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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AH91

Disaster Assistance Loan Program Changes to Maximum Loan Amounts and Miscellaneous Updates

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending various regulations governing SBA's Disaster Loan Program in order to expand options for disaster loan recipients as well as reflect the impact of inflationary increases over time that result in higher costs. These changes, including the increase to the home loan lending limits, the extension of the deferment period and the expansion of mitigation options, are intended to increase disaster survivors' access to obtain needed disaster loan funds for the repair or replacement of a damaged property. The changes are overdue and necessary due to increased costs related to construction and labor, as well as increases in property valuations that have occurred over time.

DATES:

Effective date: This rule is effective July 31, 2023, unless SBA receives a significant adverse comment to this direct final rule by July 17, 2023 that explains why it is inappropriate, for example by persuasively challenging the rule's underlying premise or approach or explaining why the rule will be ineffective or unacceptable without a change. If a timely, significant adverse comment is received, the Agency will publish a notification of withdrawal of the direct final rule in the **Federal Register** before the effective date. Such a notification might withdraw the direct final rule in whole or in part.

Applicability date: This rule is applicable for disasters declared on or after July 31, 2023.

Comment Date: Comments must be received on or before July 17, 2023.

ADDRESSES: You may submit comments, identified by number 2023–0002, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information via email to Robert Blocker at *robert.blocker@sba.gov* and highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Robert Blocker at *robert.blocker@sba.gov* or (202) 619–0477. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBA's Disaster Loan Program provides direct assistance to homeowners, renters, businesses and nonprofits and is critical to rebuilding communities after a disaster. Pursuant to section 7(b)(1) of the Small Business Act, 15 U.S.C. 636(b)(1), SBA is authorized to make disaster loans available to repair, rehabilitate or replace real or personal property damaged or destroyed as a result of disasters. These long-term, low-interest loans support those needing to repair or replace their damaged primary residence and personal effects. In this direct final rule, SBA is increasing the lending limits applicable to home loans, including the limits on amounts for repair and replacement of disaster damaged real and personal property, for refinancing, for mitigation, and for contractor malfeasance. These changes are necessary as current home loan lending limitations have not been adjusted since 1994 and are insufficient to meet the needs of many homeowners and renters. SBA has determined that these increases are necessary due to inflation and higher costs for real and personal property repairs. These increases address the need for periodic adjustments in loan limits based on increases in home costs, the cost and availability of construction materials, and significant changes in labor costs. The current limits, established in 1994, are inadequate to compensate many disaster survivors for the costs associated with rebuilding, replacing and repairing their homes and household effects which have been lost or damaged as a result of a disaster. Housing prices have risen significantly over the past 25 years. The median price of a single-family house sold in the first quarter of 1994 was only $130,000. By the end of 2021, the median price of a home had risen to over $400,000.[1] More recent increases have also been noted. According to the latest Producer Price Index (PPI) report released by the Bureau of Labor Statistics,[2] the prices of goods used in construction climbed each month during 2022 resulting in a 19% jump in producer prices for construction for a 12-month period ending November 2022. Additionally, the National Association of Home Builders (NAHB) price index of services inputs to residential construction registered even steeper increases. As a result, the price index of services used in home building (including trade services, transportation and warehousing) went up 15.2% since the start of 2022. The index increased 18.5% year over year. Since the start of the pandemic, services prices are now 39% higher. In addition, building materials prices increased 20.4% year over year and have risen 33% since the start of the pandemic.[3] From 2018 through 2022, approximately 8.5% of borrowers have been unable to fully restore their real estate and replace their personal property due to the current home loan lending limits. Most recently, 64.2% of recipients of home loans for damage caused by the 2021 Colorado Wildfires, and 17.6% of such borrowers from Hurricanes Fiona and Ian, were unable to fully restore their real estate

[1] Data obtained from U.S. Census Bureau and U.S. Department of Housing and Urban Development, Median Sales Price of Houses Sold for the United States. *www.census.gov/construction/nrs/current/index.html.*

[2] *www.bls.gov/opub/ted/2022/producer-prices-for-final-demand-rose-7-4-percent-over-the-year-ended-november-2022.htm.*

[3] National Association of Home Builders published Apr 15, 2022 *www.nahb.org/blog/2022/04/building-materials-prices-start-2022-with-8-percent-increase and* Producer Price Index News Release—*www.bls.gov/news.release/archives/ppi_05122022.htm.*

and replace personal property; this level of shortfall is expected to continue to increase and impact greater numbers of disaster survivors in other regions. Historically, in the aftermath of disasters, especially large catastrophes, construction costs increase sharply as demand increases and supply decreases. Therefore, SBA, based on statutory authority and additional analyses cited above, has determined that it is appropriate and necessary at this time to increase home loan lending limits.

SBA is also increasing the initial deferment period from 5 months to 12 months, which reduces the immediate financial burden for disaster survivors. Repair and replacement timelines often extend beyond the existing 5 months permitted for deferment. This creates the responsibility and burden for a disaster survivor to begin making payments before their property is completely restored and all-in costs accounted for. Further, SBA is revising its regulations to allow the SBA Administrator to increase the maximum loan amounts to homeowners and renters under a specific disaster declaration based on appropriate economic indicators, such as current building costs, regional median home prices, and the Consumer Price Index (CPI) and the Producer Price Index (PPI) for the region(s). These disaster-specific increases will be published in the **Federal Register**.

Finally, SBA is making other revisions that will increase access to disaster loans and that clarify existing requirements, as further described below in the section-by-section analysis.

II. Section-by-Section Analysis

Section 123.7 Are there restrictions on how disaster loans can be used?

Current section 123.7 allows loan funds to be used to protect damaged or destroyed real property from possible future similar disasters. SBA is eliminating the word ''similar,'' which allows a disaster loan recipient to use loan funds allocated for mitigation to implement mitigation measures to protect against any type of disaster. The elimination of ''similar'' allows disaster loan recipients more flexibility to better protect their property from future disasters. For example, under current section 123.7, a homeowner that suffered damage from a fire would not be allowed to use mitigation funds to prevent earthquake damage, since the damage to the home was not caused by an earthquake. This change provides disaster borrowers with more options to mitigate future damage from all types of disasters, reducing the need for future financial assistance.

Section 123.11 Does SBA require collateral for any of its disaster loans?

Section 123.11 defines when SBA requires collateral for disaster loans. Paragraph (b) lists examples of available collateral that may be required to secure a disaster loan, such as a lien on the damaged or replacement property, a security interest in personal/business property, or both. SBA is revising paragraph (b) to provide SBA more discretion to determine the collateral that will be required for disaster loans. This increased flexibility will allow SBA to tailor this collateral requirement to the disaster survivor's circumstances. For example, requiring liens on property with no liquidation value may increase the cost burden to the borrower without providing meaningful liquidated recovery for SBA in the event of a default. SBA will further define ''available collateral'' in its Standard Operating Procedures (SOP). SBA will clarify in the Disaster Assistance Program SOP 50 30 the circumstances under which blanket liens on all business assets will not be required.

Section 123.13 What happens if my loan application is denied?

Section 123.13 addresses declined applications and procedures for reconsideration. Current subsection (d) refers to documentation required to overcome SBA's denial of the original loan application and includes an additional requirement for business loan application reconsideration requests to include current business financial statements. SBA is removing this requirement to submit current business financial statements with every business loan reconsideration request. In instances where SBA declines a loan based on lack of repayment ability, current business financial statements would be required. However, other reconsiderations not based on repayment ability may not require this information.

Section 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

SBA is amending this regulation by increasing the stated threshold limits within each subparagraph of § 123.105(a). Specifically, SBA is replacing ''$40,000'' with ''$100,000'' as the limit for repair and replacement of household and personal effects. SBA is also replacing ''$200,000'' with ''$500,000'' as the limit for repair and replacement of a primary residence. These changes will allow for many eligible disaster survivors to obtain full recovery for their disaster losses and align with increases in inflation, construction costs and home prices. In addition, SBA is removing the limit on landscaping and other improvements to grounds, currently capped at $5,000, to allow disaster borrowers to obtain the necessary funds to repair their damaged real estate. In accordance with the home lending limit increase, SBA is also increasing the limits from $200,000 to $500,000 for eligible refinancing purposes in section 123.105(a)(3), post-disaster mitigation in § 123.105(a)(4), and eligible malfeasance in § 123.105(a)(5). These changes are based on increases in median home prices and repair/replacement costs.

SBA is increasing the deferment period for the first payment due in § 123.105(c) from 5 months to 12 months from the date of the initial disbursement to reduce the financial burden for disaster survivors. Generally, the borrower will pay monthly installments of principal and interest, payment beginning 12 months from the date of the initial disbursement. Currently, SBA has the discretion to defer first payment due dates longer than 5 months and frequently defers payments for 12 months on a disaster-by-disaster basis. This change will create clarity and consistency across disaster declarations, since each will have the same deferment period, and will provide more time to a borrower recovering from a declared disaster to start making payments on the loan. SBA recognizes that full disbursements are not always completed immediately after approval and disaster recovery can be an ongoing process.

Finally, in order to allow for flexibility and to match the authority already granted to the Administrator for business loans,[4] SBA is adding a new paragraph (d) to § 123.105 to allow the Administrator to increase home loan lending limits within § 123.105(a) under an individual disaster declaration based on appropriate economic indicators for the region(s) in which the disaster occurred including but not limited to factors such as Consumer Price Index (CPI), Producer Price Index (PPI), median home prices and local construction costs. After reviewing the totality of circumstances, and if determined appropriate, SBA will publish any increased lending limit for an individual disaster declaration in the **Federal Register**.

[4] See 15 U.S.C. 636(b)(8)(B) and 13 CFR 123.202(e).

Section 123.106 What is eligible refinancing?

The eligible amount of refinancing is limited by the amount of physical damage to the home as well as the maximum loan amount. Therefore, in accordance with the increases in disaster lending limits, SBA is increasing the refinance limits in § 123.106(b) to match the above stated repair/replacement lending limit of $500,000.

In addition, SBA is revising the regulation to remove certain restrictions on the amount of eligible refinancing. Currently, refinancing amounts cannot exceed the amount of physical damage, less any amounts received from insurance or other recoveries, up to a maximum of $200,000. SBA is revising § 123.106(b) to state that refinancing amounts cannot exceed the amount of physical damage, and the amount will be reduced by any insurance or other recoveries, but only if the disaster survivor uses the insurance or other recoveries to pay down the mortgage or lien to be refinanced, up to a maximum of $500,000. This change ties the eligible refinancing amount to the amount of physical damage rather than to the amount received from SBA for physical damage repairs. This change also makes the regulatory language—currently more constraining than the statutory language—the same as the statutory language, removes the existing penalty on disaster borrowers with insurance, and makes more funding available to disaster survivors for refinancing.[5] For example, under the current regulation, if a disaster survivor suffered $150,000 in real estate damages and received $100,000 from their insurance company, SBA would reduce the disaster survivor's refinancing eligibility to $50,000—the physical damages less their insurance recovery. So the borrower could receive $50,000 for physical damages and $50,000 for refinancing, for a total maximum SBA loan amount of $100,000. In contrast, a borrower with the same damages, but no insurance, could receive $150,000 for physical damages and $150,000 for refinancing, for a maximum total SBA loan amount of $300,000. With the change, some disaster survivors will have increased refinancing eligibility. Using the earlier example, the disaster survivor's refinancing eligibility will be $150,000, unless any amount of insurance is used to reduce the lien SBA is refinancing. So the borrower could receive $50,000 for physical damages and $150,000 for refinancing, for a total maximum SBA loan amount of $200,000. If the disaster survivor uses the $100,000 of insurance proceeds to pay down the lien SBA is refinancing, only then would SBA reduce the amount of eligible refinancing funds by the $100,000 to $50,000, for a total maximum SBA loan amount of $100,000 ($50,000 for physical damages and $50,000 for refinancing).

Section 123.107 How much can I borrow for post-disaster mitigation for my home?

In accordance with increases in the disaster loan limit discussed above, SBA is also increasing the maximum amount available for post-disaster mitigation. Current regulations limit the amount to the lesser of the cost of the mitigation measure, or up to 20% of the verified loss, to a maximum of $200,000. SBA is increasing the maximum allowed for post-disaster mitigation from $200,000 to $500,000 to align with the real estate lending limit increase.

Section 123.202 How much can my business borrow with a physical disaster business loan?

SBA is revising paragraph (c) of § 123.202 to remove restrictions on the amount of eligible refinancing for businesses. SBA is removing the requirement to reduce the amount of eligible refinancing if there is compensation from insurance or other recoveries. Like the changes to § 123.106(b) described above applicable to home loans, SBA is revising the regulation to the statutory language. Revised paragraph (c) requires the refinancing amount for business loans to be reduced only to the extent the lien or encumbrance to be refinanced is satisfied by insurance or other recoveries.

In addition, and in accordance with removal of the limit on amounts for landscaping or recreational facilities in § 123.105(a)(4) for home loans, SBA is removing similar language in § 123.202(d) applicable to business loans. Currently, SBA makes exceptions to this limit based on documented functional need on a case-by-case basis. This change provides consistency and removes the need for administrative exceptions and reduces administrative burden on the disaster survivor and SBA in securing resources to repair or replace their damaged property.

Section 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

SBA is increasing the deferment period for the first payment due in § 123.203(b) from 5 months to 12 months from the date of the initial disbursement to reduce the financial burden for disaster survivors. Generally, the borrower will pay monthly installments of principal and interest, payment beginning 12 months from the date of the initial disbursement. Currently, SBA has the discretion to defer first payment due dates longer than 5 months and frequently defers payments for 12 months on a disaster-by-disaster basis. This change will create clarity and consistency across disaster declarations, since each will have the same deferment period, and will provide more time to a borrower recovering from a declared disaster to start making payments on the loan. SBA recognizes that full disbursements are not always completed immediately after approval and disaster recovery can be an ongoing process.

Section 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

SBA is removing ineligibility for economic injury disaster loans for consumer or marketing cooperatives to align with SBA's 7(a) and 504 business loan programs that currently consider cooperatives as eligible entities. Cooperatives are recognized by SBA as an eligible form of business organization which should not be excluded from disaster assistance provided to other business entities. As such, cooperatives may be eligible for economic injury disaster loans, provided they meet all other program requirements. SBA is removing paragraph (c) in its entirety.

Section 123.502 Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

SBA is removing ineligibility for Military Reservist Economic Injury Disaster loans for consumer or marketing cooperatives for the same reasons as stated above. SBA is removing paragraph (j) in its entirety.

III. Justification for Direct Final Rule

Agencies typically utilize direct final rulemakings for non-controversial regulatory actions that are unlikely to receive adverse comments. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If the agency receives

[5] See 15 U.S.C. 636(b)(1)(B)(iv).

no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and may instead issue a proposed rulemaking.

SBA has determined that the regulatory changes addressed in this direct final rulemaking are non-controversial, and not likely to result in adverse comments. SBA's disaster loan maximums have not been increased in over 20 years, in part, because such increase in the maximums was unnecessary: despite the rise in the costs of real estate, SBA had perennially satisfied the lending demands of disaster survivors, ensuring homeowners could successfully rebuild. However, today, recent natural disasters have demonstrated SBA's lending limits are increasingly preventing households from receiving the necessary disaster assistance to rebuild as in years past. Over the past 20 years, SBA has provided disaster assistance for 119 disaster declarations each year on average, each of which is an emergency to the survivors. The timing, occurrence, and impact of a disaster is unpredictable. But natural disasters are increasing in severity and in frequency across the United States and its territories, evidenced by more severe hurricane seasons and more frequent wildfires, tornados, floods, and blizzards. This is a recent phenomenon, and the effect on disaster survivors has been exacerbated by the increase in construction costs occasioned by the pandemic. As stated previously, more than 60% of borrowers from the recent Colorado wildfires and nearly 20% of borrowers from Hurricanes Fiona and Ian, were unable to obtain the full disaster assistance necessary because of SBA's current disaster loan maximums and other criteria. Overall, as also noted above, on average from 2018 to 2022, fewer than 10% of borrowers affected by a disaster have been unable to obtain sufficient disaster assistance through SBA. Further, an increasing number of insurance carriers in areas of frequent disasters are insolvent and have issues providing benefit payments to insured customers.[6] All disaster occurrences are urgent and require the most efficient and effective path to assistance for the survivors. In short, an increase to SBA's disaster loan maximums is no longer preemptive, but now necessary to meet current economic demands from increasingly severe and frequent disasters. A higher threshold accounting for increased average home value, inflation, and other changes is required to ensure nearly all disaster survivors can receive full SBA assistance.

This direct final rule changes the maximum loan size which is well overdue based on inflation and other economic data. SBA does not anticipate receiving significant adverse comments because the principal effect of these amendments is to increase the amount disaster survivors can borrow under the SBA's Disaster Assistance Loan Program. The regulatory changes in this direct final rulemaking address overdue loan amount adjustments based on inflation and costs over a 28-year period, the need to increase mitigation measures that reduce taxpayer investment in repeat repairs and expanding payment options for disaster survivors that assist with successful repayment of loans. SBA's disaster loan program offers long-term, low interest, fixed rate loans to disaster survivors, enabling them to replace real or personal property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses and non-profits to help them recover from economic injury caused by such disasters. The changes in this direct final rule will not require members of the public to adjust their behavior. Rather, the changes will benefit the public by allowing for increased compensation to adequately reflect increases in costs associated with replacing and repairing residential real property and household effects which have been lost or damaged as a result of a disaster. This would eliminate the need for many disaster borrowers to seek out more costly additional financing options to cover potential shortfalls in completing repair and replacement projects, such as second mortgages and Home Equity Lines of Credit (HELOC), which incur additional closing costs, and credit cards, which historically carry variable and/or punitive higher interest rates compared to disaster assistance loans (current average 22.91%). Other changes, such as increasing the amounts available for landscaping, refinancing, and mitigation, also benefit disaster survivors. Due to urgent needs for disaster assistance, and the noncontroversial nature of these changes, SBA concludes immediate action is required to support homeowners, businesses, and their communities as they recover from future disasters.

[6] See *e.g.,* Duvall, M. (December 20, 2022). Home insurers are leaving Florida: Here's what you need to know. Retrieved from *https://www.insurance.com/home-and-renters-insurance/home-insurers-leaving-florida.*

Compliance With Executive Orders 12866, 12988, 13132, 13175, 13563, 14030, the Paperwork Reduction Act (44 U.S.C., Ch. 35), the Congressional Review Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is a ''significant regulatory action'' under Executive Order 12866. SBA has drafted a Regulatory Impact Analysis for the public's information below.

A. Regulatory Objective of the Rule

The Agency believes it needs to update its disaster home loan limits and expand access to disaster loan funds to better meet the recovery needs of many homeowners throughout the nation that have incurred physical damage from an unforeseen disaster. The lending limits for home loans have been in place since 1994 and the increase would align the SBA Disaster Program with relative increased costs related to construction and labor, as well as increases in property valuations that have occurred over time. According to the Bureau of Labor Statistics' (BLS) consumer price index and Zillow median house price data,[7] housing prices have increased by an average of 0.85% monthly between May 2013 and May 2022, whereas inflation has only increased at an average monthly rate of 0.24% over the same period.[8] In light of housing prices increasing at a faster rate than inflation, SBA has identified a need for increasing home disaster loan lending limits. Further changes in the program, including extending the loan deferment for first payment due date on the loan are also necessary to provide disaster borrowers with flexibility in payment options when dealing with and incurring additional expenses related to disaster recovery. Other modernizations include expanding the availability of mitigation measures, which supports the Administration's climate resilience priorities and resiliency initiative. In addition, rule updates related to refinancing eligibility, removing restrictions on loans to consumer or marketing cooperatives, and enhancing the Administrator's authority to adjust loan limits for specific disaster declarations depending on economic indicators allows the disaster loan program greater flexibility for unforeseen economic conditions. These

[7] For home prices: Zillow's website and pulling median sale price smoothed and seasonally adjusted *www.zillow.com/research/data/.*

[8] *See* CPI Home: *www.bls.gov/cpi/.*

increases and expansions are necessary and long overdue for many disaster borrowers especially in areas of the country where housing and repair costs have risen significantly.

