170 by removing ''Subpart'' and adding ''subpart'' in its place.

■ 8. Revise section 225.202 to read as follows:

225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a). For other materials, a nonavailability determination shall be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level. A nonavailability determination is not required before January 1, 2030, if there is an offer for foreign construction material that exceeds 55 percent domestic content (also see FAR 25.204(b)(1)(ii) and (b)(2)(ii)).

■ 9. Amend section 225.502—

■ a. In paragraph (c)(i)(A) by removing ''subject only to the Buy American or Balance of Payments Program'' and adding ''subject only to the Buy American statute or the Balance of Payments Program'' in its place;

■ b. In paragraph (c)(i)(B) by removing ''factor'' and adding ''factor, but see 225.106'' in its place; and

■ c. By revising paragraph (c)(ii)(C).

The revision reads as follows:

225.502 Application.

* * * * *

(c) * * *

(ii) * * *

(C) If the low offer is a foreign offer that is exempt from application of the Buy American or Balance of Payments Program evaluation factor, award on that offer. If the low offer is a qualifying country offer from a country listed at 225.872–1(b), execute a determination in accordance with 225.872–4. A qualifying country offer is subject to the domestic content requirement for end products that are wholly or predominantly of iron or steel or a combination of both.

* * * * *

■ 10. Amend section 225.1101—

■ a. In paragraph (1)(i) by removing ''basic clause'' and adding ''basic clause or alternate II of the clause'' in its place;

■ b. In paragraph (1)(ii) by removing ''alternate I'' and adding ''alternate I or alternate III of the clause'' in its place;

■ c. In paragraph (2)(i) by—

■ i. Removing ''basic or the alternate'' and adding ''basic or an alternate'' in its place; and

■ ii. Removing ''Act'';

■ d. In paragraph (2) by adding paragraphs (iv) and (v);

■ e. In paragraph (9)(i) by removing ''basic of the clause'' and adding ''basic or alternate VI of the clause'' in its place;

■ f. In paragraph (9)(ii) by removing ''alternate I of the clause'' and adding ''alternate I or alternate VII of the clause'' in its place;

■ g. In paragraph (9)(iii) by removing ''alternate II of the clause'' and adding ''alternate II or alternate VIII of the clause'' in its place;

■ h. In paragraph (9)(iv) by removing ''alternate III of the clause'' and adding ''alternate III or alternate IX of the clause'' in its place;

■ i. In paragraph (9)(v) by removing ''alternate IV of the clause'' and adding ''alternate IV or alternate X of the clause'' in its place;

■ j. In paragraph (9)(vi) by removing ''alternate V of the clause'' and adding ''alternate V or alternate XI of the clause'' in its place;

■ k. In paragraph (10(i)(D) by removing ''equals or exceeds $25,000, but'';

■ l. In paragraph (10)(i) by adding paragraphs (G) through (L); and

■ m. In paragraph (10)(ii)(B) by removing ''sSection'' and adding ''section'' in its place.

The additions read as follows:

225.1101 Acquisition of supplies.

* * * * *

(2) * * *

(iv) Use alternate II of the clause in lieu of the basic clause in solicitations and contracts if—

(A) The acquisition is not of end products listed in 225.401–70 in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(v) Use alternate III of the clause in lieu of Alternate I of the clause in solicitations and contracts if—

(A) The acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

* * * * *

(10) * * *

(i) * * *

(G) Use the alternate VI clause in lieu of the basic clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(1) The estimated value equals or exceeds $100,000 but is less than $183,000; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(H) Use the alternate VII clause in lieu of the alternate I clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(1) The estimated value is less than $92,319; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(I) Use the alternate VIII clause in lieu of the alternate II clause in solicitations and contracts when—

(1) The estimated value is less than $183,000;

(2) The acquisition is of end products in support of operations in Afghanistan; and

(3) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(J) Use the alternate IX clause in lieu of the alternate III clause in solicitations and contracts when—

(1) The estimated value is less than $92,319;

(2) The acquisition is of end products in support of operations in Afghanistan; and

(3) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive in accordance with FAR 25.101(d).

(K) Use the alternate X clause in lieu of the alternate IV clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(1) The estimated value equals or exceeds $92,319 but is less than $100,000; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(L) Use the alternate XI clause in lieu of the alternate V clause in solicitations and contracts when—

(1) The estimated value equals or exceeds $92,319 but is less than $100,000;

(2) The acquisition is of end products in support of operations in Afghanistan; and

(3) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

* * * * *

■ 11. Amend section 225.7503 by—

■ a. Adding paragraphs (a)(3) and (4); and

■ b. Adding paragraphs (b)(5) through (8).

The additions read as follows:

225.7503 Contract clauses.

(a) * * *

(3) Use the alternate II clause in lieu of the basic clause if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)), unless the acquisition is in support of operations in Afghanistan.

(4) Use the alternate III clause in lieu of the alternate I clause if—

(A) The acquisition is in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(b) * * *

(5) Use the alternate IV clause in lieu of the basic clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(A) The estimated value is $12,001,460 or more; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(6) Use the alternate V clause in lieu of the alternate I clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(A) The estimated value is $7,032,000 or more; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(7) Use the alternate VI clause in lieu of the alternate II clause in solicitations and contracts when—

(A) The estimated value is $12,001,460 or more;

(B) The acquisition is in support of operations in Afghanistan; and

(C) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(8) Use the alternate VII clause in lieu of the alternate III clause in solicitations and contracts when—

(A) The estimated value is $7,032,000 or more but less than $12,001,460;

(B) The acquisition is in support of operations in Afghanistan; and

(C) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Amend section 252.225–7000—

■ a. By revising the provision date and paragraphs (a) and (c); and

■ b. In *Alternate I,* by revising the provision date and paragraphs (a) and (c).

The revisions read as follows:

252.225–7000 Buy American—Balance of Payments Program Certificate.

* * * * *

Buy American—Balance of Payments Program Certificate—Basic (Date)

(a) *Definitions. Commercially available off-the-shelf (COTS) item, component, critical component, critical item, domestic end product, foreign end product, qualifying country, qualifying country end product,* and *United States,* as used in this provision, have the meanings given in the 252.225–7001, Buy American and Balance of Payments Program—Basic clause of this solicitation.

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American and Balance of Payments Program—Basic clause of this solicitation, the Offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product and that each domestic end product listed in paragraph (c)(4) of this provision contains a critical component or a critical item; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country. For those end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

(2) The Offeror certifies that the following end products are qualifying country end products:

Line item No.	Country of origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(4) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component or a critical item (see Federal Acquisition Regulation 25.105).

Domestic end products containing a critical component or a critical item:

Line Item Number _____
[List as necessary]

* * * * *

Alternate I. * * *

Buy American—Balance of Payments Program Certificate—Alternate I (Date)

(a) *Definitions. Commercially available off-the-shelf (COTS) item, component, critical component, critical item, domestic end product, foreign end product, qualifying country, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States,* as used in this provision, have the meanings given in the 252.225–7001, Buy American and Balance of Payments Program—Alternate I clause of this solicitation.

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American and Balance of Payments Program—Alternate I clause of this solicitation, the Offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product and that each domestic end product listed in paragraph (c)(4) of this provision contains a critical component or a critical item; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country. For those end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

(2) The Offeror certifies that the following end products are qualifying country end products or SC/CASA state end products:

Line Item Number	Country of Origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

Line Item Number	Country of Origin (if known)

* * * * *

■ 13. Amend section 252.225–7001—

■ a. By revising the clause date;

■ b. In paragraph (a)—

■ i. In the definition of ''Commercially available off-the-shelf (COTS) item'' paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ iii. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text;

■ iv. In the definition of ''Qualifying country end product'' by revising paragraph (2)(i) introductory text;

■ c. By revising paragraph (b);

■ d. In Alternate I—

■ i. By revising the clause date;

■ ii. In paragraph (a)—

■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ C. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text;

■ D. In the definition of ''Qualifying country end product'' by revising paragraph (2)(i) introductory text;

■ e. By adding Alternate II and Alternate III.

The revisions and additions read as follows:

252.225–7001 Buy American and Balance of Payments Program.

* * * * *

Buy American and Balance of Payments Program—Basic (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d), or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see Defense Federal Acquisition Regulation Supplement 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * * * *

(b) This clause implements 41 U.S.C. chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see FAR 12.505(a)(1)). Unless otherwise specified, this clause applies to all line items in the contract.

* * * * *

Alternate I. * * *

Buy American and Balance of Payments Program—Alternate I (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered

starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d), or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see Defense Federal Acquisition Regulation Supplement 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * * * *

Alternate II. As prescribed in 225.1101(2)(i) and (2)(iv), use the following clause, which includes, in the definitions of ''domestic end product'' at paragraph (1)(ii)(A) and ''qualifying country end product'' at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance.