B. Benefits of the Rule

This regulatory action will directly benefit disaster survivors by increasing the amount of loan proceeds available as well as expanding options for mitigation funds and other related benefits. The changes will allow for increased resources for disaster borrowers specifically accounting for regional pricing differentials. The changes will reflect increases in costs to replace and repair residential, property and household effects which have been lost or damaged as a result of a physical disaster.

Data from disaster loan approvals between July 2018 and July 2022 shows over 2,300 disaster home borrowers had uncompensated real estate damage that exceeded the $200,000 loan limit, of which 97% were under the $500,000 limit. In addition, there were a larger number of disaster borrowers, over 7,600, that had uncompensated personal property losses that exceeded the $40,000 limit, of which 94% were under the $100,000 limit.

In these cases, the disaster borrowers were limited in the amount of loan funds that they could receive and had to seek out more costly financing options to cover potential shortfalls in completing repair and replacement projects, such as second mortgages and Home Equity Lines of Credit (HELOC), which incur additional closing costs, and credit cards, which historically carry variable and/or punitive higher interest rates compared to disaster assistance loans (current average 22.91%).

Between July 2018 and July 2022, for the disaster survivors whose losses exceeded the $200,000 limit in uncompensated losses, the annual average uncompensated loss for real estate damage was approximately $113,027. The annual average personal property uncompensated losses were approximately $36,847. These amounts represent a shortfall in funds needed for the disaster survivor to fully recover. Based on SBA's review of historic data, between 479 and 2,919 loan applicants per year would benefit from the loan limit increases for personal property and real estate losses. There are no changes to loan eligibility approval or repayment factors so these estimates are based on the number of loan applicants who applied and were approved previously but would have received the recovery benefit of a larger loan amount. These calculations reflect the historical number of applicants who would potentially benefit from the new loan limits and the corresponding increases in their approved loan amounts.

C. Costs of the Rule

SBA anticipates the calculated subsidy from the changes will not have a significant impact on the overall subsidy rate. The initial cost to the Agency is de minimis. Individual applicants will still be governed by standard disaster loan eligibility requirements for SBA disaster assistance and will remain eligible for assistance to the extent of verifiable uncompensated loss as present regulations provide.

Based on SBA data from disaster loan approvals between July 2018 and July 2022, SBA anticipates that this rule change would result in an average annual increase of roughly $95.1 million in additional lending. The annual increase in loan amounts could range between $68.9 million and $131.1 million, depending on the severity of disasters in any given year. Although the loan amounts would likely increase, SBA does not expect any significant impact to the subsidy rate given that the historical rate of default for the disaster program trends down as loan amounts increase. Based on actual performance from FY 2012 through July 2022, approximately 221,497 home loans were approved, of which a total 16,141 defaulted (7.2%). This portfolio default rate based on the size of loan is 5.2% for loans approved between $50,000 to $200,000, decreasing to 3.75% rate of default for loans over $200,000. This data demonstrates a diminishing rate of default for larger amount loans.

There are no changes in credit and repayment consideration for loan approval determinations. SBA will continue to analyze personal or business cash flow to determine repayment ability for those applicants who do not have strong credit. In addition, the value of the property being repaired by the disaster loan would be enhanced by additional repair/replacement funds from the increased loan amount, which would potentially enhance SBA collateral in the event of default.

D. Alternatives

Given that the program has not increased the current lending limits since 1994, the SBA found no acceptable alternatives to the regulation changes. The Agency currently requires disaster survivors to seek outside financing to cover project shortfalls caused by current lending limits. Typical alternate financing includes the use of second mortgages and Home Equity Lines of Credit (HELOC), which incur additional closing costs, and credit cards, which historically carry variable and/or punitive higher interest rates compared to disaster assistance loans (current average 22.91%). Use of alternate financing can make full recovery from disasters significantly less affordable for many survivors and further reduces opportunities to include mitigation funds for sustainable recoveries. Additionally, outside lenders generally require collateral for loans which can adversely impact SBA's lien priority and collateral on secured home loans.

SBA concluded that the revisions as set forth in this rule are the optimum available to ensure recovery is available for disaster survivors. When comparing SBA's projections to a no action baseline, the Agency found that between 479 and 2,919 loan applicants per year would potentially be excluded from the benefits of the higher loan limits. These applicants are those that qualify for funds greater than the previous limits of $200,000 and $40,000 for real estate and personal property, respectively, who are currently forced to look to other likely more costly sources to cover excess loss.

Table 1 displays the relative frequencies of uncompensated losses between July 2018 and July 2022, when grouped by each of the discussed loan limit ranges. Over this period, 29% of loans with real estate had uncompensated losses between the $200,000 and $500,000 thresholds, while only 3% exceeded this threshold. The table demonstrates that the increase of the disaster home loan lending limit to $500,000 for real property damage would cover an additional 29% of uncompensated real estate losses and fully cover 97% of the uncompensated real estate losses during this timeframe. Similarly, increasing the personal property disaster loan limit from $40,000 to $100,000 would cover an additional 88% of uncompensated personal property losses and fully cover 94% of disaster survivors in this category.

TABLE 1—RELATIVE FREQUENCIES OF UNCOMPENSATED LOSSES

[FY 2018–FY 2022]

Category	Percentages of loans within category
Real estate (7,279)	
0–$200K	68
$201K–$500K	29
>$500K	3

TABLE 1—RELATIVE FREQUENCIES OF UNCOMPENSATED LOSSES—Continued
[FY 2018–FY 2022]

Category	Percentages of loans within category
Personal Property (8,174)	
0–$40K	6
$41K–$100K	88
>$100K	6

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13175

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.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

Executive Order 14030

SBA was tasked with developing recommendations for improving how federal financial management and reporting can incorporate climate-related financial risk, especially as that risk relates to Federal lending programs. The SBA disaster loan program contains eligibility and additional loan funds for mitigation measures that allow physical disaster loan recipients to obtain additional funds to install mitigating measures to protect homes and businesses and reduce future property damage. Expanding the scope of mitigation measures by not limiting them to similar disasters that caused the original damage will allow for more options and give more flexibility for the recipient to utilize the funds. In addition, the regulations allow physical disaster loan recipients additional funding of up to 20 percent of the verified loss to cover costs related to these measures. Increasing the maximum amount of mitigation funding from $200,000 to $500,000 will assist in encouraging the use of proceeds for mitigation measures. These changes align with the intent of Executive Order 14030 in that they expand the range of mitigation measures that a disaster survivor can use to prevent future loss from subsequent disasters.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Congressional Review Act, 5 U.S.C. Ch. 8

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA 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. A major rule under the CRA 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(2). Therefore, this rule is not subject to the 60-day restriction.

Regulatory Flexibility Act, 5 U.S.C. 601

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, such as when—among other exceptions—the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy Guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan mitigation, Loan programs—physical disaster (home, business).

For the reasons set forth in the preamble, the SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, and 9009.

§ 123.7 [Amended]

■ 2. Amend § 123.7 by removing the word ''similar''.

■ 3. Amend § 123.11 by revising paragraph (b) to read as follows:

§ 123.11 Does SBA require collateral for any of its disaster loans?

* * * * *

(b) For loans larger than the amounts outlined in paragraph (a) of this section, you will be required to provide available collateral, as determined by SBA, such as a lien on the damaged or replacement property and/or a security interest in business assets.

* * * * *

§ 123.13 [Amended]

■ 4. Amend § 123.13 in paragraph (d) by removing the second sentence.

■ 5. Amend § 123.105 by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

(a) There are limits on how much money you can borrow for particular purposes. The limits in effect for disasters occurring on or after June 16, 2023 are as follows.

(1) $100,000 for repair or replacement of household and personal effects;

(2) $500,000 for repair or replacement of a primary residence (including

upgrading in order to meet minimum standards of safety and decency or current building code requirements);

(3) $500,000 for eligible refinancing purposes;

(4) 20 percent of the verified loss (not including refinancing or malfeasance), before deduction of compensation from other sources, up to a maximum of $500,000 for post-disaster mitigation (see § 123.107); and

(5) $500,000 for eligible malfeasance, pursuant to § 123.18.

* * * * *

(c) SBA determines the loan maturity and repayment terms based on your needs and your ability to pay. Generally, you will pay monthly installments of principal and interest, beginning twelve months from the date of the initial disbursement. SBA will consider other payment terms if you have seasonal or fluctuating income. The maximum maturity for a home disaster loan is 30 years. There is no penalty for prepayment of disaster loans.

(d) The SBA Administrator may increase the home loan lending limits within paragraph (a) of this section under an individual disaster declaration based on appropriate economic indicators for the region(s) in which the disaster occurred. SBA will publish any increased lending limit for an individual disaster declaration in the **Federal Register**.

■ 6. Amend § 123.106 by revising paragraph (b) to read as follows:

§ 123.106 What is eligible refinancing?

* * * * *

(b) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of $500,000, or the physical damage to your primary residence. Any refinancing amount will be reduced to the extent such lien or encumbrance is satisfied by insurance or otherwise.

§ 123.107 [Amended]

■ 7. Amend § 123.107 by removing the number ''$200,000'' and adding in its place the number ''$500,000''.

■ 8. Amend § 123.202 by:

■ a. Revising paragraph (c) introductory text;

■ b. Removing paragraph (d); and

■ c. Redesignating paragraph (e) as paragraph (d).

The revision reads as follows:

§ 123.202 How much can my business borrow with a physical disaster business loan?

* * * * *

(c) Physical disaster business borrowers may request refinancing of liens on both damaged real property and machinery and equipment. Such amount shall be reduced to the extent such lien or encumbrance is satisfied by insurance or otherwise. Your business property must be totally destroyed or substantially damaged, which means:

* * * * *

■ 9. Amend § 123.203 by revising paragraph (b) as follows:

§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

* * * * *

(b) Generally, you will pay monthly installments of principal and interest, beginning twelve months from the date of the initial disbursement. SBA will consider other payment terms if you have seasonal or fluctuating income. There is no penalty for prepayment for disaster loans.

* * * * *

§ 123.301 [Amended]

■ 10. Amend § 123.301 by removing and reserving paragraph (c).

§ 123.502 [Amended]

■ 11. Amend § 123.502 by removing and reserving paragraph (j).

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–12779 Filed 6–15–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0439; Project Identifier MCAI–2022–01263–T; Amendment 39–22449; AD 2023–11–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by a report that a design deficiency was discovered which could allow a no-back pawl to be incorrectly installed in a horizontal stabilizer trim actuator (HSTA). This AD requires a check for part number and serial numbers of the HSTA, and if necessary, inspection of the no-back pawl installation, and corrective action. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 21, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 21, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0439; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–0439.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on March 24, 2023 (88 FR 17748). The NPRM was prompted by AD CF–2022–55, dated September 21, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that during an unscheduled inspection, a design deficiency was discovered which could allow a no-back pawl to be

incorrectly installed in an HSTA. The no-back mechanism is a primary means to prevent back driving of the HSTA, and the motor brake assemblies (MBAs) are the secondary means. If this condition is not corrected, a non-functioning no-back mechanism in combination with loss of, or degraded HSTA MBA braking capability, could lead to a loss of control of the airplane. The MCAI also states that as a mitigating action, Transport Canada AD CF–2019–23, dated June 18, 2019, was issued to mandate a software upgrade for the horizontal stabilizer trim electronic control unit to verify the MBA for braking capability during the power up test on certain Bombardier, Inc., Model BD–100–1A10 airplanes. Transport Canada AD CF–2019–23 corresponds to FAA AD 2019–15–04, Amendment 39–19697 (84 FR 38862, August 8, 2019) (AD 2019–15–04).

In the NPRM, the FAA proposed to require a check for part number and serial numbers of the HSTA, and if necessary, inspection of the no-back pawl installation, and corrective action. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0439.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from an individual who supported the SNPRM/NPRM without change.

Additional Changes to This AD

The FAA has revised paragraph (h) of this AD to clarify the parts installation prohibition applies only to any HSTA with P/N C47100–003 or P/N C47100–004 that does not have either the suffix-K following the serial number or a modification plate showing ''SB C47100–27–02'' or ''SB C47100–27–03.'' In the NPRM, the FAA had inadvertently stated that installation of an HSTA with a modification plate showing ''SB C47100–27–02'' or ''SB C47100–27–03'' was prohibited.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial change, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletins 100–27–20 and 350–27–009, both Revision 01, both dated December 1, 2020. This service information specifies procedures for a check for part number and serial numbers of the HSTA, and if necessary, inspection of the no-back pawl installation and corrective action. Corrective actions include replacement of the HSTA, and a re-identification and test of the HSTA. These documents are distinct since they apply to different airplane configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD will affect 703 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 2 work-hours × $85 per hour = Up to $170	None	Up to $170	Up to $119,510.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 25 work-hours × $85 per hour = Up to $2,125	$2,905	Up to $5,030.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–11–04 Bombardier, Inc.: Amendment 39–22449; Docket No. FAA–2023–0439; Project Identifier MCAI–2022–01263–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 21, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, having serial number 20003 and subsequent.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that a design deficiency was discovered which could allow a no-back pawl to be incorrectly installed in a horizontal stabilizer trim actuator (HSTA). The FAA is issuing this AD to address incorrectly installed no-back pawls. The unsafe condition, if not addressed, could result in a non-functioning no-back mechanism, which, in combination with loss of or degraded HSTA motor brake assembly (MBA) braking capability, could lead to a loss of control of the airplane.

(f) Compliance

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

(g) Records Check and Corrective Actions

Within 60 months after the effective date of this AD, check the airplane maintenance records or do a visual check to determine the part and serial numbers of the HSTA.

(1) If the part number is C47100–005: No further action is required by this paragraph.

(2) If the part number is C47100–004 and the serial number ends with the suffix-K: No further action is required by this paragraph.

(3) If the serial number is listed in the table referred to in paragraph 2.B.(4) of the Accomplishment Instructions of the applicable Bombardier service bulletin identified in figure 1 to paragraph (g)(3) of this AD: Within 60 months from the effective date of this AD, inspect the HSTA no-back mechanism pawls in accordance with paragraph 2.C. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(i) If one or more pawls are not correctly installed: Before further flight, replace the HSTA in accordance with paragraph 2.E. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(ii) If all the pawls are correctly installed, re-identify and test the HSTA, and do all applicable corrective actions, in accordance with paragraphs 2.C.(4) and 2.F. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

FIGURE 1 TO PARAGRAPH (g)(3)—APPLICABLE SERVICE INFORMATION

Airplane model	Applicable bombardier service bulletin
BD–100–1A10 (CH300 marketing).	100–27–20, Revision 01, dated December 1, 2020.
BD–100–1A10 (CH 350 marketing).	350–27–009, Revision 01, dated December 1, 2020.

(4) If the serial number is listed in the table referred to in paragraph 2.B.(5) of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD: Within 60 months from the effective date of this AD, add a modification plate to the HSTA in accordance with paragraph 2.D. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(5) If the records check is inconclusive, or if a visual check instead of a records check of the HSTA was accomplished: Within 60 months from the effective date of this AD, verify the part numbers and serial numbers of the HSTA, and verify the modification plate, in accordance with paragraph 2.B. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(i) If the HSTA has part number (P/N) C47100–005: No further action is required by this paragraph.

(ii) If the HSTA has P/N C47100–004 and a serial number that ends with the suffix-K, or if the modification plate contains ''SB C47100–27–02'' or ''SB C47100–27–03'': No further action is required by this paragraph.

(iii) If the serial number is listed in the table referred to in paragraph 2.B.(4) of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD: Within 60 months from the effective date of this AD, inspect the HSTA no-back mechanism pawls in accordance with paragraph 2.C. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(A) If one or more pawls are not correctly installed, before further flight, replace the HSTA in accordance with Paragraph 2.E. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(B) If all the pawls are correctly installed, re-identify and test the HSTA, and do all applicable corrective actions, in accordance with paragraphs 2.C.(4) and 2.F. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(iv) If the serial number is listed in the table referred to in paragraph 2.B.(5) of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD: Within 60 months from the effective date of this AD, add a modification plate to the HSTA in accordance with paragraph 2.D. of the Accomplishment Instructions of the applicable service bulletin identified in figure 1 to paragraph (g)(3) of this AD.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install an HSTA with P/N C47100–003 or P/N C47100–004 that does not have either the suffix-K following the serial number or a modification plate showing ''SB C47100–27–02'' or ''SB C47100–27–03'' on any airplane.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (i)(1) and (2) of this AD.

(1) Bombardier Service Bulletin 100–27–20, dated November 9, 2020.

(2) Bombardier Service Bulletin 350–27–009, dated November 9, 2020.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly

to the manager of the International Validation Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (k)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Additional Information

(1) Refer to Transport Canada AD CF–2022–55, dated September 21, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0439.

(2) For more information about this AD, contact Chirayu Gupta, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 100–27–20, Revision 01, dated December 1, 2020.

(ii) Bombardier Service Bulletin 350–27–009, Revision 01, dated December 1, 2020.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

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

Issued on June 7, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–12934 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0425; Project Identifier MCAI–2022–00980–A; Amendment 39–22458; AD 2023–11–12]

RIN 2120–AA64

Airworthiness Directives; DAHER AEROSPACE (Type Certificate Previously Held by SOCATA) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain DAHER AEROSPACE (type certificate previously held by SOCATA) Model TBM 700 airplanes. This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as interference between the emergency exit trim panel and the upholstery panel, which could result in additional effort required to open the emergency exit door. This AD requires modification of the gripping strap, which maintains the upholstery panel on the emergency exit trim panel. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 21, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 21, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0425; 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, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact DAHER AEROSPACE, Customer Support, Airplane Business Unit, Tarbes Cedex 9, France 65921; phone: (833) 826–2273; email: *tbmcare@daher.com;* website: *daher.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. It is also available at *regulations.gov* under Docket No. FAA–2023–0425.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–2346; email: *fred.guerin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain DAHER AEROSPACE Model TBM 700 airplanes. The NPRM published in the **Federal Register** on March 8, 2023 (88 FR 14301). The NPRM was prompted by AD 2022–0149, dated July 21, 2022 (referred to after this as ''the MCAI''), issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union.

The MCAI was prompted by a report that, due to interference between the emergency exit trim panel and the upholstery panel, additional effort may be required to open the emergency exit door. An investigation revealed that the gripping strap, which maintains the upholstery panel on the emergency exit trim panel, is not properly sized. The MCAI requires inserting a temporary revision (TR) into the emergency procedures section of the applicable pilot's operating handbook (POH), informing all flight crews, operating the airplane accordingly, and modifying the gripping strap, at which time the TR can be removed from the POH. The unsafe condition, if not addressed, could lead to failure of the emergency exit door to perform its intended function during an emergency opening, possibly resulting in reduced evacuation capacity from the airplane and injury to occupants.