Buy American and Balance of Payments Program—Alternate II (Date)

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

''Foreign end product'' means an end product other than a domestic end product.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements 41 U.S.C. chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see FAR 12.505(a)(1)). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate III. As prescribed in 225.1101(2)(i) and (2)(v), use the following clause, which includes, in the definitions of ''domestic end product'' at paragraph (1)(ii)(A) and ''qualifying country end product'' at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a); and uses different paragraphs (b) and (c) than the basic clause:

Buy American and Balance of Payments Program—Alternate III (Date)

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced,

or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

■ 14. Amend section 252.225–7035—

■ a. By revising the provision date;

■ b. In paragraph (a) by removing ''''component,'''' and ''Buy American'' and adding ''''component,'' ''critical component,'' ''critical item,'''' and ''252.225–7036, Buy American'' in their places, respectively;

■ c. By revising paragraph (c);

■ d. By adding ''(End of provision)'' at the end of the provision;

■ e. In Alternate I—

■ i. By revising the introductory text;

■ ii. By revising the provision date;

■ iii. In paragraph (a) by removing ''''component,'''' and ''Buy American'' and adding ''''component,'' ''critical component,'' ''critical item,'''' and ''252.225–7036, Buy American'' in their places, respectively;

■ iv. Revising paragraph (c);

■ f. In Alternate II—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ''''component,'''' and ''Buy American'' and adding ''''component,'' ''critical component,'' ''critical item,'''' and ''252.225–7036, Buy American'' in their places, respectively;

■ iii. By revising paragraph (c);

■ g. In Alternate III—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ''''component,'''' and ''Buy American'' and adding ''''component,'' ''critical component,'' ''critical item,'''' and ''252.225–7036, Buy American'' in their places, respectively;

■ iii. By revising paragraph (c);

■ h. In Alternate IV—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ''''component,'''' and ''Buy American'' and adding ''''component,'' ''critical component,'' ''critical item,'''' and ''252.225–7036, Buy American'' in their places, respectively;

■ iii. Revising paragraph (c); and

■ i. In Alternate V—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ''''component,'''' and ''Buy American'' and adding ''''component,'' ''critical component,'' ''critical item,'''' and ''252.225–7036, Buy American'' in their places, respectively; and

■ iii. By revising paragraph (c).

The revisions read as follows:

252.225–7035 Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic (Date)

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Basic clause of this solicitation, the Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Australian) end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line Item No. _____

[List as necessary]

(End of provision)

Alternate I. As prescribed in 225.1101(9) and (9)(ii), use the following provision, which does not use the phrases ''Bahrainian end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Moroccan end product,'' ''Panamanian end product,'' and ''Peruvian end products'' in paragraph (a); does not use ''Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products'' in paragraphs (b)(2) and (c)(2)(ii); does not use ''Australian or'' in paragraph (c)(2)(i); and includes ''that are mined, produced, or manufactured in the United States'' in paragraph (c)(2)(ii):

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I (Date)

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I clause of this solicitation, the Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country end products:

(Line item No.) (Country of origin)

(ii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items that are mined, produced, or manufactured in the United States. If the percentage of the domestic content is unknown, select ''no''.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____

[List as necessary]

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II (Date)

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this solicitation, the Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Australian) or SC/CASA state end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____

[List as necessary]

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III (Date)

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III clause of this solicitation, the Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country or SC/CASA state end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____

[List as necessary]

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV (Date)

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV clause of this solicitation, the Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Australian) end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____

[List as necessary]

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V (Date)

* * * * *

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation, the Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Australian) or SC/CASA state end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select ''no''.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____

[List as necessary]

* * * * *

■ 15. Amend section 252.225–7036—

■ a. By revising the clause date;

■ b. In paragraph (a)—

■ i. In the definition of ''Commercially available off-the-shelf (COTS) item'' paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ iii. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text;

■ iv. In the definition of ''Qualifying country end product'' by revising paragraph (2)(i) introductory text;

■ c. In Alternate I—

■ i. By revising the clause date;

■ ii. In paragraph (a)—

■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';
■ C. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text;
■ D. In the definition of ''Qualifying country end product'' by revising paragraph (2)(i) introductory text;
■ iii. In paragraph (c) by removing ''qualifying country, or other'' and adding ''qualifying country or other'' in its place;
■ d. In Alternate II—
■ i. By revising the clause date;
■ ii. In paragraph (a)—
■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';
■ C. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text and redesignating paragraph (1)(C) as paragraph (1)(B);
■ D. In the definition of ''Qualifying country end product'' revising paragraph (2)(i) introductory text;
■ e. In Alternate III—
■ i. By revising the clause date;
■ ii. In paragraph (a)—
■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';
■ C. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text;
■ D. In the definition ''Qualifying country end product'' by revising paragraph (2)(i) introductory text;
■ f. In Alternate IV—
■ i. By revising the clause date;
■ ii. In paragraph (a)—
■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';
■ C. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text;
■ D. In the definition of ''Qualifying country end product'' by revising paragraph (2)(i) introductory text;
■ g. In Alternate V—
■ i. By revising the clause date;
■ ii. In paragraph (a)—
■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';
■ C. In the definition of ''Domestic end product'' by revising the first sentence of paragraph (1)(ii)(A) introductory text;
■ D. In the definition of ''Qualifying country end product'' by revising paragraph (2)(i) introductory text; and
■ h. By adding Alternates VI through XI.

The revisions and additions read as follows:

252.225–7036 Buy American—Free Trade Agreements—Balance of Payments Program.

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Basic (Date)

(a) * * *

* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * *

* * * * *

Alternate I. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I (Date)

(a) * * *

* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * *

* * * * *

Alternate II. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (Date)

(a) * * *

* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * *

* * * * *

Alternate III. * * *

Buy American—Free Trade Agreements—Balance Of Payments Program—Alternate III (Date)

(a) * * *

* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * *

* * * * *

Alternate IV. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV (Date)

(a) * * *

* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * *

* * * * *

Alternate V. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V (Date)

(a) * * *

* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) * * *

(ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * *

* * * * *

Alternate VI. As prescribed in 225.1101(10)(i) and (10)(i)(G), use the following clause, which includes, in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate VI (Date)

(a) *Definitions.* As used in this clause—

Bahrainian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Moroccan end product means an article that—

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Panamanian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland

Turkey
United Kingdom of Great Britain and Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate VII. As prescribed in 225.1101(10)(i) and (10)(i)(H), use the following clause, which includes, in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate VII (Date)

(a) *Definitions.* As used in this clause—

Bahrainian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

''Foreign end product'' means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that

of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Moroccan end product means an article that—

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Panamanian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate VIII. As prescribed in 225.1101(10)(i) and (10)(i)(I), use the following clause, which includes, in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds *South Caucasus/Central and South Asian (SC/CASA) state* and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate VIII (Date)

(a) *Definitions.* As used in this clause—

Bahrainian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Moroccan end product means an article that—

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Panamanian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland

Turkey
United Kingdom of Great Britain and Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate IX. As prescribed in 225.1101(10)(i) and (10)(i)(J), use the following clause, which includes in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i) the domestic content threshold that will apply to the entire contract period of performance; adds *South Caucasus/Central and South Asian (SC/CASA) state* and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IX (Date)

(a) *Definitions.* As used in this clause—

Bahrainian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron and steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good

faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Moroccan end product means an article that—

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Panamanian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or SC/CASA state end products, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for

which the Contractor will claim duty-free entry.

(End of clause)

Alternate X. As prescribed in 225.1101(10)(i) and (10)(i)(K), use the following clause, which includes, in the definitions of ''domestic end product'' at paragraph (1)(ii)(A) and ''qualifying country end product'' at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds ''Korean end product'' to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate X (Date)

(a) *Definitions.* As used in this clause—

Bahrainian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Korean end product means an article that—

(1) Is wholly the growth, product, or manufacture of Korea; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Moroccan end product means an article that—

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Panamanian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided

that the value of those incidental services does not exceed the value of the product itself.

Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate XI. As prescribed in 225.1101(10)(i) and (10)(i)(L), use the following clause, which includes, in the definitions of ''domestic end product'' at paragraph (1)(ii)(A) and ''qualifying country end product'' at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds ''Korean end product,'' ''South Caucasus/Central and South Asian (SC/CASA) state,'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate XI (Date)

(a) *Definitions.* As used in this clause—

Bahrainian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of

all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Korean end product means an article that—

(1) Is wholly the growth, product, or manufacture of Korea; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Moroccan end product means an article that—

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Panamanian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

''Predominantly of iron or steel or a combination of both'' means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of

performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

■ 16. Amend section 252.225–7044—

■ a. By revising the clause title and date;

■ b. In paragraph (a)—

■ i. In the definition of ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ iii. In the definition of ''Domestic construction material'' by revising the first sentence of paragraph (1)(ii)(A);

■ c. In Alternate I—

■ i. By revising the clause title and date;

■ ii. In paragraph (a)—

■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ C. In the definition of ''Domestic construction material'' by revising the first sentence of paragraph (1)(ii)(A); and

■ d. By adding Alternates II and III.