In the NPRM, the FAA proposed to require modification of the gripping strap, which maintains the upholstery panel on the emergency exit trim panel. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0425.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

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 referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Daher Aerospace Service Bulletin SB 70–304, dated July 2022, which specifies procedures for modifying the gripping strap on the emergency exit trim panel.

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**.

Differences Between This AD and the MCAI

The MCAI requires inserting a TR into the emergency procedures section of the applicable POH, informing all flight crews, and thereafter, operating the airplane accordingly until the modification of the gripping strap, at which time the TR can be removed from the POH. This AD requires modifying the gripping strap because FAA regulations mandate compliance with only the operating limitations section of the POH and not the emergency procedures section.

Costs of Compliance

The FAA estimates that this AD affects 841 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
Modification of the gripping strap	1 work-hour × $85 per hour = $85	$300	$385	$323,785

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–11–12 DAHER AEROSPACE (Type Certificate Previously Held by SOCATA): Amendment 39–22458; Docket No. FAA–2023–0425; Project Identifier MCAI–2022–00980–A.

(a) Effective Date

This airworthiness directive (AD) is effective July 21, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to DAHER AEROSPACE (type certificate previously held by SOCATA) Model TBM 700 airplanes, serial numbers 434 through 1424 inclusive, except serial numbers 1408 and 1420, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5220, Emergency Exits.

(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 interference between the emergency exit trim panel and the upholstery panel, which could result in additional effort required to open the emergency exit door. The FAA is issuing this AD to address this condition. The unsafe condition, if not addressed, could lead to failure of the emergency exit door to perform its intended function during an emergency opening, resulting in reduced evacuation capacity from the airplane and injury to occupants.

(f) Compliance

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

(g) Required Actions

Within 12 months after the effective date of this AD, modify the gripping strap on the emergency exit trim panel by following, as applicable for your serial-numbered airplane, sections A, B, and C in the Description of Accomplishment Instructions in Daher Aerospace Service Bulletin SB 70–304, dated July 2022 (Daher SB 70–304), except where Daher SB 70–304 specifies to discard certain parts, this AD requires removing those parts from service. If the operational check of the emergency exit fails, before further flight, re-modify the gripping strap on the emergency exit trim panel by following, as applicable for your serial-numbered airplane, sections A, B, and C in the Description of Accomplishment Instructions in Daher SB 70–304 until it passes this operational check, except where Daher SB 70–304 specifies to discard certain parts, this AD requires removing those parts from service.

(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, mail it to the address 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. 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.

(i) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0149, dated July 21, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0425.

(2) For more information about this AD, contact Fred Guerin, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–2346; email: *fred.guerin@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) Daher Aerospace Service Bulletin SB 70–304, dated July 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact DAHER AEROSPACE, Customer Support, Airplane Business Unit, Tarbes Cedex 9, France 65921; phone: (833) 826–2273; email: *tbmcare@daher.com;* website: *daher.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 12, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–12914 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0503; Airspace Docket No. 23–ASO–07]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E surface airspace and Class E airspace extending upward from 700 feet above the surface in Huntsville, AL, as the result of a biennial airspace evaluation. This action extends the Class E airspace extending upward from 700 feet above the surface surrounding Redstone Army Airfield (AAF) and Huntsville Executive Tom Sharp Jr. Field. The FAA will also update terminology in the Class D and Class E surface airspace descriptions for Redstone AAF.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone: (404) 305–5649.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0503 in the **Federal Register** (88 FR 21141; April 10, 2023), amending Class E airspace extending upward from 700 feet above the surface at Redstone AAF and Huntsville Executive Tom Sharp Field in Huntsville, AL. This action also updates terminology in the Class D and Class E surface airspace descriptions for Redstone AAF. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E airspace designations are published in paragraphs 5000, 6002, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of

that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface of Redstone AAF by increasing the radius to 14.1 miles (previously 9.5 miles). The FAA amends Class E airspace extending upward from 700 feet above the surface of Huntsville Executive Tom Sharp Field by increasing the radius to 7.6 miles (previously 6.3 miles). In doing so, the FAA removes Huntsville International-Carl T. Jones Field: RWY 36L–LOC from the legal description of Huntsville Executive Tom Sharp Field as it is no longer a necessary part of the legal description. In addition, this action replaces the outdated terms Airport/Facility Directory with the term Chart Supplement and Notice to Airmen with the term Notice to Air Missions in the Huntsville Class D and Class E surface airspace descriptions.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASO AL D Huntsville, Redstone Army Airfield, AL

Redstone Army Airfield, AL
(Lat 34°40′43″ N, long 86°41′05″ W)

That airspace extending upward from the surface to but not including 2,400 feet MSL within a 4.4-mile radius of Redstone Army Airfield, excluding that portion within the Huntsville International-Carl T. Jones Field, AL, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Surface Airspace

* * * * *

ASO AL E2 Huntsville, AL

Huntsville International-Carl T. Jones Field, AL
(Lat 34°38′14″ N, long 86°46′30″ W)
Redstone AAF, AL
(Lat 34°40′43″ N, long 86°41′05″ W)

That airspace extending upward from the surface within a 5-mile radius of the Huntsville International-Carl T. Jones Field, excluding that airspace within a 1-mile radius of the Redstone AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ASO AL E5 Huntsville, AL

Redstone AAF, AL
(Lat 34°40′43″ N, long 86°41′05″ W)
Pryor Field Regional Airport, AL
(Lat 34°39′15″ N, long 86°56′43″ W)
Huntsville Executive Tom Sharp Jr. Field, AL
(Lat 34°51′34″ N, long 86°33′27″ W)

That airspace extending upward from 700 feet above the surface within a 14.1-mile radius of Redstone AAF, within a 7-mile radius of Pryor Field Regional Airport, and within a 7.6-mile radius of Huntsville Executive Tom Sharp Jr. Field.

* * * * *

Issued in College Park, GA, on June 12, 2023.

Andreese C. Davis,

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

[FR Doc. 2023–12959 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1022; Airspace Docket No. 23–AWA–3]

RIN 2120–AA66

Amendment of Class C Airspace; Dane County Regional Airport-Truax Field, Madison, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Madison Dane County Regional Airport-Truax Field, WI, Class C airspace description to update the Dane County Regional Airport-Truax Field name and the geographic coordinates of the airport reference point (ARP) for the Dane County Regional Airport-Truax Field and Waunakee Airport, WI, to match the FAA's National Airspace System Resources (NASR) database information. Additionally, this action amends the airspace description by updating the header format and replacing the outdated terms ''Notice to Airmen'' and ''Airport/Facility Directory'' with the current terminology. This action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by

reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of this final rule and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the information in the Madison Dane County Regional Airport-Truax Field, WI, Class C airspace description.

History

During a review of the Madison Dane County Regional Airport-Truax Field, WI, Class C airspace description, the FAA identified the need to update the airport name, the ARP geographic coordinates for the Dane County Regional Airport-Truax Field and the Waunakee Airport, and replace the outdated terms ''Notice to Airmen'' and ''Airport/Facility Directory''.

Incorporation by Reference

Class C airspace areas are published in paragraph 4000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by updating the Madison Dane County Regional Airport-Truax Field, WI, Class C airspace description as published in FAA Order JO 7400.11G, Airspace Designations and Reporting Points. The airport name ''Dane County Regional Airport-Truax Field'' is changed to ''Dane County Regional/Truax Field,'' to match the Airport Master Record database, and the ARP geographic coordinates are updated from ''lat. 43°08′22″ N, long. 89°20′14″ W'' to ''lat. 43°08′24″ N, long. 089°20′15″ W.'' The ARP geographic coordinates for the Waunakee Airport are updated from ''lat. 43°11′00″ N, long 89°27′00″ W'' to ''lat. 43°10′43″ N, long. 089°27′05″ W.'' The ARP coordinates updates are made to match the FAA's NASR database information. The airport name is removed from the first line in the text header of the description leaving just the city and state location of the airport. These changes follow the current formatting standard. In the body of the Class C description, the outdated term ''Notice to Airman'' is replaced by ''Notice to Air Missions'' and the outdated term ''Airport/Facility Directory'' is replaced by ''Chart Supplement.''

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 4000 Class C Airspace.

* * * * *

AGL WI C Madison, WI [Amended]

Dane County Regional/Truax Field, WI
(Lat. 43°08′24″ N, long. 89°20′15″ W)
Waunakee Airport, WI
(Lat. 43°10′43″ N, long 89°27′05″ W)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Dane County Regional/Truax Field excluding that airspace within a 1½-mile radius of the Waunakee Airport; and that airspace extending upward from 2,300 feet MSL to and including 4,900 feet MSL within a 10-mile radius of the Dane County Regional/Truax Field. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Washington, DC, on June 12, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–12858 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0533; Airspace Docket No. 22–ANM–64]

RIN 2120–AA66

Modification of Class E Airspace; Pullman/Moscow Regional Airport, Pullman/Moscow, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace designated as a surface area, modifies the Class E airspace extending upward from 700 feet above the surface, and removes the Class E airspace extending upward from 1,200 feet above the surface at Pullman/Moscow Regional Airport, Pullman/Moscow, WA. Additionally, this action makes administrative amendments to update the airport's existing Class E airspace legal descriptions. These actions would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace to support IFR operations at Pullman/Moscow Regional Airport, Pullman/Moscow, WA.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0533 in the **Federal Register** (88 FR 18101; March 27, 2023), modifying Class E airspace at Pullman/Moscow Regional Airport, Pullman/Moscow, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to the publication of the NPRM, the FAA identified a typographical error in the docket number used in the proposal. The correct docket number is FAA–2023–0533, not FAA–2022–0533. The Airspace Docket Number (22–ANM–64) remains the same, as it was correct in the NPRM. Additionally, the phrase ''extending upward from the surface'' was missing from the first sentence of the Pullman/Moscow, WA E2 legal description in the NPRM. The phrase was added in this final rule as it is needed to align with the intent and purpose of Class E2 airspace.

Incorporation by Reference

Class E2 and E5 airspace areas are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by modifying the Class E airspace designated as a surface area, modifying the Class E airspace extending upward from 700 feet above the surface, and removing Class E airspace extending upward from 1,200 feet above the surface at Pullman/Moscow Regional Airport, Pullman/Moscow, WA.

The Class E surface area is expanded to better contain departing IFR operations until they reach the base of adjacent controlled airspace on the Runway (RWY) 23 Obstacle Departure Procedure (ODP). A 4.5-mile radius around the airport fully contains this procedure and appropriately contains IFR arrival operations between the surface and 1,000 feet above the surface. The extension northeast of the surface area centered on the airport's 046° bearing is now centered on the 058° bearing. It is also widened on either side of the 046° bearing—from 1.7 miles to 2.3 miles—to better contain departing IFR operations until they reach the base of adjacent controlled airspace on the

RWY 5 ODP. The southwest extension to the surface area is no longer needed and is removed.

The Class E airspace extending upward from 700 feet above the surface is expanded 1.1 miles to the east to better contain arriving IFR operations below 1,500 feet above the surface on the Area Navigation (RNAV) Required Navigation Performance (RNP) Z RWY 23 approach. The Class E airspace extending upward from 700 feet above the surface is greatly reduced from the southeast clockwise through the northeast as the airspace is no longer needed. The Class E airspace extending upward from 1,200 feet above the surface is removed, as the area is already within the Spokane en route domestic airspace area.

Finally, the FAA is making administrative amendments to the airport's legal descriptions. The city name on line 1 of the text headers in both legal descriptions is updated from ''Pullman'' to ''Pullman/Moscow'' to match the FAA's database. The geographic coordinates located on line 3 of the text headers in both legal descriptions is updated to match the FAA's database. The Class E surface area legal description is updated to replace the outdated use of the phrases ''Notice to Airmen'' and ''Airport/Facility Directory.'' These phrases now read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, to align with the FAA's current nomenclature.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM WA E2 Pullman/Moscow, WA [Amended]

Pullman/Moscow Regional Airport, WA
(Lat. 46°44′30″ N, long. 117°06′42″ W)

That airspace extending upward from the surface within a 4.5-mile radius of the airport and within 2.3 miles on each side of the 058° bearing extending from the 4.5-mile radius to 7 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ANM WA E5 Pullman/Moscow, WA [Amended]

Pullman/Moscow Regional Airport, WA
(Lat. 46°44′30″ N, long. 117°06′42″ W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at a point on the 055° bearing, 11.1 miles from the airport, then clockwise along the airport's 11.1-mile radius to the 122° bearing, then to the 212° bearing at 6.4 miles, then to the 243° bearing at 7.3 miles, then to the 358° bearing at 6.6 miles, thence to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on June 12, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–12964 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0502; Airspace Docket No. 23–ASO–09]

RIN 2120–AA66

Amendment of Class E Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amends Class E airspace extending upward from 700 feet above the surface in Augusta, GA, as the result of new procedures developed for the Augusta University Medical Center and Children's Hospital of Georgia Heliport. This action establishes Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of the Augusta University Medical Center and Children's Hospital of Georgia. The FAA will also update the geographical coordinates for the Emory non-directional beacon (NDB) in the Augusta Class E5 legal description to align with information located in the FAA's database.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation

Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5946.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends airspace for Augusta University Medical Center and Children's Hospital of Georgia Heliport, Augusta, GA, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0502 in the **Federal Register** (88 FR 18264: March 28, 2023), amending Class E airspace extending upward from 700 feet above the surface at the Augusta University Medical Center and Children's Hospital of Georgia Heliport. One comment was received concerning whether the airspace would be exclusive to medical aircraft or if it would be open to the public. The controlled airspace surrounding Augusta University Medical Center and Children's Hospital was established to provide for the safety and management of instrument flight rules operations in the area, as a new instrument approach procedure was recently developed for the heliport. All aircraft operating within the Class E airspace must adhere to the requirements set forth in 14 CFR 91.127.

Differences From the NPRM

Subsequent to the publication of the Notice of Proposed Rulemaking, the FAA found that the geographical coordinates for the Emory NDB did not align with the information found in FAA's database. This action updates the Emory NDB geographical coordinates.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface in Augusta, GA, by establishing Class E airspace extending upward from the surface within a 6-mile radius of the Augusta University Medical Center and Children's Hospital of Georgia. This airspace will allow medical transport helicopters to fly during inclement weather and will be included in the Augusta, GA, Class E5 legal description. In addition, this action will update the Emory NDB geographical coordinates in the Augusta, GA, Class E5 legal description to align with the information found in the FAA's database.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Augusta, GA [Amended]

Augusta Regional Airport at Bush Field, GA
(Lat 33°22′12″ N, long 81°57′52″ W)
Daniel Field
(Lat 33°28′00″ N, long 82°02′22″ W)
Augusta University Medical Center and Children's Hospital of Georgia
(Lat 33°28′17″ N, long 81°59′17″ W)
Emory NDB
(Lat 33°27′46″ N, long 81°59′49″ W)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Augusta Regional Airport at Bush Field and within 3.2 miles on either side of the 168° bearing from the airport extending from the 8.6-mile radius to 12.5 miles south of the airport, and within a 7-mile radius of Daniel Field, and a 6-mile radius of Augusta University Medical Center and Children's Hospital of Georgia, and within 8 miles west and 4 miles east of the 349° bearing from the Emory NDB extending from the 7-mile radius of Daniel Field and the 6-mile radius of Augusta University Medical Center and Children's Hospital of Georgia to 16 miles north of the Emory NDB.

* * * * *

Issued in College Park, GA, on June 12, 2023.

Andreese C. Davis,

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

[FR Doc. 2023–12956 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2021–0142]

RIN 2105–AF18

Clarification of Formal Enforcement Procedures for Unfair and Deceptive Practices

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is amending its regulations regarding the formal enforcement procedures that are available if the DOT's Office of Aviation Consumer Protection (OACP) takes enforcement action against an airline or ticket agent, and efforts to settle the matter through a consent order are unsuccessful. Consistent with existing law, this final rule clarifies that DOT may bring a civil action in a United States District Court.

DATES: Effective July 17, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Gorman, Kimberly Graber, or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342, 202–366–7152 (fax); *robert.gorman@dot.gov; kimberly.graber@dot.gov; blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Unfair and Deceptive Practices Statute and the Department's Related Rulemakings

The Department's authority to regulate unfair and deceptive practices in air transportation or the sale of air transportation is found at 49 U.S.C. 41712 (section 41712) in conjunction with its rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations. Section 41712 gives the Department the authority to investigate and decide whether an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. Under section 41712, after notice and an opportunity for a hearing, the Department has the authority to issue orders to stop an unfair or deceptive practice.

On December 20, 2020, the Department published in the **Federal Register** a final rule titled ''Defining Unfair or Deceptive Practices'' (UDP Final Rule).[1] The UDP Final Rule was intended to provide regulated entities and other stakeholders with greater clarity about the Department's enforcement and regulatory processes with respect to aviation consumer protection actions under section 41712.[2] It sets forth procedures that the Department uses when conducting enforcement actions and rulemakings under the authority of section 41712.[3]

On February 2, 2022, the Department amended its regulations regarding the hearing procedures that are available when DOT proposes a discretionary aviation consumer protection rulemaking declaring a practice to be unfair or deceptive.[4] On August 29, 2022, the Department issued an interpretive rulemaking (guidance) to inform the public and regulated entities about DOT's interpretation of the terms unfair, deceptive, and practices as it relates to its statutory authority to prohibit unfair or deceptive practices.[5]

II. Need for Clarification of Formal Enforcement Procedures

In the UDP Final Rule, the Department stated that when there are reasonable grounds to believe that an airline or ticket agent has violated Section 41712, and efforts to settle the matter have failed, then OACP may issue a notice instituting an enforcement proceeding before a DOT administrative law judge (ALJ).[6] However, the ALJ complaint process is not the only avenue available for taking formal enforcement action. Pursuant to existing law, DOT also has the option of filing a complaint in a United States District Court to enforce Section 41712, or any regulation, requirement, or order issued under the authority of Section 41712.[7] In the UDP Final Rule codifying the Department's formal enforcement procedures, the option to file a complaint in United States District Court was not listed. This final rule is intended to clarify and provide a more complete statement of formal enforcement procedures available under existing DOT authority.

III. Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 553) provides that when an agency, for good cause, finds that notice and public comment are impractical, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment (5 U.S.C. 553(b)(B)). The Department has determined that there is good cause to issue this final rule without notice and an opportunity for public comment because such notice and comment would be unnecessary. Since this final rule only restates and clarifies existing legal authorities without imposing any new requirements, public comment is unnecessary.

Rulemaking Analyses and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866 (''Regulatory Planning and Review''). Accordingly, OMB has not reviewed it. The Department does not anticipate that this rulemaking, which amends the Department's internal procedures, will have an economic impact on regulated entities. E.O. 12866, as amended by E.O. 14094 (''Modernizing Regulatory Review''), requires that agencies ''should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' The Department does not anticipate that this action will result in any costs because it is simply a clarification of existing legal authorities and, therefore, is not expected to change the behavior of regulated parties or how they interact with the Department. The primary benefit of this rulemaking is providing clarification regarding the legal authorities applicable to the Department's enforcement practices.

B. Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the analytical provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply.

[1] 85 FR 78707 (December 7, 2020); RIN 2105–AE72; Docket DOT–OST–2019–0182.

[2] 85 FR 78707.

[3] 14 CFR 399.79.

[4] 87 FR 5655 (February 2, 2022); RIN 2105–AF03; Docket DOT–OST–2021–0142.

[5] 87 FR 52677 (August 29, 2022); RIN 2105–ZA18; Docket DOT–OST–2019–0182.

[6] 14 CFR 399.79(f).

[7] 49 U.S.C. 46106; 49 U.S.C. 46107.

C. Executive Order 13132 (Federalism)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (August 4, 1999), and DOT has determined that this action will not have a substantial direct effect or federalism implications on the States and would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Therefore, consultation with the States is not necessary.

D. Executive Order 13175 (Tribal Consultation)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this final rule.

F. National Environmental Policy Act

The agency has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts'' (44 FR 56420, October 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' This rulemaking relates to the Department's authority to pursue a complaint in United States District Court on consumer protection matters. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 14 CFR Part 399

Consumer Protection, Policies, Rulemaking proceedings, Enforcement, Unfair or deceptive practices.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR part 399 as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 40113(a), 41712, 46106, and 46107.

■ 2. Amend § 399.79 by revising the paragraph (f) heading and by adding paragraph (g) to read as follows:

§ 399.79 Policies relating to unfair and deceptive practices.

* * * * *

(f) *Formal enforcement proceedings before an administrative law judge.* * * *

(g) *Formal enforcement proceedings in U.S. District Court.* Alternatively, when there are reasonable grounds to believe that an airline or ticket agent has violated 49 U.S.C. 41712 and efforts to settle the matter have failed, the Department of Transportation may bring a civil action in a district court of the United States pursuant to 49 U.S.C. 46106 or 46107.

Issued this 12th day of June, 2023, in Washington, DC, under authority delegated in 49 CFR 1.27(n).

John E. Putnam,

General Counsel.

[FR Doc. 2023–12845 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

15 CFR Part 7

[Docket No. 230125–0025]

RIN 0605–AA62

Securing the Information and Communications Technology and Services Supply Chain; Connected Software Applications

AGENCY: U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: On November 26, 2021, the Department of Commerce (Department) published a Notice of Proposed Rulemaking (NPRM) proposing to amend Department regulations, ''Securing the Information and Communications Technology Supply Chain,'' to implement provisions of Executive Order 14034, ''Protecting Americans' Sensitive Data from Foreign Adversaries'' (E.O. 14034). This final rule responds to, and adopts changes based on, the comments received to the NPRM. Consistent with the factors enumerated in E.O. 14034, the final rule amends the Securing the Information and Communications Technology Supply Chain regulations to provide additional criteria that the Secretary may consider when determining whether ICTS transactions involving connected software applications present undue or unacceptable risks (as those terms are defined in the regulations). The final rule also adds definitions for ''end-point computing devices'' and ''via the internet'' for the purposes of this rule to clarify the definition of connected software applications provided in E.O. 14034.

DATES: This rule is effective July 17, 2023.

FOR FURTHER INFORMATION CONTACT: Katelyn Christ, U.S. Department of Commerce, telephone: 202–482–3506, email: *Katelyn.Christ@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 2021, the Department published an interim final rule (the Supply Chain Rule) to implement Executive Order 13873, ''Securing the Information and Communications Technology and Services Supply Chain'' (E.O. 13873). The Supply Chain Rule established the Department regulations at title 15 of the Code of Federal Regulations (CFR) part 7, ''Securing the Information and Communications Technology and Services Supply Chain'' (part 7). These regulations set out procedures by which the Secretary of Commerce (Secretary), in consultation

with the appropriate heads of other executive departments and agencies, reviews transactions involving information and communications technology and services (ICTS) that is designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries to determine whether those transactions present certain undue or unacceptable risks to the United States or U.S. persons. ICTS transactions include, as noted in 15 CFR 7.2, among other things, ''any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service, including ongoing activities, such as managed services, data transmission, software updates, repairs, or the platforming or data hosting of applications for consumer download.''

On November 26, 2021, the Department published an NPRM seeking comments on amendments to Part 7 incorporating provisions of E.O. 14034 (86 FR 67379). Specifically, consistent with E.O. 14034, the NPRM proposed to add ''connected software applications'' to the range of ICTS transactions the Department can review under the regulations in Part 7. The Department proposed this addition given that the increased use of such connected software applications continues to potentially threaten the national security, foreign policy, and economy of the United States. E.O. 14034 also listed criteria that the Department should consider when evaluating the risks of any ICTS transaction involving ''connected software applications.''

Specifically, the NPRM proposed to incorporate the term ''connected software applications'' into 15 CFR 7.1, 7.2, and 7.3 to address the purpose, definition, and scope of covered ICTS transactions. The Department sought public comment on whether it should adjust the definition of ''connected software applications'' from the definition in E.O. 14034, or whether the E.O.'s definition sufficiently identifies this category of ICTS transaction.

Drawing from the list of criteria in E.O. 14034 identifying potential indicators of risk the Secretary should consider when assessing whether an ICTS transaction involving connected software applications poses an undue or unacceptable risk, the Department proposed to incorporate these criteria into § 7.103 and requested comments on the usefulness and application of this criteria.

The public comment period for the NPRM initially ended on December 27, 2021, but the Department extended the comment period, at the request of several commenters, to January 11, 2022. The Department received ten comment letters on the NPRM, containing many individual comments. These comments and the Department's responses are addressed below.

II. Response to Comments

Section 7.1 Purpose

The Department proposed adding the phrase ''connected software applications'' to 15 CFR 7.1. One commenter supported this addition and suggested that the Department continue to identify other subcategories of ICTS transactions to narrow the scope of ICTS transactions subject to Departmental review. Because the Department interprets E.O. 14034's purpose as only clarifying that connected software applications fall within the existing national emergency regarding the ICTS supply chain, the Department is not identifying other subcategories at this time. The Department has, though, added terms to this provision to clarify that the rule is intended to cover transactions involving ICTS, including connected software applications. In addition, the Department has clarified the types of activities related to connected software applications that the Department believes are important to be covered by the rule. Specifically, the ''operation, management, maintenance, or service'' of connected software applications by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries could present risks and are therefore covered by the rule.

Additionally, the Department notes that the rule's purpose statement at 15 CFR 7.1 specifically provides that the Secretary may evaluate individual as well as classes of ICTS transactions. Individual transaction reviews are and will remain an important aspect of the Department's authorities, but such reviews may indicate or uncover concerns about more than the single transaction being reviewed, and the Department reiterates that it has the authority to define and review classes of ICTS transactions as well.

Section 7.2 Definitions

In the NPRM, the Department sought comments on whether the definition of ''connected software applications'' supplied by E.O. 14034 was sufficient to fully identify this category of ICTS. Commenters generally supported the definition as written. One commenter suggested that the Department delete the word ''process'' in the definition, reasoning that because the software applications at issue in the rule were ''connected,'' the definition need only cover software applications that can ''collect or transmit data.'' The Department will not change the definition. The word ''process'' recognizes that there may be national security concerns with connected software applications that process, as well as that collect or transmit, data.

The same commenter felt that the definition's reference to the collection or transmission of data via ''the internet'' was too restrictive and instead proposed ''communication network'' as a replacement. The Department will not revise the definition presented in the E.O. However, to provide clarification, this final rule defines ''via the internet,'' for the purposes of this final rule, to mean communicating ''using internet protocols to transmit data including, but not limited to, transmissions by cable, telephone line, wireless, satellite or other means.''

One commenter wrote that while the reference to ''end-point computing device'' in the definition was too narrow, ''end-point device'' should be used rather than ''end-to-end technology,'' and that the Department should include additional devices in the definition. This commenter was concerned that these terms would narrow the definition of connected software applications such that it would not capture devices that are the source and destination point of data in addition to devices that forward data. Other commenters noted that the term ''end-point computing device'' might not be technologically accurate, and recommended using another term, such as ''end-to-end'' to describe what the Department will be regulating.

The Department shares the concerns about an unduly narrow definition that may be technologically inaccurate, and therefore, to avoid confusion and technical inaccuracies, this final rule adds a definition for the term ''end-point computing device'' to clarify that such device is one that can receive or transmit data and includes as an integral functionality the ability to collect or transmit data via the internet, as that term is defined for the purposes of this final rule.

Section 7.3 Scope of Covered Transactions

E.O. 13783 granted the Department authority to review individual as well as certain classes of ICTS transactions, and regulations issued pursuant to that E.O. clarified these classes of transactions as including those involving software, including desktop applications, mobile applications, gaming applications, and

web-based applications, designed primarily for connecting with and communicating via the internet that is in use by greater than one million U.S. persons at any point over the twelve months preceding an ICTS transaction. To incorporate the types of software applications that are the subject of E.O. 14034, the Department proposed to add ''connected software applications'' to this category. One commenter suggested decreasing the user requirements for the software from one million to 250,000 U.S. persons. Though the Department at this time is not considering revisions to the provisions of § 7.3 that contain the user requirement, the Department takes this comment under consideration for potential future revisions to 15 CFR part 7 as the Department gains experience with ICTS involving connected software applications.

Section 7.103 Initial Review of ICTS Transactions

In the NPRM, the Department sought comments on the additions to Part 7 of the criteria laid out in E.O. 14034 regarding how the Department evaluates ICTS transactions involving connected software applications. Specifically, the Department requested comments on whether to modify or add criteria to assist the Department's review of ICTS transactions with connected software applications. The Department also sought input on whether the Department should use the E.O. 14034 criteria in its review of all ICTS transactions, rather than just those related to connected software applications.

Many commenters supported applying these criteria more broadly to all ICTS transactions. One of these commenters argued that incorporating these criteria into the Department's review of all ICTS transactions would streamline the regulation because ICTS transactions involving connected software applications are a subset of other ICTS transactions. Another commenter disagreed and suggested that the Department should not incorporate these criteria into its review of all ICTS transactions because different standards of review for different types of transactions are necessary given the diversity and complexity of the ICTS supply chain.

The Department has determined that not all of the criteria in E.O. 14034 are applicable to transactions not involving connected software applications. For example, the criterion regarding third-party auditing of connected software applications may not be appropriate to use in evaluating other ICTS transactions or classes of transactions because auditing may not be applicable in those instances. Similarly, the number of users might not be an appropriate factor for evaluating ICTS transactions that have low numbers of users but that service critical infrastructure or that might have significant risks if misused. Additionally, amending the criteria that apply to all ICTS transactions is beyond the scope of this rulemaking as contemplated in E.O. 14034. Therefore, the Department has decided to maintain the approach in the proposed rule and limit the application of these eight new criteria to only those ICTS transactions involving connected software applications.

In the NPRM, the Department also requested comments on additional criteria beyond the proposed eight criteria for evaluating ICTS transactions involving connected software applications. For example, the Department asked whether the software's ability to execute embedded out-going network calls or web server references, regardless of the ownership, control, or management of the software, should be a criterion. Though the Department received one comment in support of this position, other comments were concerned about the potential that this addition would unintentionally capture ICTS transactions, such as those involving call center software and Voice Over internet Protocol solutions from domestic vendors. These commenters felt the addition of such a criterion would be unduly broad and disagreed with adding it to the final rule. Commerce agrees with these commenters and is declining at this time to add the criterion. However, as the Department gains experience with ICTS transactions involving connected software applications, the Department may add criteria to these provisions in the future.

Having reviewed these comments, the Department will revise § 7.103 to add the eight criteria enumerated in E.O. 14034, as proposed in the NPRM. The Secretary will use these eight criteria to determine whether ICTS transactions involving connected software applications pose undue or unacceptable risks, as defined in Part 7. In making such decisions, the Secretary will evaluate both the criteria in § 7.103(c), which apply to all ICTS transactions, and the new criteria, which apply specifically to ICTS transactions involving connected software applications. This final rule redesignates current paragraph 7.103(d) as 7.103(e) and adds new paragraph 7.103(d) to include the eight criteria applicable to connected software applications.

Criteria

Below, the Department addresses comments received on each of the eight new criteria taken from E.O. 14034:

(1) Ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities.

The Department requested comments on the definition of ''ownership, control, or management'' as it pertains to the criteria to review connected software applications. Specifically, the Department sought comments on whether this phrase includes or should include both continuous and sporadic ''ownership, control, or management.'' One commenter stated that the scope of the Department's review need not include an evaluation of parties with sporadic access to the software, including, for example, those with access to deploy updates or patches. The commenter believed the Department's scrutiny of such parties could potentially disrupt the frequency of security updates and patches to software applications. The Department understands this concern and does not want to disrupt necessary security patches and updates. However, the Department is also concerned about the risks, especially to critical infrastructure, posed by sporadic ownership of software applications by malicious cyber actors.

Overall, the Department believes that software security patches or updates for individual consumers typically would not pose risks that rise to the level of requiring the Department's scrutiny. On the other hand, the potential risks to critical infrastructure presented by sporadic access to connected software applications could result in significant harms to the country's infrastructure. The Department is concerned that specifically excluding transactions involving sporadic access to software would create a loophole that would allow exactly the types of malicious cyber acts the rule is meant to prevent. Accordingly, although the Department declines to implement the commenter's suggestion to narrow the definition of ''ownership, control, or management'' under the rule, the Department notes that it is not the Department's intent to scrutinize every ICTS transaction involving temporary or sporadic access to software to, for example, provide security updates, but rather to be more targeted in its reviews to address the types of risks identified in E.O. 13873.

(2) Use of the connected software application to conduct surveillance that

enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data.

The Department did not receive comments to this criterion and adds it to part 7 as proposed.

(3) Ownership, control, or management of connected software applications by persons subject to coercion or cooption by a foreign adversary.

One commenter suggested that the Department further establish how a person could be found ''subject to coercion or cooption,'' and felt that it might prove difficult for one party to an ICTS transaction to identify the likelihood that the other party is or has been coerced or coopted by a foreign adversary. The Department agrees and, as a result, will align the risk calculation in this criterion with that used in E.O. 13873. Instead of ''subject to coercion or cooption by a foreign adversary,'' the criterion will read ''subject to the jurisdiction or direction of a foreign adversary.'' This language strikes the balance between the Department's need to be flexible to investigate future transactions and transacting parties' need for appropriate notice. Furthermore, because the Department interprets E.O. 14034 as clarifying that connected software applications fall within the existing national emergency regarding the ICTS supply chain, this change ensures the scope of the inquiry into ICTS transactions related to connected software applications aligns with the scope and language of E.O. 13873.

(4) Ownership, control, or management of connected software applications by persons involved in malicious cyber activities.

The Department did not receive comments on this criterion and will incorporate it as proposed.

(5) A lack of thorough and reliable third-party auditing of connected software applications.

Many commenters wrote that the auditing envisioned in this final rule should be a continuous process throughout the development and deployment life cycle of the connected software application, rather than a one-time audit. One commenter suggested that the parties developing the application and the parties implementing the application should be subject to audits. Another commenter raised security and privacy concerns regarding this criterion, arguing that granting access to this data to third-party auditors could introduce additional security and privacy concerns. Although the Department agrees that increased access to the data increases risks that the data could be exploited or otherwise misused, the Department has determined that the benefits to parties of being able to audit and secure their own ICTS transactions outweighs the incremental risk increase that results from reliable third-party auditors accessing a connected software application.

The Department also received a number of comments on the proposed definitions of ''reliable third-party'' and ''independently verifiable measures.'' One commenter suggested that the final rule should explicitly reference established standards or frameworks that parties could use when auditing this data, such as the standards and frameworks in SOC 2 (a compliance standard for service organizations developed by the American Institute of Certified Public Accountants), ISO/IEC 207001 (a set of standards on information security management published by the International Organization for Standardization and the International Electrotechnical Commission), IEC–62443 (a set of standards adopted by the International Electrotechnical Commission to secure industrial automation and control systems), or FedRamp (the U.S. Government's Federal Risk and Authorization Management Program).

The Department has decided to not reference specific standards or frameworks at this time, though the Department encourages the use of recognized standards by third-party auditors. The Department, however, does not want to mandate one type of standard, to allow parties flexibility to adopt an approach appropriate for their company. Therefore, the Department will determine whether a connected software application transaction has undergone reliable third-party auditing on a case-by-case basis to allow parties to these transactions flexibility to account for technological advances in cybersecurity.

One commenter suggested that the Department clarify how each criterion would apply. To address this, the final rule deletes the words ''a lack of'' so the criterion now reads ''whether there is regular, thorough, and reliable third-party auditing.''

(6) The scope and sensitivity of the data collected.

One commenter suggested adding references to established guidelines such as NIST Special Publication 800–122 (Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)) and guidelines such as ISO/IEC27018:2019 (a publication by the International Organization for Standardization describing a code of practice for protection of PII) in this criterion to clarify what the Department deems sensitive data. Upon consideration of the comment, the Department decided to leave the proposed language unchanged. To promote flexibility in accounting for changes in the type and sensitivity of the data collected by connected software applications, the Department declines to refer to specific published guidelines, which might soon become outdated or might not fully characterize the sensitivity of data. We also note that ''sensitive personal data'' is defined in 15 CFR 7.2.

(7) The number and sensitivity of the users of the connected software application.

One commenter wrote that the Department should consider not just active users of a connected software application, but also stored or past users who still may have sensitive data on the application. The Department agrees with this comment and is clarifying that the Department will consider not just active users of a connected software application but also number and sensitivity of the users and the data collected and/or stored by the connected software application in this criterion. Adding this language furthers the objective of this rulemaking to protect all sensitive data on the connected software application, regardless of whether the user is active.

(8) The extent to which identified risks have been or can be addressed by independently verifiable measures.

The Department received a comment on this criterion suggesting that identified vulnerabilities be given a specified period of time to remediate and promote timely mitigation. Because different measures will require different timeframes for mitigation to be effective, the Department believes that specifying a remediation timeline in the regulatory text will not be productive for the implementation and enforcement of this rule. Therefore, the Department has decided not to incorporate this commenter's suggestion into the final rule.

III. Comprehensive List of Changes From the Proposed Rule

In response to the comments discussed above, the Department is editing the proposed language in § 7.103(d)(8) to clarify that the Secretary will be evaluating the extent to which identified risks have been or can be ''mitigated,'' rather than ''addressed.'' Specifically, the Department decided to delete ''addressed by independently verifiable'' and replace with ''mitigated

using measures that can be verified by independent third parties,'' which is more precise.

As noted above, the Department added definitions of ''via the internet'' and ''end-point computing device'' to clarify those terms and address commenters' concerns about potential technological inaccuracies.

The Department also amended the language of the criteria, based on public comments. In criterion 3, regarding ownership and control, the Department changed the phrase ''subject to coercion or cooption by a foreign adversary,'' to ''subject to the jurisdiction or direction of a foreign adversary'' to clarify the criterion. Additionally, the Department removed from the criterion on third-party auditors the words ''lack of'' and replaced that term with the phrase ''whether there is regular, thorough, and reliable third-party auditing'' in order to clarify the Department's concern regarding such auditing. Finally, the Department added to criterion 7 regarding the number and sensitivity of users the term ''with access to'' in order to clarify that the criterion applies to any users that have access to the application.

Classification

A. Executive Order 12866 (Regulatory Policies and Procedures)

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is significant.

B. Regulatory Flexibility Analysis

In the proposed rule, the Chief Counsel for Regulation in the Department of Commerce certified that the rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is contained in the proposed rule and is not repeated here. We received no comments from the public on this certification, and we have no new information about this rule's potential impact on small entities. Accordingly, a final regulatory flexibility analysis was not required, and none was prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number. This proposed rule does not contain a collection of information requirement subject to review and approval by OMB under the PRA.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The Department has analyzed this proposed rule under Executive Order 13175 and has determined that the action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law.

E. National Environmental Policy Act

The Department has reviewed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). It has determined that this proposed rule would not have a significant impact on the quality of the human environment.