The revisions and additions read as follows:

252.225–7044 Balance of Payments Program—Construction Material.

* * * * *

Balance of Payments Program—Construction Material—Basic (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate I. * * *

Balance of Payments Program—Construction Material—Alternate I (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate II. As prescribed in 225.7503(a) and (a)(3), use the following clause, which includes, in the definition of ''domestic construction material'' at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:

Balance of Payments Program—Construction Material—Alternate II (Date)

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the

construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this clause.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''].

(End of clause)

Alternate III. As prescribed in 225.7503(a) and (a)(4), use the following clause, which includes, in the definition of ''domestic construction material'' at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire period of performance; adds definitions for ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''SC/CASA state construction material'' to paragraph (a); and uses ''domestic construction material or SC/CASA state construction material'' instead of ''domestic construction material'' in the second sentence of paragraph (b):

Balance of Payments Program—Construction Material—Alternate III (Date)

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this clause.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material or SC/CASA state construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''].

(End of clause)

■ 17. Amend section 252.225–7045—

■ a. By revising the clause date;

■ b. In paragraph (a)—

■ i. In the definition of ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ iii. In the definition of ''Domestic construction material'' by revising the first sentence of paragraph (1)(ii)(A);

■ c. In Alternate I—

■ i. By revising the clause date;

■ ii. In paragraph (a)—

■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ C. In the definition of ''Domestic construction material'' by revising the first sentence of paragraph (1)(ii)(A);

■ d. In Alternate II—

■ i. By revising the clause date;

■ ii. In paragraph (a)—

■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ C. In the definition of ''Domestic construction material'' by revising the first sentence of paragraph (1)(ii)(A);

■ e. In Alternate III—

■ i. By revising the clause date;

■ ii In paragraph (a)—

■ A. In the definition of ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) by removing ''Federal Acquisition Regulation'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ B. By adding, in alphabetical order, the definitions of ''Critical component'' and ''Critical item'';

■ C. In the definition of ''Domestic construction material'' by revising the first sentence of paragraph (1)(ii)(A); and

■ f. By adding Alternates IV through VII.

The revisions and additions read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Basic (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate I. * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate I (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate II. * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate II (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in

the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate III. * * *

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate IV. As prescribed in 225.7503(b) and (b)(5), use the following clause, which includes, in the definition of ''domestic construction material'' at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate IV (Date)

(a) *Definitions.* As used in this clause—

Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material'' means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States

means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this clause.

Free Trade Agreement country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''].

(End of clause)

Alternate V. As prescribed in 225.7503(b) and (b)(6), use the following clause, which includes, in the definition of ''domestic construction material'' at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds ''Bahrainian or Mexican construction material'' to paragraph (a); and uses a different paragraph (b) and (c) than the basic clause:

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate V (Date)

(a) *Definitions.* As used in this clause—

Bahrainian or Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic

Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this clause.

Free Trade Agreement country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except United States-Mexico-Canada Agreement and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2; or

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''].

(End of clause)

Alternate VI. As prescribed in 225.7503(b) and (b)(7), use the following clause, which includes, in the definition of ''domestic construction material'' at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''SC/CASA state construction material'' to paragraph (a); uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause; and adds paragraph (d):

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate VI (Date)

(a) *Definitions.* As used in this clause—

Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of

those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this clause.

Free Trade Agreement country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''].

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

Alternate VII. As prescribed in 225.7503(b) and (b)(8), use the following clause, which includes, in the definition of ''domestic construction material'' at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds ''South Caucasus/Central and South Asian (SC/CASA state)'' and ''SC/CASA state construction material'' to paragraph (a); uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause; and adds paragraph (d):

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate VII (Date)

(a) *Definitions.* As used in this clause—

Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this clause.

Free Trade Agreement country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement

country into a new and different construction material distinct from the material from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except United States-Mexico-Canada Agreement and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''].

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

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LIST OF PUBLIC LAWS

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