List of Subjects in 15 CFR Part 7

Administrative practice and procedure, Business and industry, Communications, Computer technology, Critical infrastructure, Executive orders, Foreign persons, Investigations, National security, Penalties, Technology, Telecommunications.

For reasons stated in the preamble, the Department of Commerce amends 15 CFR part 7 as follows:

PART 7—SECURING THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AND SERVICES SUPPLY CHAIN

■ 1. The authority citation for part 7 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.;* 50 U.S.C. 1601 *et seq.;* E.O. 13873, 84 FR 22689; E.O. 14034, 86 FR 31423

■ 2. Revise § 7.1 to read as follows:

§ 7.1 Purpose.

(a) This part sets forth the procedures by which the Secretary may:

(1) Determine whether any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service, including but not limited to connected software applications, (ICTS Transaction) that has been designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries poses certain undue or unacceptable risks as identified in the Executive Order. For purposes of these regulations, the Secretary will consider ICTS to be designed, developed, manufactured, or supplied by a person owned by, controlled by, or subject to the jurisdiction of a foreign adversary where such a person operates, manages, maintains, or services the ICTS;

(2) Issue a determination to prohibit an ICTS Transaction;

(3) Direct the timing and manner of the cessation of the ICTS Transaction;

(4) Consider factors that may mitigate the risks posed by the ICTS Transaction.

(b) The Secretary will evaluate ICTS Transactions under this rule, which include, but are not limited to, classes of transactions, on a case-by-case basis. The Secretary, in consultation with appropriate agency heads specified in Executive Order 13873 and other relevant governmental bodies, as appropriate, shall make an initial determination as to whether to prohibit a given ICTS Transaction or propose mitigation measures, by which the ICTS Transaction may be permitted. Parties may submit information in response to the initial determination, including a response to the initial determination and any supporting materials and/or proposed measures to remediate or mitigate the risks identified in the initial determination as posed by the ICTS Transaction at issue. Upon consideration of the parties' submissions, the Secretary will issue a final determination prohibiting the transaction, not prohibiting the transaction, or permitting the transaction subject to the adoption of measures determined by the Secretary to sufficiently mitigate the risks associated with the ICTS Transaction. The Secretary shall also engage in coordination and information sharing, as appropriate, with international partners on the application of this part.

■ 3. In § 7.2, add in alphabetical order definitions for ''Connected software application'' and ''End-point computing device'', revise the definition of ''Information and communications technology or services or ICTS'' and add in alphabetical order a definition for ''Via the internet'' to read as follows:

§ 7.2 Definitions.

* * * * *

Connected software application means software, a software program, or a group of software programs, that is designed to be used on an end-point computing device and includes as an integral functionality, the ability to collect, process, or transmit data via the internet.

* * * * *

End-point computing device means a device that can receive or transmit data

and includes as an integral functionality the ability to collect or transmit data via the internet.

* * * * *

Information and communications technology or services or ICTS means any hardware, software, including connected software applications, or other product or service, including cloud-computing services, primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means (including electromagnetic, magnetic, and photonic), including through transmission, storage, or display.

* * * * *

Via the internet means using internet protocols to transmit data, including, but not limited to, transmissions by cable, telephone lines, wireless methods, satellites, or other means.

■ 4. In § 7.3:

■ a. Revise paragraph (a)(4)(v) introductory text;

■ b. Remove the word ''and'' in paragraph (a)(4)(v)(C);

■ c. Remove the word ''or'' and add the word ''and'' in its place in paragraph (a)(4)(v)(D); and

■ d. Add paragraph (a)(4)(v)(E).

The revision and addition read as follows:

§ 7.3 Scope of covered ICTS Transactions.

(a) * * *

(4) * * *

(v) Software designed primarily to enable connecting with and communicating via the internet, which is accessible through cable, telephone line, wireless, or satellite or other means, that is in use by greater than one million U.S. persons at any point over the twelve (12) months preceding an ICTS Transaction, including:

* * * * *

(E) Connected software applications; or

* * * * *

■ 5. In § 7.103, redesignate paragraph (d) as paragraph (e) and add new paragraph (d) to read as follows:

§ 7.103 Initial review of ICTS Transactions.

* * * * *

(d) For ICTS Transactions involving connected software applications that are accepted for review, the Secretary's assessment of whether the ICTS Transaction poses an undue or unacceptable risk may be determined by evaluating the criteria in paragraph (c) as well as the following additional criteria:

(1) Ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities;

(2) Use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data;

(3) Ownership, control, or management of connected software applications by persons subject to the jurisdiction or direction of a foreign adversary;

(4) Ownership, control, or management of connected software applications by persons involved in malicious cyber activities;

(5) Whether there is regular, thorough, and reliable third-party auditing of connected software applications;

(6) The scope and sensitivity of the data collected;

(7) The number and sensitivity of the users with access to the connected software application; and

(8) The extent to which identified risks have been or can be mitigated using measures that can be verified by independent third parties.

* * * * *

Alan F. Estevez,

Under Secretary of Commerce for Industry and Security, U.S. Department of Commerce.

[FR Doc. 2023–12925 Filed 6–15–23; 4:15 pm]

BILLING CODE 3510–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0144]

RIN 1625–AA00

Safety Zone; Glorietta Bay, Coronado, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the U.S. within an 800-foot radius of the City of Coronado's 4th of July fireworks display at Stingray Point. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector San Diego.

DATES: This rule is effective from 8 p.m. through 10 p.m. on July 4, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0144 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Shera Kim, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@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, as we did not receive final details for this event until April 24, 2023. The Coast Guard must establish this safety zone by July 4, 2023, and lacks sufficient time to provide a reasonable comment period and 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 implementation of this rulemaking is impracticable and contrary to public interest because action is needed to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display on July 4, 2023.

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 San Diego (COTP) has determined that potential hazards associated with the fireworks display on July 4, 2023, will be a safety

concern for anyone within an 800-foot radius of the display location. This rule is needed 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 8 p.m. until 10 p.m. on July 4, 2023. The safety zone will cover all navigable waters within an 800-foot radius of the fireworks display at Stingray Point, Coronado, CA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will only impact a small, designated area of Glorietta Bay for two hours in the evening. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will 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.

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 2 hours that will prohibit entry within an 800-foot radius of a fireworks display. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

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.T11–130 to read as follows:

§ 165.T11–130 Safety Zone; Glorietta Bay, Coronado, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of Glorietta Bay, from surface to bottom, within an 800-foot radius centered at the following coordinates: 32°40′45.61″ N, 117°10′1.43″ W.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the 24-hour Command Center at (619) 278–7033 or via VHF channel 16.

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8 p.m. to 10 p.m. on July 4, 2023.

Dated: June 6, 2023.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0492]

Safety Zone; Lower Mississippi River, Mile Markers 94 to 97 Above Head of Passes, New Orleans, LA—Essence Festival Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Essence Festival fireworks display located on the navigable waters of the Lower Mississippi River between mile marker (MM) 94.5 and MM 95.5. Our regulation for Safety Zones; Lower Mississippi River, mile markers 94 to 97 above Head of Passes, New Orleans, LA, in 33 CFR 165.845, identifies the regulated area for this event. This action is necessary to provide for the safety of life on these navigable waterways during this event. During the enforcement periods, as reflected in § 165.845(c), entry into this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 165.845 will be enforced from 9:30 p.m. until 10:30 p.m. on July 1, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone in 33 CFR 165.845 for the Essence Festival fireworks display event. This safety zone will be enforced from 9:30 p.m. through 10:30 p.m. on July 1, 2023. This action is being taken to provide for the safety of life on these navigable waterways during this event. Our regulation for Safety Zones; Lower Mississippi River, mile markers 94 to 97 above Head of Passes, New Orleans, LA, in 33 CFR 165.845(a), specifies the location of the regulated area on the Lower Mississippi River, between MM 94.5 and MM 95.5. During the enforcement period, as reflected in § 165.845(c), entry into this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: June 12, 2023.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2023–12860 Filed 6–15–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 674, 682, and 685

Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program)

AGENCY: Office of Postsecondary Education, Department of Education (the Department).

ACTION: Updated waivers and modifications of statutory and regulatory provisions.

SUMMARY: The Secretary is issuing updated waivers and modifications of statutory and regulatory provisions governing the Federal student financial aid programs under the authority of the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act). The waivers and modifications in this document apply only to the national emergency declared in regard to the coronavirus disease 2019 (COVID–19) pandemic. With the termination of the COVID–19 national emergency, effective April 10, 2023, each waiver and modification identified in this document expires at the end of the award year that ends on June 30, 2023, unless otherwise noted in this document or unless it is otherwise extended by the Secretary in a document published in the **Federal Register**. HEROES Act waivers and modifications included in earlier documents sunset in accordance with the timeframes provided in those documents.

DATES: Effective June 16, 2023.

FOR FURTHER INFORMATION CONTACT: Vanessa Freeman, by telephone: (202) 987–1336 or by email: *Vanessa.Freeman@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On December 11, 2020, the Secretary published a document in the **Federal**

Register announcing waivers and modifications of statutory and regulatory requirements governing the Federal student financial aid programs under the authority of the HEROES Act (20 U.S.C. 1098bb(a)(2)) in response to the COVID–19 national emergency. (85 FR 79856). On January 19, 2021, the Secretary published a notice correcting the date through which some of the waivers and modifications included in the prior document were extended. (86 FR 5008). The Secretary is issuing this document to provide updated waivers and modifications under the HEROES Act and to provide notice of their expiration date in connection with the termination of the COVID–19 national emergency.

The HEROES Act authorizes the Secretary to waive or modify any statutory or regulatory provision applicable to the Federal student financial assistance programs under title IV of the Higher Education Act of 1965, as amended (HEA) 20 U.S.C. 1070 *et seq.,* as the Secretary deems necessary in connection with a war or other military operation or national emergency. Such waivers or modifications may be provided to affected individuals who are recipients of Federal student financial assistance under title IV of the HEA, institutions of higher education (IHEs), eligible lenders, guaranty agencies (GAs), and other entities participating in the Federal student financial assistance programs under title IV of the HEA that are located in areas declared disaster areas by any Federal, State, or local official in connection with a national emergency, or whose operations are significantly affected by such a disaster. These entities may be granted temporary relief from requirements that are rendered infeasible or unreasonable by a national emergency, including due diligence requirements and reporting deadlines.

Under 20 U.S.C. 1098bb(b)(1), section 437 of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (5 U.S.C. 553) do not apply to the contents of this document.

On March 13, 2020, by Proclamation 9994, the President declared a national emergency concerning the COVID–19 pandemic, which was extended on February 24, 2021 (86 FR 11599), and February 18, 2022 (87 FR 10289). On February 10, 2023, President Biden announced his intention to terminate the COVID–19 national emergency. (88 FR 9385). On April 10, 2023, the President signed H.J. Res. 7 into law, which terminates this national emergency. The waivers and modifications provided in this document apply only to the declared COVID–19 national emergency. Prior waivers granted by the Secretary under the HEROES Act remain in effect for affected individuals, as defined in those waivers.

The terms ''institution of higher education'' and ''institution of higher education for purposes of title IV programs'' (IHE) used in this document are defined in sections 101 and 102 of the HEA.

In 20 U.S.C. 1098ee, the HEROES Act provides definitions critical to determining whether a person is an ''affected individual'' under the Act and, if so, which waivers and modifications apply to the affected individual. However, because these definitions do not include the specific circumstances under which these waivers and modifications are provided under the HEROES Act, we provide these definitions below.

For purposes of this document, ''affected individual'' means a student enrolled in an institution of higher education. An ''affected borrower'' is one whose Federal student loans provided under title IV are in repayment. These definitions are in keeping with 20 U.S.C. 1098bb(a)(2), which establishes that statutory and regulatory provisions can be waived or modified ''as necessary to ensure that recipients of student financial assistance under title IV of the HEA who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals.'' The statute also authorizes the Secretary to minimize administrative requirements placed on affected individuals who are recipients of student financial assistance to the extent possible without impairing the integrity of the student financial assistance programs, to ease the burden on such individuals and avoid inadvertent technical violations or defaults.

In accordance with the HEROES Act and the national emergency that was declared by the President on March 13, 2020, and subsequently extended on February 24, 2021, and February 18, 2022, the Secretary is publishing the following waivers and modifications of statutory and regulatory provisions applicable to the student assistance general provisions and student financial assistance programs under title IV of the HEA that the Secretary deems necessary in connection with the COVID–19 national emergency. Each provision is discussed further below:

- IHEs are permitted to waive the requirement for a parental signature in the event that it cannot be obtained, or to accept a document signed and photographed and sent by email or text message attachment, on any verification documentation required to validate a student's title IV eligibility.
- Borrowers with loans under the Federal Perkins Loan Program whose loans have been placed in a forbearance status on or after March 13, 2020, will have that period excluded from the 3-year cumulative limit on forbearances.
- Borrowers with Federal Perkins Loans who are employed full-time in specified occupations, such as teaching or law enforcement, may receive loan cancellation for every year of service if their service is uninterrupted. Under this waiver, borrowers working toward service cancellation of such loans are exempted from the requirement that performing service must be uninterrupted or consecutive to qualify for loan cancellation, if qualifying service was disrupted due to the COVID–19 national emergency. Institutions are required to obtain and retain a written attestation from the borrower (which may be by email or text message) requesting cancellation and describing how the qualifying service was interrupted as a result of the COVID–19 national emergency.

Appropriate explanations for the interruption of service include, but are not limited to, the closure of the facility where the borrower was working or decreased work hours as a result of the COVID–19 national emergency. Information provided by the borrower (that in the judgment of the IHE is reliable) is acceptable for documentation purposes.

- Borrowers who have received a total and permanent disability discharge are not required to certify their annual earnings during the 3-year post-discharge monitoring period.
- Borrowers who were in an in-school status or an in-school deferment status on or after March 13, 2020, for Direct Loan repayment purposes remain in such status when the borrower's attendance was interrupted by the COVID–19 national emergency, unless the borrower's institution ceased operations on or after March 13, 2020, and does not expect to reopen for more than 90 days, or the borrower officially withdraws or otherwise indicates their intent not to resume attendance at least half-time at the institution.
- Borrowers participating in income-driven repayment (IDR) plans under §§ 685.209(a)(5)(i) and 685.221(e)(1) are not required to provide documentation that enables the annual calculation of the borrower's payment amount for each year the borrower remains on the plan

and will be notified of a new recertification date in advance of the deadline on which such documentation is required.

• The Secretary approved and announced the Fresh Start initiative on April 6, 2022.[1] During the COVID–19 national emergency many borrowers lost their jobs and fell behind on student loans payments. The Fresh Start Initiative will enable approximately 7.5 million borrowers with defaulted Federal student loans to return to repayment without any past due balance, just like non-defaulted borrowers. These borrowers are disproportionately likely to be first generation college students, have received a Federal Pell Grant, and qualify for low monthly payments under affordable IDR plans.

The Fresh Start initiative eliminates the negative effects on borrowers who defaulted on student loans made under the William D. Ford Federal Direct Loan Program prior to March 13, 2020 (prior to the payment pause); borrowers with Federal Family Education Loan (FFEL) Program loans that defaulted prior to March 13, 2020, that are held by the Department and GAs; and borrowers with defaulted Department-held Perkins loans. Borrowers who take advantage of Fresh Start will have renewed eligibility for additional title IV aid (without going through loan rehabilitation or consolidation) and would have a pathway to return to repayment on their defaulted loans without an overdue balance. Borrowers who take advantage of the opportunity provided by Fresh Start will also regain access to the full list of repayment options for loans not in default, including the opportunity to enter into an IDR repayment plan allowing a more affordable monthly payment. In addition, borrowers who attempted to rehabilitate their defaulted loan during the payment pause will regain access to the one-time loan rehabilitation opportunity, which provides credit reporting benefits and protects borrowers from involuntary debt collection.

• The Department waives the requirement that GAs meet minimum reserve levels in their Federal Funds for Federal fiscal years at least partially overlapping with the Fresh Start Initiative.

• The Department waives the requirement that GAs remit to the Secretary excess proceeds from the consolidation of defaulted loans that exceed 45 percent of the agency's total collections during Federal fiscal years at least partially overlapping with the Fresh Start Initiative.

• A GA will not have its reinsurance rate reduced if the total of reinsurance claims paid by the Secretary reaches specified thresholds prescribed in regulations for Federal fiscal years that partially overlap with the Fresh Start Initiative.

• The Department modifies the formula for the Account Maintenance Fee received by GAs so that a GA's revenue will not be significantly decreased due to the pause on collections of FFEL loans in default held by a GA. Modifications to the formula will continue through the fiscal year that partially overlaps with the Fresh Start Initiative.

• Perkins Loan and Health Education Assistance Loan (HEAL) borrowers whose loans are held by the Department are afforded the same benefits extended to Direct Loan borrowers in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.[2]

• Borrowers with federally held Direct Loans, FFEL loans, Perkins Loans, and HEAL loans did not accrue interest on those loans from March 13, 2020, to March 27, 2020. Borrowers were also permitted to suspend payment on their loans without any penalties during this period. The automatic suspension of payment and the application of a zero percent interest rate on loans held by the Department was extended to October 1, 2020, under the CARES Act. On August 24, 2022, the Secretary extended the pause on student loan payments and interest benefits through December 31, 2022.[3] The Secretary announced on November 22, 2022, another extension of the pause on student loan repayment, interest, and collections.[4] The Fiscal Responsibility Act of 2023 (Pub. L. 118–15) ends these waivers 60 days after June 30, 2023.

• The Department paused collections on loans in default on a commercial FFEL loan at a guaranty agency and set interest to 0 percent retroactively to March 13, 2020, until the end date for the overall payment pause, interest, and collections provision. This included a refund of all involuntary collections, the option to refund voluntary payments, and the cessation of collection charges for successful loan rehabilitations. Borrowers who are in the process of completing a loan rehabilitation agreement could have months of the pause count toward successful completion of that agreement, regardless of whether they made a payment. During and through the end of the payment pause, the guaranty agencies will assign any FFEL loans that defaulted on or after March 13, 2020, to the Department which will return those loans to good standing.

• Upon the end of the payment pause, the Department will not capitalize any interest that accrued on federally held Direct Loans or FFEL loans that were in a deferment, forbearance, in-school, grace period, or any other status in which payments were not required on March 12, 2020.

• Borrowers with qualifying loans working toward Public Service Loan Forgiveness (PSLF) and Temporary Expanded Public Service Loan Forgiveness (TEPSLF) were exempted from the requirement under section 455(m)(1)(B)(i) of the HEA that the borrower work for a qualifying employer at the time they apply for or receive forgiveness. To benefit from this waiver, borrowers with qualifying loans must have applied for the limited PSLF waiver announced by the Department on October 6, 2021, by October 31, 2022.[5]

• Borrowers who submitted applications for a borrower defense discharge on or prior to August 31, 2022, that related to any Direct or Federal non-Direct loans made prior to July 1, 2020, and who consolidated those loans into a Direct Consolidation Loan on or after July 1, 2020, will have their application for a discharge adjudicated under the standards for borrower defense discharges on Direct Loans disbursed between July 1, 2017, and July 1, 2020.

• The Department waived the United States Medical Licensing Exam (USMLE) pass rate requirement for currently approved participating foreign graduate medical institutions for the duration of years when the test was unavailable due to the COVID–19 national emergency.

Each of the waivers and modifications described in this notice independently serves the purposes of the HEROES Act. The Secretary accordingly deems each of these waivers and modifications to be necessary in connection with the COVID–19 national emergency, and

[1] *https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-08-17/information-about-restored-aid-eligibility-under-fresh-start-initiative.*

[2] *www.congress.gov/bill/116th-congress/house-bill/748/text.*

[3] *www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment.*

[4] *www.ed.gov/news/press-releases/biden-harris-administration-continues-fight-student-debt-relief-millions-borrowers-extends-student-loan-repayment-pause.*

[5] *www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul.*

intends that these waivers and modifications be legally severable. Were a court to stay or invalidate any of these waivers or modifications, or to deem any waiver or modification unlawful as applied in certain factual circumstances, the Secretary would intend that all other waivers and modifications set forth in this notice remain in effect to the maximum possible extent.

Prior waivers granted by the Secretary under the HEROES Act that are not otherwise discussed in this document remain in effect for affected individuals, as defined in those waivers. (85 FR 79856, as corrected in 86 FR 5008).

Waivers and Modifications Granted Under the Heroes Act in Connection With the Covid–19 National Emergency

Verification

Acceptable Documentation (34 CFR 668.57(b), (c), and (d))

Sections 668.57(b) and (c) require a statement signed by both the applicant and one of the applicant's parents if the applicant is a dependent student, or only the applicant if the applicant is an independent student, to verify the number of family members in the household and the number of family members enrolled in IHEs. Pursuant to § 668.57(d), an applicant may also be required to verify other information specified in the annual **Federal Register** document that announces the Free Application for Federal Student Aid (FAFSA) information as well as the acceptable documentation for verifying that FAFSA information. The Department waived the requirement that IHEs require parental signatures. IHEs may waive the requirement for a parental signature in the event that it cannot be obtained, or accept a document signed and photographed and sent by email or text message attachment, on any verification documentation required to validate a student's title IV eligibility. This waiver expires at the end of the payment period that begins after April 10, 2023, when the federally declared national emergency related to COVID–19 ended. Payment periods are as defined in 34 CFR 668.4. In a program measured in standard terms, the payment period is the term, *i.e.,* semester, trimester, or quarter.

Forbearance (34 CFR 674.33(d)(2))

Under section 464(e) of the HEA and § 674.33(d)(2), there is a 3-year cumulative limit on the length of forbearances that a Federal Perkins Loan borrower can receive. To assist Federal Perkins Loan borrowers during the COVID–19 national emergency, for a borrower whose Perkins Loan was in forbearance status on or after March 13, 2020, the Secretary waived these statutory and regulatory requirements and will exclude that period of forbearance during the payment pause from the 3-year cumulative limit. The Secretary also applies the waivers described in this paragraph to loans held by the Department.

Service-Based Loan Cancellation (34 CFR 674.53, 674.55, 674.55(b), 674.56, 674.57, 674.58, 674.60, 682.216, and 685.217)

Federal Perkins Loan borrowers may qualify for loan cancellation if they are employed full-time in specified occupations and meet additional eligibility requirements or are providing eligible volunteer service, pursuant to sections 460 and 465 of the HEA. An eligible Perkins Loan borrower may qualify for a service cancellation under §§ 674.53 (Teacher), 674.55 (Teacher), 674.56 (Nurse, medical technician, employee in a child or family service agency, professional provider of early intervention services, firefighter, faculty member at a Tribal College or University, librarian, speech pathologist), 674.57 (Law enforcement officer, corrections officer, attorney in an eligible Federal public defender or community defender organization), 674.58 (Full-time staff member in a Head Start, pre-kindergarten, or child care program), and 674.60 (Volunteer under the Peace Corps Act or the Domestic Volunteer Service Act of 1973).

For Perkins Loan teacher cancellations under §§ 674.53 and 674.55, borrowers must perform uninterrupted, otherwise-qualifying service for a complete academic year.

For the Perkins Loan service cancellations under §§ 674.56, 674.57, 674.58, and 674.60, borrowers must perform uninterrupted otherwise-qualifying service for a complete year.

FFEL and Direct Loan borrowers may qualify for teacher loan forgiveness pursuant to section 428J of the HEA and §§ 682.216 and 685.217. To qualify for teacher loan forgiveness, a FFEL or Direct Loan borrower must provide qualifying teaching service for 5 consecutive, complete academic years.

The Secretary waived the requirements that provide that periods of qualifying service for the loan forgiveness opportunities mentioned above be uninterrupted or consecutive to qualify the borrower for loan cancellation or loan forgiveness if the service was interrupted due to COVID–19.

Institutions must obtain and retain a written attestation from the borrower (which may be by email or text message) requesting cancellation and which describes how the qualifying service was interrupted as a result of the COVID–19 national emergency.

Appropriate explanations for the interruption of service include, but are not limited to, the closure of the facility where the borrower was working or decreased work hours as a result of the COVID–19 national emergency. Information provided by the borrower (that in the judgment of the IHE is reliable) is acceptable for documentation purposes.

Therefore, the service period required for the borrower to receive or retain a loan cancellation or loan forgiveness for which they are otherwise eligible will not be considered interrupted by any period that these waivers are in effect. The Secretary applies the waivers described in this paragraph to loans held by the Department.

Total and Permanent Disability Discharges (34 CFR 674.61(b), 682.402(c), and 685.213(b))

Under §§ 674.61(b)(7)(iii), 682.402(c)(7)(iii), and 685.213(b)(8)(iii), a borrower who receives a total and permanent disability discharge through the Social Security Administration or physician's certification process must certify their annual earnings during the 3-year post-discharge monitoring period. To assist borrowers, the Secretary waived the requirement that the borrower provide the Secretary with documentation of annual earnings from employment.

Borrowers in In-School Loan Status (34 CFR 682.209 and 685.207) and In-School Deferment Status (34 CFR 682.210 and 685.204)

Under §§ 682.209(a) and 685.207, for purposes of the FFEL and Direct Loan Programs, a borrower ceases to be in an ''in-school'' status, and either resumes repayment or enters a grace period on a loan, when the borrower ceases to be enrolled at an eligible school on at least a half-time basis. Similarly, §§ 682.210 and 685.204 provide that, for purposes of the Direct Loan and FFEL Programs, a borrower's deferment while enrolled in an eligible school ends when the borrower ceases to be enrolled at least half-time. Section 668.2(b) defines a ''half-time student'' as one who is carrying a half-time academic workload, as determined by the institution, that amounts to at least half of the workload of the applicable minimum requirement outlined in the definition of a ''full-time student,'' or, if the student is enrolled

solely in a program of study by correspondence, is carrying a workload of at least 12 hours of work per week, or is earning at least 6 credit hours per semester, trimester, or quarter.

The Secretary waived § 668.2(b), such that a student who met the institution's definition of a ''half-time student'' at the time the student's enrollment was interrupted due to the COVID–19 national emergency continues to be treated as enrolled at least half-time for purposes of the borrower's ''in-school'' and ''in-school deferment'' statuses, unless the borrower's institution ceased operations on or after March 13, 2020, and does not expect to reopen for more than 90 days; or unless the borrower officially withdraws or otherwise indicates their intent not to resume attendance at an institution on at least a half-time basis. A borrower whose enrollment was interrupted due to the COVID–19 national emergency, may not be treated as withdrawn or enrolled less-than-half-time for enrollment reporting purposes, unless the borrower officially withdraws; the borrower indicates their intent not to resume attendance on at least a half-time basis; or the borrower's institution ceased operations on or after March 13, 2020, and does not expect to reopen for more than 90 days. The institution must document this decision in its records.

Recertification of Income-Driven Repayment Plans (34 CFR 685.209 and 685.221)

Under §§ 685.209 and 685.221, a borrower participating in an income-driven repayment plan is required to provide documentation, acceptable to the Secretary, that enables annual calculation of the borrower's payment amount for each year that the borrower remains on the plan.

The Secretary waived the recertification documentation requirements of §§ 685.209(a)(5)(i) and 685.221(e)(1) and borrowers will be notified by their loan servicer of their new certification date, in advance of the deadline on which such documentation is required.

Fresh Start Initiative

The Secretary waived the title IV eligibility requirements of § 668.32(g)(1) for a borrower who is in default on a Federal student loan and waived 20 U.S.C. 1091(a)(3), which makes defaulted borrowers ineligible for any title IV aid. Borrowers who qualify under the Fresh Start Initiative will be eligible for title IV student aid.

The Secretary also waived the conditions needed to regain title IV eligibility in § 668.35(a) for a student who is in default on a title IV loan.

The Fresh Start initiative will be available to qualifying borrowers for 1 full year following the end of the payment pause. The waivers provided as part of the Fresh Start Initiative will expire on October 1, 2024.

Minimum Reserve Ratios (34 CFR 682.410)

Section 682.410(a)(10) provides the minimum reserve fund levels that a GA is required to maintain. The reserve fund level is calculated as the GA's total reserve fund assets less the amount of reserve fund assets used in accordance with § 682.410(a)(2) and (3). The minimum reserve ratio is calculated by dividing a GA's reserve fund level by the amount of loans outstanding as defined in § 682.410(a)(11)(ii) and expressed as a percentage.

The Secretary waived the requirement that a GA meet a minimum reserve ratio requirement as provided in § 682.410(a)(10) for Federal fiscal years at least partially overlapping with the Fresh Start Initiative as described earlier in this document.

Limits on Loan Consolidation Volume (34 CFR 682.401(b)(18))

Under § 682.401(b)(18), a GA may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFEL Program loan that is paid off by a Direct Consolidation loan. A GA that returns proceeds to the Secretary from the consolidation of a defaulted loan must remit the applicable amounts prescribed in § 682.401(b)(18)(ii) or (iii).

The Secretary waived the requirement in § 682.401(b)(18) that the GA return the funds identified as excess consolidation proceeds in § 682.401(b)(18)(ii) or (iii) to the Secretary during Federal fiscal years at least partially overlapping with the Fresh Start Initiative, described earlier in this document.

Reinsurance Trigger Rate (34 CFR 682.404(b))

Under § 682.404(b), the reinsurance rate for payments of reinsurance to the GA is reduced if the total of reinsurance claims paid by the Secretary to the GA during any fiscal year reaches specified thresholds.

The Secretary waived the requirement in § 682.404(b) that would provide for the reduction in the reinsurance rate under § 682.404(b) for Federal fiscal years at least partially overlapping with the Fresh Start Initiative, described earlier in this document.

Federal Reinsurance Agreement (34 CFR 682.404)

Section 682.404 outlines the ways GAs may receive compensation from their Federal fund for collections activity. This includes the provisions in § 682.404(g) that address the portion of borrower payments returned to the Secretary, the account maintenance fee equal to 0.06 percent of original principal amount of outstanding guaranteed loans in § 682.404(h), and the default aversion fee in § 682.404(j).

The Secretary modified the terms of § 682.404 to ensure that GAs will not have their revenue significantly decrease as a result of the pause on collections activity for FFEL loans in default held by a GA as required by the Secretary in connection with the COVID–19 national emergency.

In addition, the Secretary modified 34 CFR 682.404(h) to provide that GAs will receive an account maintenance fee on an annual basis equal to 0.76 percent of the original principal amount of outstanding loans. Under the modification, the fee is calculated each quarter from the period that covers the end of the pause on collections of defaulted FFEL loans at a GA through the fiscal year that is at least partially overlapping with the Fresh Start Initiative.

Section 3513 of the CARES Act

Section 3513 of the CARES Act directs the Secretary to (1) suspend all payments due, (2) cease interest accrual, and (3) suspend involuntary collections for loans that are held by the Department and made under parts D and B of title IV of the HEA through September 30, 2020. The section also directs the Secretary to deem each month for which a loan payment was suspended as if the borrower of the loan had made a payment for the purpose of any loan forgiveness program or loan rehabilitation program authorized under parts D or B for which the borrower would have otherwise qualified. Lastly, this section directs the Secretary to ensure that, for the purpose of reporting information about the loan to a consumer reporting agency, any payment that has been suspended is treated as if it were a regularly scheduled payment made by a borrower.

On August 8, 2020, President Trump issued a memorandum directing the Secretary to continue to waive interest and payments on such loans until December 31, 2020. On December 4, 2020, the pause was further extended to January 31, 2021. On January 21, 2021, President Biden extended the pause through September 30, 2021. On August

6, 2021, the President authorized the Secretary to use his authority under the HEROES Act to extend the benefits provided under section 3513 of the CARES Act until January 31, 2022, for borrowers with federally held Perkins, HEAL, Direct, and FFEL loans. President Biden announced on December 22, 2021, that the Secretary would extend the waiver on interest and payments on such loans through May 1, 2022. In accordance with these prior announcements, on August 24, 2022, the Secretary announced he was using his authority under the HEROES Act to modify the terms of the CARES Act to extend its benefits until December 31, 2022.[6]

On November 22, 2022, the Secretary announced another extension of the pause on student loan repayment, interest, and collections. Under the Fiscal Responsibility Act of 2023 (Pub. L. 118–15), the payment pause will end 60 days after June 30, 2023.

Treatment of Defaulted FFEL Loans Held by a Guaranty Agency

On March 30, 2021, the Department announced that it would be extending the waivers on interest and payments originally provided under the CARES Act and extended by the Department as discussed above to also include defaulted commercial FFEL loans held by a GA. The information in this announcement was clarified in DCL Gen–21–03, which was published on May 12, 2021.

This announcement of the extension of the waivers required GAs to set the interest rate to 0 percent on commercial FFEL loans in default and cease collections activity and charges. Moreover, the GAs had to refund any involuntary collections payments received on or after March 13, 2020, and offer borrowers the ability to have voluntary payments refunded. Borrowers that were in the process of pursuing a loan rehabilitation were able to have any months during the pause count toward the successful completion of that rehabilitation agreement. The Secretary also waives the provisions in section 428F(a)(1)(D)(II) of the HEA, 20 U.S.C. 1078–6(a)(1)(D)(II) and 34 CFR 682.405(b)(1)(vi)(B) which authorizes guaranty agencies to charge collection costs when a borrower rehabilitates a defaulted loan.

The Department's announcement also noted that, during and through the end of the payment pause, the guaranty agencies must assign the FFEL loans that defaulted on or after March 13, 2020, to the Department in accordance with 34 CFR 682.409(a)(1) and that the Department will return those loans to good standing.

Prior to such assignment the GAs must delete their trade line from the borrower's credit report entirely.

Interest Capitalization

Under § 685.202(b), § 685.204, and § 685.205 the Secretary capitalizes unpaid interest upon the end of a borrower's grace period and after expiration of a borrower's deferment or forbearance. Similar provisions that apply to FFEL loans are in § 682.200, § 682.210, and § 682.211.

As part of the waivers and modifications included in the **Federal Register** notice published on December 11, 2020, the Department announced that if the borrower's loan payments were current before March 13, 2020, interest accrued prior to that date, interest would not capitalize at the end of the coronavirus-related administrative forbearance period. However, interest that accrued on loans during the grace period and deferments and forbearances would be capitalized.

The Secretary has now waived the provisions related to capitalization of interest on loans held by the Department that, on March 12, 2020, were in a status during which interest was accruing and would be capitalized when the borrower exits that status. For instance, if a borrower was in their grace period on an unsubsidized loan on March 12, 2020, the interest on the loan that was due as of March 13, 2020, would not be capitalized when the borrower returns to repayment after the end of the payment pause. The same would be true of a loan that was in a deferment or forbearance immediately prior to the payment pause. Interest that accrued on those loans until March 13, 2020, would not be capitalized but would still have to be repaid.

Public Service Loan Forgiveness (34 CFR 685.219)

First, § 685.219 provides that borrowers must be employed by a qualifying employer when making each qualifying payment, as well as when applying for and receiving PSLF. Section 3513 of the CARES Act and the waivers extending its student loan repayment benefits provide credit toward PSLF and TEPSLF during months when payments would have been due but for the suspension of payments. Borrowers are still required to have worked for a qualifying employer during those months to receive full credit toward PSLF and TEPSLF.

The Secretary waived the requirement under § 685.219(c)(1)(ii)(B) that the borrower must be working for a qualifying employer at the time they receive forgiveness if they otherwise meet the requirements for forgiveness from March 2020 through the end of the student loan repayment pause authorized by section 3513 of the CARES Act and extended through the HEROES Act waivers. Borrowers, however, still have to have accumulated 120 months of qualifying employment. For borrowers who reach the 120 qualifying payment mark as a result of section 3513 of the CARES Act, the Secretary further waived the requirement that the borrower apply to receive PSLF or TEPSLF.

Second, on October 6, 2021, as prescribed under § 685.219(c)(1)(iii) and (c)(1)(iv), the Department announced a temporary waiver to give borrowers credit for prior, late, or partial payments that would not otherwise count toward PSLF, as well as payments made on a repayment plan that do not otherwise qualify for credit toward PSLF, such as payments made under the extended or graduated repayment plans.[7] Specifically, any months in which the borrower is in a repayment status on their loan while they are also working for a qualifying employer counted as a qualifying payment, regardless of the Federal loan type or repayment plan. This waiver was limited only to borrowers who submitted PSLF Forms or Employer Certification Forms or who completed the PSLF Help Tool prior to October 31, 2022, that were subsequently approved.

Further, the Secretary waived section 455(m)(4) of the HEA and 34 CFR 685.217(c)(12)(ii) and borrowers who have applied for teacher loan forgiveness and PSLF credit will be able to receive credit toward both benefits for the same period of time.

This limited waiver applies to all Federal student loans, as well as to current borrowers with Direct Loans, those who have already consolidated into the Direct Loan Program, and those with other types of Federal student loans who submitted a Direct Consolidation Loan application between October 6, 2021, and October 30, 2022.

Borrower Defense (34 CFR 685.206)

On December 11, 2020, the Department announced that borrowers who had applied prior to July 1, 2020, for a borrower defense discharge of

[6] *www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment.*

[7] *www.studentaid.gov/announcements-events/pslf-limited-waiver.*

FFEL, Perkins, and other loans that were not Direct Loans (non-Direct Loans), but who had not consolidated their non-Direct Loans prior to July 1, 2020, would have their applications for borrower defense discharges adjudicated under the standards for Direct Loans disbursed between July 1, 2017, and July 1, 2020. 85 FR at 79862.

To ensure those borrowers are treated equitably, and to align this waiver with prior extensions of the payment pause, borrowers who submitted applications for a borrower defense discharge on or before August 31, 2022, that relate to any Direct or non-Direct loans that were made prior to July 1, 2020, but which are consolidated on or after July 1, 2020, will be adjudicated under the standards for Direct Loans disbursed between July 1, 2017, and July 1, 2020.

USMLE Exam Scores at Foreign Medical Schools (34 CFR 600.55(f)(1)(ii) and (f)(2)–(4))

Under § 600.55(f), unless exempt under the law, all foreign graduate medical schools must, on an annual basis, have at least a 75 percent pass rate on each step/test of the USMLE administered by the Educational Commission for Foreign Medical Graduates (ECFMG), including Step 1, Step 2—Clinical Knowledge (Step 2–CK), and Step 2—Clinical Skills (Step 2–CS). However, during the pandemic, the Step 2–CS test was permanently discontinued, and, upon expiration of this waiver, institutions will only resume reporting results for Step 1 and Step 2–CK. Pass rate scores must be submitted to the Department by April 30 of each year.

The Secretary waived the minimum 75 percent pass rate requirement for currently approved foreign graduate medical schools that participate in the Direct Loan program for the duration of admissions years when the test was unavailable for a period of time due to the COVID–19 national emergency. For admissions years that begin after the end of the COVID–19 national emergency on April 10, 2023, normal USMLE pass rate requirements will apply.

Accessible Format: On request to Mr. Jean-Didier Gaina, by telephone: 202–987–1333 or by email: *Jean-Didier.Gaina@ed.gov,* individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Assistance Listing Numbers: 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.038 Federal Perkins Loan Program; 84.063 and 84.268 William D. Ford Federal Direct Loan Program.)

Program Authority: 20 U.S.C. 1071, 1082, 1087a, 1087aa, 1098bb.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–12977 Filed 6–15–23; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0087; FRL–10672–02–R9]

Air Plan Revisions; California; Mojave Desert Air Quality Management District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval a revision to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) from industrial, institutional, and commercial boilers, steam generators, and process heaters. We are finalizing a limited approval of a local rule that regulates these emission sources under the authority of the Clean Air Act (CAA or the Act), because the rule would strengthen the current SIP-approved version of MDAQMD's rule for boilers and process heaters. We are finalizing a limited disapproval of this revision because it is inconsistent with the EPA's startup, shutdown, and malfunction (SSM) policy and Credible Evidence Rules.

DATES: This rule is effective July 17, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2023–0087. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3245 or by email at *evanshopper.lakenya@epa.gov.*

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

Table of Contents

I. Proposed Action

On March 27, 2023 (88 FR 18106), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	1157	Boilers and Process Heaters	01/22/18	05/23/18

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because it contains a rule provision that is not consistent with the requirements of section 110 and part D of the Act. Specifically, section (E)(1)(b)(iii) is not consistent with EPA's SSM policy and Credible Evidence Rule in. Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one anonymous comment. The full text of this comment is available in the docket for this rulemaking. The comment was broadly supportive of the rule as a tool to address air pollution, particularly NO_X emissions, and human health. The commenter indicated that they believed the rule would be successful at regulating clean air, once the rule deficiencies are corrected. After reviewing this comment, the EPA has determined that the comment is supportive of our proposed action and does not raise issues that change our assessment of MDAQMD Rule 1157.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under sections 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule.

As a result, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months.

In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

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

The EPA is also removing the previous conditional approval of the major NO_X RACT element associated with Rule 1157 based on the finding that the District has met its commitment and submitted a rule that addressed all deficiencies identified in our February 12, 2018 conditional approval (83 FR 5921).

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Mojave Desert Air Quality Management District Rule 1157, Boilers and Process Heaters, amended on January 22, 2018, which regulates NO_X and CO emissions from industrial, institutional, and commercial boilers, steam generators, and process heaters. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

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

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per

the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. 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.''

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action is finalizing a limited approval and limited disapproval of MDAQMD Rule 1157 as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The State 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.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: June 7, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(248)(i)(D)(*2*) and(c)(518)(i)(A)(*10*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(248) * * *

(i) * * *

(D) * * *

(*2*) Previously approved on April 20, 1999, in paragraph (c)(248)(i)(D)(*1*) of this section and now deleted with replacement in paragraph (c)(518)(i)(A)(*10*): Rule 1157, amended May 19, 1997.

* * * * *

(518) * * *

(i) * * *

(A) * * *

(*10*) Rule 1157, ''Boilers and Process Heaters,'' amended on January 22, 2018.

* * * * *

§ 52.248 Identification of plan—conditional approval.

■ 3. Section 52.248 is amended by removing and reserving paragraph (d)(1)(vii).

[FR Doc. 2023–12632 Filed 6–15–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 371

[Docket No. FMCSA–2022–0134]

Definitions of Broker and Bona Fide Agents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notification of final regulatory guidance.

SUMMARY: FMCSA issues final guidance, in response to a mandate in the Infrastructure Investment and Jobs Act (IIJA) to inform the public and regulated entities about FMCSA's interpretation of the definitions of ''broker'' and ''bona fide agents'' as it relates to all brokers of transportation by motor vehicle. FMCSA previously published a notice

seeking public comment on the IIJA provision on June 9, 2022, and issued interim guidance on November 16, 2022. Today's notice makes updates to November 2022 guidance in response to the public comments the Agency received.

DATES: This updated guidance is applicable on June 16, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Secrist, Registration, Licensing, and Insurance Division, Office of Registration, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 385–2367, *jeff.secrist@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Viewing Comments and Documents

Viewing Documents and Comments

To view documents related to this docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0134/document* and choose the document to review. To view comments, visit the same website, then click ''Browse All Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act

All comments the Agency received in response to the November 16, 2022, notice mentioned above were posted without change to *http://www.regulations.gov.* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). 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.*

II. Background

On November 15, 2021, the President signed the IIJA into law (Pub. L. 117–58, 135 Stat. 429). Section 23021 of the IIJA [1] directed the Secretary (through FMCSA) to issue guidance, within one year of the date of enactment of the IIJA, clarifying the definitions of the terms ''broker'' and ''bona fide agents'' in 49 CFR 371.2. The guidance must take into consideration the extent to which technology has changed the nature of freight brokerage, the role of bona fide agents, and other aspects of the freight transportation industry. Additionally, when issuing the guidance, FMCSA must, at a minimum: (1) examine the role of a dispatch service in the transportation industry; (2) examine the extent to which dispatch services could be considered brokers or bona fide agents; and (3) clarify the level of financial penalties for unauthorized brokerage activities under 49 U.S.C. 14916, applicable to a dispatch service.[2]

The notice and comment rulemaking procedures of the Administrative Procedure Act (APA) do not apply to interpretative rules and general statements of policy (commonly called ''guidance'') (5 U.S.C. 553(b)(A)). Accordingly, the APA did not specifically require FMCSA to solicit public comment, and most of the other statutes and executive orders that would be applicable if the opportunity for prior notice and public comment was required similarly do not apply. Nevertheless, in order to ensure that the guidance provides clear, useful, and relevant information for stakeholders, FMCSA solicited stakeholder input via a **Federal Register** notice published on June 9, 2022. (87 FR 35593). FMCSA then issued a **Federal Register** notice containing interim guidance. (87 FR 68635, Nov. 16, 2022). As part of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328 (Dec. 29, 2022)), Congress directed FMCSA to finalize the guidance by June 16, 2023.[3]

While the interim guidance was effective immediately upon publication, FMCSA sought additional public comment to determine whether the guidance should be updated before being finalized. FMCSA also invited commenters to speak at a listening session during the Mid America Trucking Show (MATS) on March 31, 2023, but none of the commenters at the MATS session addressed this guidance. (87 FR 14439, Mar. 8, 2023). FMCSA also reopened the comment period for written comments, which were due by April 6, 2023. (87 FR 14322, Mar. 8, 2023).

FMCSA now issues final guidance on the definitions of ''broker'' and ''bona fide agent,'' including guidance on the role and activities of entities referred to as ''dispatch services'' and the level of financial penalties for unauthorized brokerage services provided by such entities. This document does not have the force and effect of law and is not meant to bind the public in any way, and the document is intended only to provide information to the public regarding existing requirements under the law or agency policies.

Stakeholder Comments

FMCSA received 55 comments on the interim guidance, in addition to more than 80 comments received during the previous comment period, and the Agency appreciates the time and effort stakeholders took in submitting these comments. The commenters included individuals, trade associations, brokers, and dispatch services. While the Agency does not specifically reference all comments in this guidance, the Agency would like to assure stakeholders it has reviewed and considered all comments filed.

III. Compliance With IIJA

A. Technology

The IIJA required FMCSA to examine the impact of technological advances in the freight transportation industry. In the interim guidance, FMCSA recognized that freight brokerage has changed immeasurably due to technology, including moving from a phone-based system to one conducted mainly over the internet. (87 FR 68637). However, such changes do not impact the fundamental nature of brokerage, which involves arranging transportation for compensation, and hence do not have a significant impact on this guidance.

Commenters on the interim guidance generally agreed with FMCSA's position on the extent to which technology has changed the freight brokerage business and the impact of such changes. FMCSA does not believe there is any reason to revise its analysis for the final guidance.

B. Bona Fide Agents

The IIJA also required FMCSA to examine the role of bona fide agents in the freight transportation industry. Based upon previous stakeholder comments, FMCSA determined in the

[1] The full text is available at *congress.gov/117/plaws/publ58/PLAW-117publ58.pdf.*

[2] Due to a statutory omission, FMCSA is unable to assess civil penalties for violations of 49 U.S.C. 14916 and may pursue such penalties only through the Department of Justice in federal court. Congress has indicated interest in FMCSA's statutory authority in a recent House Appropriations Committee Report.

[3] *See* Division L Joint Explanatory Statement to the Consolidated Appropriations Act, 2023. Staff of H.R. Comm. on Appropriations, 117th Cong. (Comm. Print 2023).

interim guidance that bona fide agents are generally considered to be individuals or entities that solicit business for a motor carrier. (87 FR 68638). In the recent comments, several commenters indicated that this statement may have made the relationship between a motor carrier and a bona fide agent seem too casual, when in reality a bona fide agent has a formalized and ongoing relationship with a particular motor carrier.[4] FMCSA agrees that the regulatory definition of ''bona fide agent'' does not contemplate a casual relationship, as it requires the bona fide agent to be part of the motor carrier's normal operations and to perform duties as directed by the motor carrier pursuant to a preexisting agreement which provides for a continuing relationship. 49 CFR 371.2(b).

C. Other Aspects of the Freight Transportation Industry

Another topic the IIJA requires FMCSA to consider when issuing this guidance is ''other aspects of the freight transportation industry.'' Numerous drivers and motor carriers raised concerns about economic pressures negatively affecting the industry.[5] A group of commenters also sought action regarding allegations of fraud, supply chain abuse, theft of cargo, double brokering, and misappropriation of funds occurring in the industry.[6] In response, FMCSA notes that ''double brokering'' is not a term defined by statute or regulation, and commenters use the term to refer to several different activities. However, it appears most commenters concerned with double brokering are referring to ways in which some entities act as brokers without proper authority.

FMCSA also notes that approximately 24 comments received in this docket asked the Agency to take actions beyond the scope of the guidance required by the IIJA, specifically regarding issues of transparency and fairness in transactions between motor carriers and brokers.[7]

While the guidance contained in this notice is limited to the issues Congress required FMCSA to examine with the enactment of IIJA, FMCSA nevertheless recognizes that its guidance is operating in a broader context and has impacts beyond the immediate focus of this guidance. In today's notice, FMCSA has worked to avoid creating unintended consequences, in issuing its interpretation of its regulations and related matters. While the guidance may be relevant to stakeholder compliance with FMCSA's regulations, any changes to FMCSA's regulations, and consequently to a stakeholder's compliance responsibilities, would need to be made through a rulemaking proceeding.

IV. Final Guidance

The interim guidance concerned six main areas: (1) the definition of broker; (2) the definition of bona fide agent; (3) the role of dispatch services in the transportation industry; (4) how to determine whether a dispatch service is acting as a broker or as a bona fide agent; (5) services dispatchers may provide without broker authority; and (6) services for which dispatchers must obtain broker authority in order to provide. The guidance also clarified the level of financial penalties for unauthorized brokerage activities under 49 U.S.C. 14916.

FMCSA has considered the comments received and has made several updates to the guidance, discussed further below, and now issues final guidance on these topics.

A. Definition of Broker

Final Guidance: FMCSA has determined that the definition of ''broker'' at 49 CFR 371.2(a) is adequate. Handling money exchanged between shippers and motor carriers is one factor that strongly suggests the need for broker authority, but it is not an essential requirement for one to be considered a broker.

Discussion: As explained in the interim guidance, FMCSA is unable to change the statutory definition of ''broker'' at 49 U.S.C. 13102(2). (87 FR 68637). Nor is it able to change the regulatory definition of ''broker'' at 49 CFR 371.2(a) without going through the rulemaking process. However, FMCSA did clarify in the interim guidance that, although handling money exchanged between shippers and motor carriers strongly suggests the need for broker authority, it is only one factor of the analysis and is not, standing alone, determinative. (87 FR 68638). Stakeholder reactions to FMCSA's interim guidance were mainly supportive.[8]

Stakeholders asked FMCSA to clarify whether internet-based load matching services and load boards are considered brokers.[9] While this topic garnered few comments, those that addressed it agreed that these services should not be considered brokers.[10] However, some commenters expressed concerns about motor carriers, brokers, and dispatch services perpetrating fraud through the use of load boards.[11]

In response, FMCSA has determined that merely making information about potential shippers publicly available, regardless of whether a fee is charged, does not require an entity to obtain broker authority as long as the entity making the leads available is not otherwise involved in any transaction between the shipper and a motor carrier.

B. Definition of Bona Fide Agent

Final Guidance: A bona fide agent may be either an employee of a motor carrier or a contractor but must perform its duties as specified in a preexisting agreement between the parties. While FMCSA has determined that the definition of ''bona fide agent'' in 49 CFR 371.2(b) is adequate, FMCSA clarifies that the term ''allocating traffic,'' which appears in the definition, means any exercise of discretion on an agent's part when assigning a load to a motor carrier. If an entity representing more than one carrier exercises such discretion, it would not meet the definition of ''bona fide agent.''

Discussion: The regulations define ''bona fide'' agents as ''persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.'' 49 CFR 371.2(b). FMCSA cannot change this definition absent a rulemaking.

In the interim guidance, FMCSA determined that representing more than one motor carrier does not necessarily mean one is a broker rather than a bona fide agent. (87 FR 68638). Any

[4] *See* comments of PES, American Trucking Associations Moving & Storage Conference (ATA M&SC) at 3 FN6, and joint submission from MoveRescue, Mayflower Transit, LLC, and United Van Lines, LLC (MM&U) at 6.

[5] *See* comments of PES, Hans Witt, Kadence Logistics Dispatching, and multiple anonymous commenters.

[6] *See* two comments from Henry Seaton, on behalf of multiple stakeholders.

[7] On March 17, 2023, FMCSA granted petitions from the Owner-Operator Independent Drivers Association (OOIDA) and the Small Business in Transportation Coalition (SBTC) to initiate a rulemaking on issues of transparency in brokered transactions. These comments appear to be related to this future rulemaking, and do not raise issues related to the guidance presented here. However, FMCSA will solicit public comment regarding transparency issues at the appropriate time.

[8] *See, e.g.,* comments of SBTC at 1, ATA M&SC at 2–3 and ATA MS&C Supplemental Comment at 1, MM&U at 4–5, and Transportation Intermediaries Association (TIA) at 3.

[9] *See* comments of ATA M&SC at 3.

[10] *See* comments of ATA M&SC at 3 and ATA M&SC Supplemental Comment at 1; SBTC at 2.

[11] *See* comments of Hans Witt and Robert Bradley.

determination will be highly fact specific and will entail determining whether the person or company is engaged in the allocation of traffic between motor carriers. Several commenters requested more clarity on the meaning of ''allocation of traffic.'' [12] FMCSA intended this term to mean any exercise of discretion, choice, or decision-making on the agent's part about which motor carrier to assign a load.

If a bona fide agent represents only one motor carrier, it will assign all loads it sources to that particular carrier and thus, no exercise of discretion is necessary, and there is no dispute that the agent is not a broker. However, an agent representing multiple carriers should be careful to structure its agreements to avoid the possibility of allocating traffic. The scope of these agreements and the agent's compliance with the terms of the agreements are key factors in the analysis of whether such an agent may qualify as a bona fide agent under the regulatory definition at 49 CFR 371.2(b). To illustrate, FMCSA presents two examples of situations where a bona fide agent may be able to represent multiple motor carriers without engaging in allocation of traffic.

The first example is where a bona fide agent represents motor carriers that require the agent to source loads originating in different geographic areas and selected motor carriers will not pick up freight in the other carriers' locations. For instance, if the agreement between the bona fide agent and Carrier A requires the agent to source loads originating only in Maine, New Hampshire, Vermont, or Massachusetts, and its agreement with Carrier B requires it to source loads originating only in Florida, Georgia, or Alabama, the entity would not need to exercise discretion because all loads originating in a particular geographic location would necessarily be assigned to the relevant carrier.

A second example is if the bona fide agent has agreements with multiple carriers to source specific types of loads and these services do not overlap. For instance, if the agent's agreement with Carrier A requires the agent to source only hazardous materials loads, and the agreement with Carrier B requires it to exclude hazardous material loads, the agent would not have to exercise discretion as to which carrier to assign a load to, because the carriers are not willing or able to haul the same loads if sourced by the bona fide agent. Similarly, if Carrier A operates refrigerated trucks while Carrier B operates flatbed trucks, a bona fide agent may be able to represent both carriers without engaging in allocation of traffic.

However, if the agent's agreements require it to source the same type of loads for both carriers without geographic restrictions as described above, it could not represent both carriers without registering for broker authority, because any load assignments would necessarily require the entity to choose between carriers and would therefore constitute an allocation of traffic.

Several commenters operating in the household goods industry also asked FMCSA to clarify whether this guidance applies to ''household goods agents,'' as that term is defined at 49 U.S.C. 13907 and 49 CFR 375.205.[13] FMCSA initially determined it would address issues previously raised by the household goods industry in a separate proceeding. (87 FR 68638 at FN20). However, the stakeholders believe this would be unnecessary and asked FMCSA to address their concerns in this final guidance.[14] FMCSA agrees with the stakeholders and, consequently, is issuing guidance here.

FMCSA recognizes that entities operating in the household goods transportation industry are subject to additional regulations. ''Household goods broker'' is defined in 49 CFR 371.103 as ''a person, other than a motor carrier or an employee or bona fide agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation of household goods by motor carrier for compensation.'' Moreover, 49 CFR 375.205 permits household goods motor carriers engaged in interstate transportation of household goods to have agents and provides that a ''prime agent,'' a type of household good agent, ''does not include a household goods broker or freight forwarder.'' Thus, to the extent a person or company is operating as a prime agent in the household goods sector, this guidance would not be applicable to such person or company.

C. Role of Dispatch Services

Final Guidance: There is no statutory or regulatory definition of a dispatch service, nor is there a commonly accepted definition of such a service. Some features of dispatch services include working exclusively for motor carriers, not for shippers; sourcing loads for motor carriers; and performing additional services for motor carriers that are unrelated to sourcing shipments. FMCSA does not have statutory authority to regulate dispatch services unless such entities also meet the criteria for registration as brokers, freight forwarders, and/or motor carriers.

Discussion: The IIJA required the agency to examine the role of dispatch services in the transportation industry and the extent to which such services could be considered brokers or bona fide agents. However, Congress did not define the term ''dispatch service'' in the IIJA provision mandating this guidance, and the comments FMCSA received prior to issuing the interim guidance made clear that there is no universally accepted definition of the term. Thus, FMCSA attempted to determine what constitutes a ''dispatch service'' by examining the role such entities play in the transportation industry and set out several common features of dispatch services in the interim guidance. (87 FR 68639).

TIA suggested that FMCSA should require all dispatch services to register with FMCSA, either as brokers or as a new class of licensed entity.[15] Freight Girlz also asked FMCSA to develop and issue a certificate of compliance to ''legitimate dispatch companies'' and suggested numerous criteria for obtaining such a certificate.[16] However, FMCSA cannot define a new class of operating authority in this guidance. The existing registration statutes do not authorize FMCSA to regulate any entity in the transportation industry other than motor carriers, brokers, and freight forwarders. If a dispatch service or other entity does not meet the criteria for inclusion in one of these categories, FMCSA is unable to require registration or otherwise regulate that entity.

Some commenters on the interim guidance indicated that dispatch services are more attuned than brokers are to a carrier's needs and a specific driver's preferences, location, and other data.[17] However, relatively few comments specifically addressed this portion of the interim guidance, as most commenters were concerned with the issue of how to determine whether a dispatch service is acting as a broker or as a bona fide agent.

[12] *See* comments of SBTC at 2–5, ATA M&SC at 4, and an anonymous commenter.

[13] *See* comments of ATA M&SC at 3, MM&U at 6.

[14] *See* comments of ATA M&SC at 3, MM&U at 6.

[15] *See* comment of TIA at 3.

[16] *See* comment of Freight Girlz.

[17] *See* comments of Project Freight, LLC, Michael White, OOIDA and several anonymous commenters.

After reviewing the comments, FMCSA has determined that the interim guidance is appropriate and has not made any significant changes in the final guidance.

D. Dispatch Service: Broker or Bona Fide Agent

Final Guidance: Dispatch services may be classified as either brokers or bona fide agents, depending on the nature and scope of their activities. This requires a fact-specific analysis of whether the dispatch service's activities meet the criteria set out in the statutory and regulatory definitions of ''broker'' or ''bona fide agent.'' While no single factor is paramount in assessing the business relationship between a dispatch service and a motor carrier, the extent of a motor carrier's control is relevant because the greater control a carrier has over a dispatcher's actions, the less likely the dispatcher is to exercise independent discretion in sourcing and allocating loads and hence need broker authority.

Discussion: The IIJA mandated that FMCSA examine when a dispatch service could be considered a broker and when it could be considered a bona fide agent. Approximately 20 commenters addressed this topic, and many of these comments indicated continuing uncertainty about how to properly categorize dispatch services. In response, FMCSA provides additional clarification in the final guidance and has reorganized the factors in the following sections indicating either the ability to perform services without broker authority or the need to obtain broker authority.

FMCSA does not believe it is the intent of Congress to eliminate the use of dispatch services in the freight transportation industry. It is also clear, based on feedback from stakeholders, that both small and large motor carriers believe dispatch services play an important role in their operations. In particular, small motor carriers who cannot afford a fulltime employee may rely on dispatch services to perform various functions, including ensuring the motor carrier has a steady stream of shipments, while allowing the motor carrier to focus on its core business of transporting freight.

FMCSA clarifies that, to determine whether a dispatch service is a bona fide agent, one must analyze whether the services the dispatcher is providing fall within the definition of bona fide agent in 49 CFR 371.2(b). If a dispatch service arranges transportation on behalf of multiple motor carriers and engages in the allocation of traffic, pursuant to 49 CFR 371.2, it is not a bona fide agent and must obtain broker operating authority registration. Ultimately, this analysis requires careful consideration of the nature and scope of the relationship between the dispatch service and the motor carrier, the number and type of carriers the dispatch service represents, and the specific services the dispatcher performs.

FMCSA understands that dispatch services may not be able to operate a successful business if they only work for a single, small carrier. Thus, the Agency has attempted in this guidance to describe the maximum flexibility permissible under applicable law. However, FMCSA also recognizes that some dispatch services currently operating without broker authority may determine, based on the guidance, that their activities require them to either reduce the number of carriers they represent or apply for broker authority.

To help dispatch services determine whether their activities require them to apply for broker authority or not, FMCSA provides additional guidance in the following sections regarding specific activities that dispatch services may engage in without obtaining broker authority, and those that require broker authority.

E. Factors Indicating Broker Authority Is Not Required

Final Guidance: A dispatch service that meets the following criteria would generally be considered a bona fide agent and would not require broker authority. This list is not exclusive, and a dispatch service does not necessarily have to meet every listed factor, depending on its specific activities.

(1) The dispatch service has a written legal contractual relationship with a motor carrier that clearly reflects the motor carrier is appointing the dispatch service as a licensed agent for the motor carrier. This is often a long-term contractual relationship. The written legal contract should specify the insurance and liability responsibilities of the dispatch service and motor carrier.

(2) The dispatch service complies with all state licensing requirements, if applicable.

(3) The dispatch service goes through a broker to arrange for the transportation of shipments for the motor carrier and does not seek or solicit shippers for freight.

(4) The dispatch service does not provide billing or accept compensation from the broker, third-party logistics company, or factoring company, but instead receives compensation from the motor carrier(s) based on the pre-determined written legal contractual agreement.

(5) The dispatch service is not an intermediary or involved in the financial transaction between a broker and motor carrier.

(6) The dispatch service is an IRS 1099 recipient from the motor carrier, or a W2 employee of the motor carrier as specified in the legal written contract agreement.

(7) The dispatch service discloses that they are a dispatch service operating under an agreement with a specific motor carrier, and the shipment is arranged for that motor carrier only.

(8) The dispatch service does not subsequently assign or arrange for the load to be carried/moved by another motor carrier.

(9) A dispatch service does not provide their ''services'' for a motor carrier unless that motor carrier specifically appointed the dispatch service as their agent in accordance with the aforementioned requirements.

F. Factors Indicating Broker Authority Is Required

The following factors indicate the dispatch service should obtain broker authority. This list is not exclusive, and a dispatch service does not necessarily have to meet every listed factor, depending on its specific activities.

(1) The dispatch service interacts with or negotiates any shipment of freight directly with the shipper, or a representative of the shipper.

(2) The dispatch service accepts or takes compensation for a load from the broker or factoring company or is involved in any part of the monetary transaction between any of those entities.

(3) The dispatch service arranges for a shipment of freight for a motor carrier and there is no written legal contract with the motor carrier that meets Section IV.E.1 of the Guidance above.

(4) The dispatch service accepts a shipment without a truck/carrier, then attempts to find a truck/carrier to move the shipment.

(5) The dispatch service engages in allocation of traffic by accepting a shipment that could be transported by more than one carrier with which it has agreements and assigns it to one of those carriers.

(6) The dispatch service is a named party on the shipping contract.

(7) The dispatch service is soliciting to the open market of carriers for the purposes of transporting a freight shipment.

G. Financial Penalties

Finally, the IIJA required FMCSA to clarify the level of penalties for

unauthorized brokerage applicable to dispatch services. In the interim guidance, FMCSA determined that this assessment is straightforward. If the dispatch service is deemed to be providing unauthorized brokerage services pursuant to 49 U.S.C. 14916, the service will be subject to applicable penalties. If no finding of unauthorized brokerage is made, it will not be subject to such penalties.

After reviewing the public comments, FMCSA has determined that the interim guidance is appropriate and adopts the same analysis in the final guidance.

Robin Hutcheson,

Administrator.

[FR Doc. 2023–13080 Filed 6–15–23; 8:45 am]

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Proposed Rules

Federal Register
Vol. 88, No. 116
Friday, June 16, 2023

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–SC–22–0094]

Olives Grown in California; Increased Assessment Rate

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Olive Committee to increase the assessment rate established for the 2023 fiscal year and subsequent fiscal years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 17, 2023.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments may be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments may be sent to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or internet: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jeremy Sasselli, Marketing Specialist, or Gary Olson, Chief, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or Email: *Jeremy.Sasselli@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The California Olive Committee (Committee) locally administers the Order and is comprised of producers and handlers of olives operating within the area of production and may have one public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California olive handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the proposed assessment rate would be applicable to all assessable olives beginning on January 1, 2023, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate from $16 per ton of assessed olives, the rate that was established for the 2022 and subsequent fiscal years, to $35 per ton of assessed olives for the 2023 and subsequent fiscal years. The proposed higher rate is the

result of the significantly lower crop size in 2022 (fruit that is marketed over the course of the 2023 fiscal year) and the need to maintain the Committee's financial reserve.

The Committee met on December 13, 2022, and unanimously recommended 2023 fiscal year expenditures of $1,154,412 and an assessment rate of $35 per ton of assessed olives. In comparison, last year's budgeted expenditures were $1,245,085. The proposed assessment rate of $35 is $19 higher than the rate currently in effect. Producer receipts show a yield of 19,912 tons of assessable olives from the 2022 crop year, which is substantially less than the quantity of olives harvested in the 2021 crop year, in which 46,359 tons of assessable olives were produced.

Olives harvested in 2022 will be marketed over the course of the 2023 fiscal year, which begins on January 1, 2023. The 19,912 tons of assessable olives from the 2022 crop would generate $696,920 in assessment revenue at the proposed assessment rate. The balance of funds needed to cover budgeted expenditures would come from interest income, Federal grants, and the Committee's financial reserve. The 2023 fiscal year assessment rate increase would be appropriate to ensure the Committee has sufficient revenue to fund the recommended 2023 fiscal year budgeted expenditures. Funds in the reserve are expected to remain within the Order's requirement of no more than approximately one fiscal year's budgeted expenses.

The Order has a fiscal year and a crop year that are independent of each other. The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The fiscal year is the 12-month period that begins on January 1 and ends on December 31 of each year. Olives are an alternate-bearing crop, with a large crop (2021) followed by a small crop (2022). For this assessment rate proposed rule, the actual 2022 crop year receipts are used to determine the assessment rate for the 2023 fiscal year.

The major expenditures recommended by the Committee for the 2023 fiscal year include $547,700 for program administration, $193,000 for marketing activities, $325,712 for research, and $88,000 for inspection. Budgeted expenses for these items during the 2022 fiscal year were $538,700, $284,000, $379,485, and $42,900, respectively.

The assessment rate recommended by the Committee resulted from consideration of anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2022 crop year, and the amount in the Committee's financial reserve. Income derived from handler assessments and other revenue sources is expected to be adequate to cover budgeted expenses. The assessment rate proposed in this rulemaking would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal years would be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 800 producers of olives in the production area and 2 handlers subject to regulation under the Order. Small agricultural producers of olives are defined by the Small Business Administration (SBA) as those having annual olive receipts of less than $3.5 million (NAICS code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms are defined as those whose annual receipts are less than $34 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Because of the large year-to-year variation in California olive production, it is helpful to use two-year averages of seasonal average grower price when undertaking calculations relating to average grower revenue. The National Agricultural Statistics Service (NASS) reported season average grower prices of olives utilized for canning for 2020 and 2021 of $1,060 and $1,110 per ton, respectively, with a two-year average price of $1,085.

The appropriate quantities to consider are the annual assessable olive quantities, which were 19,912 tons in 2022 and 43,336 tons in 2021, with two-year average production of 31,624 tons. Multiplying 31,624 tons by the two-year average grower price of $1,085 yields a two-year average crop value of $34.312 million. Dividing the crop value by the number of olive producers (800) yields calculated annual average revenue per producer of $42,890, much less than SBA's size standard of $3.5 million. Thus, the majority of olive producers may be classified as small entities.

Dividing the $34.312 million average crop value by 2 (the number of handlers) equals $17.156 million, which is the annual average olive crop value processed by each of the 2 handlers over the two-year period. Subtracting $17.156 million average crop value from the large handler size threshold of $34 million yields a difference of $16.844 million. Dividing the $16.844 million difference by $17.156 average crop value processed by each of the handlers yields an average manufacturing margin of 98 percent to be considered large handlers. A key question is whether 98 percent is a reasonable estimate of a manufacturing margin for the olive canning process.

A review of economic literature on canned food manufacturing margins found no recent published estimates. A series of Economic Research Service reports on cost components of farm to retail price spreads, published in the late 1970s and early 1980s, found that margins above crop value for a canned vegetable product were in the range of 76 to 85 percent. These margins are somewhat below the computed margin estimate of 98 percent to reach the $34 million SBA threshold to be a large, canned olive handler. Although the studies are not recent, key observations are that canning technology has not changed significantly in that time period, but canning costs may have risen somewhat. Therefore, the conclusion to be drawn from these computations is that the two handlers are slightly below the large handler threshold of $34 million in annual canned olive sales, using two-year average data, and assuming that the 2 handlers are about the same size.

In a large crop year, one or both handlers could be considered large handlers, depending on the proportion of the olive crop that each of the handlers processed. For example, the 2021 quantity of assessable olives was 43,336 tons, and half of that quantity was 21,668 tons. Multiplying that tonnage by the average grower price of $1,085 per ton yields a crop value per handler estimate of $23.51 million. To reach the $34 million size threshold would mean canning costs of at least $10.49 million, which would be a manufacturing margin of 45 percent ($10.49/$23.51)—well below the range of canning margins shown above.

The contrasting examples presented here show that in terms of canned olive sales, the processors can be viewed as either being above or below the SBA large handler size threshold, depending on the assumptions used in alternative calculations.

This proposal would increase the assessment rate collected from handlers for the 2023 and subsequent fiscal years from $16 to $35 per ton of assessable olives. The Committee unanimously recommended 2023 expenditures of $1,154,412 and an assessment rate of $35 per ton. The recommended assessment rate of $35 is $19 higher than the 2022 rate. The quantity of assessable olives harvested in the 2022 crop year was 19,912 tons, as compared to 46,359 tons in 2021. Olives are an alternate-bearing crop, with a large crop (2021) followed by a small crop (2022). Income derived from the $35 per ton assessment rate, along with interest income, Federal grants, and funds from the authorized reserve, should be adequate to meet this fiscal year's budgeted expenditures.

The Committee's financial reserve is projected to be sufficient to partially fund 2023 fiscal year budgeted expenditures and remain within the requirements of § 932.40(a)(2) of the Order. The major expenditures recommended by the Committee for the 2023 fiscal year include $547,700 for program administration, $193,000 for marketing activities, $325,712 for research, and $88,000 for inspection. Budgeted expenses for these items during the 2022 fiscal year were $538,700, $284,000, $379,485, and $42,900 respectively. The Committee deliberated on many of the expenses, weighed the relative value of various programs or projects, and decreased the budgeted expenses for research and marketing activities, while increasing the budget for administration and inspection program costs. Overall, the 2023 fiscal year budget of $1,154,412 is $90,673 less than the $1,245,085 budgeted for the 2022 fiscal year.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources including the Committee's Executive, Marketing, Inspection, and Research Subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry and the decreased olive production. The assessment rate of $35 per ton of assessable olives was derived by considering anticipated expenses, the relatively low volume of assessable olives, the current balance in the monetary reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2021 crop year, the most recent crop year surveyed by NASS, was $851 per ton. The quantity of assessable olives harvested during the 2022 crop year was 19,912 tons, which makes estimated total producer revenue $16,945,112 ($851 multiplied by 19,912 tons). Therefore, utilizing the assessment rate of $35 per ton, the assessment revenue for the 2023 fiscal year as a percentage of estimated total producer revenue is expected to be approximately 4.1 percent ($35 multiplied by 19,912 tons divided by $16,945,112 multiplied by 100).

This proposed action would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The olive industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 13, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section. A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this proposed rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 932 as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2023, an assessment rate of $35 per ton is established for California olives.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–12769 Filed 6–15–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS–SC–23–0006]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Walla Walla Sweet Onion Marketing Committee (Committee) to increase the assessment rate established for the 2023 and subsequent fiscal periods. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 17, 2023.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be submitted to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or via the internet at: *https://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: *https://www.regulations.gov*. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Chief, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: *DaleJ.Novotny@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon. Part 956 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of Walla Walla sweet onions operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. Under the Order now in effect, Walla Walla sweet onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable Walla Walla sweet onions for the 2023 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agricultrue (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate for Walla Walla sweet onions handled under the Order from $0.15 per 50-pound bag or equivalent, the rate that was established for the 2020 and subsequent fiscal periods, to $0.20 per 50-pound bag or equivalent for the 2023 and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2020 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions.[1] That rate continues in effect from fiscal period to fiscal period until modified, suspended,

[1] 85 FR 41323.

or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on December 5, 2022, and unanimously recommended 2023 fiscal period expenditures of $70,400 and an assessment rate of $0.20 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2023 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $85,270. The proposed assessment rate of $0.20 per 50-pound bag or equivalent is $0.05 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better fund operations using assessment revenue and reduce the reliance on reserve funds. The Committee has drawn down its financial reserve in recent years to cover Committee expenses and to reduce the reserve so as to not exceed approximately two fiscal periods' budgeted expenses, in conformance with the Order (7 CFR 956.44(a)). The Committee projects handler receipts of 262,500 50-pound bags or equivalent of assessable Walla Walla sweet onions for the 2023 fiscal period, which is 16,150 50-pound bags or equivalent more than was projected for the 2022 fiscal period.

The major expenditures recommended by the Committee for the 2023 fiscal period include $43,400 for administrative expenses, $17,000 for promotions, $5,000 for research, and $5,000 for Committee travel. Budgeted expenditures for the 2022 fiscal period were $43,400, $31,870, $5,000 and $4,000, respectively.

Walla Walla sweet onions harvested in 2023 will be marketed mostly in the spring and summer of the 2023 fiscal period, which follows the calendar year. The expected 262,500 50-pound bags or equivalent of Walla Walla sweet onions from the 2023 crop would generate $52,500 in assessment revenue at the proposed assessment rate (262,500 50-pound bags or equivalent of Walla Walla sweet onions multiplied by $0.20 assessment rate). The remaining $17,900 needed to cover budgeted expenditures would come from reserve funds carried over from previous fiscal periods. The 2023 fiscal period assessment rate increase should be appropriate to ensure the Committee has sufficient revenue, along with its reserve, to fully fund its recommended 2023 fiscal period budgeted expenditures and maintain a level of reserve funds that the Committee believes is appropriate.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, an estimated 2023 crop volume of 262,500 50-pound bags or equivalent of assessable Walla Walla sweet onions, and the amount of funds available in the authorized reserve. Income derived from handler assessments ($52,500) and funds from the Committee's authorized reserve ($17,900) are expected to be adequate to cover budgeted expenses ($70,400).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2023 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 15 producers of Walla Walla sweet onions in the production area and 11 handlers subject to regulation under the Order. Small agricultural producers of Walla Walla sweet onions are defined by the Small Business Administration (SBA) as those having annual receipts of less than $3,750,000, and small agricultural service firms are defined as those whose annual receipts are less than $34,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average annual producer price received for dry and fresh market onions sold in Washington between 2018 and 2021 ranged from $9.13 to $13.30 per hundredweight. The average over those years was approximately $10.88 per hundredweight, or $5.44 per 50-pound bag or equivalent. Total production of Walla Walla sweet onions for the 2022 season was reported by the Committee to be 299,993 50-pound bags or equivalent. Using the average price from 2018–2021, the most recent years for which there is NASS data, the total 2022 crop value of Walla Walla sweet onions could therefore be estimated to be $1,631,962 (299,993 50-pound bags or equivalent multiplied by $5.44 per 50-pounds). Dividing the crop value by the estimated number of producers (15) yields an estimated average receipt per producer of $108,797, which is well below the SBA threshold for small producers.

In addition, according to USDA Market News data, the reported average 2021 terminal market price for Walla Walla sweet onions was $35 per 40-pound carton. Multiplying this figure by 1.25 to adjust for a 50-pound bag or equivalent yields an average 2021 terminal market price of $43.75 per 50-pound bag or equivalent. Multiplying the 2022 Walla Walla sweet onion production of 299,993 50-pound bags or equivalent by the estimated average price per 50-pound bag or equivalent of $43.75 equals $13,124,694. Dividing this figure by the 11 regulated handlers yields estimated average annual handler receipts of $1,193,154 ($13,124,694 divided by 11 handlers), which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, all of the producers and handlers of Walla Walla sweet onions may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2023 and subsequent fiscal periods from $0.15 to $0.20 per 50-pound bag or equivalent of Walla Walla sweet onions. The Committee unanimously recommended 2023 fiscal period expenditures of $70,400 and an assessment rate of $0.20 per 50-pound bag or equivalent of Walla Walla sweet onions. The proposed assessment rate of $0.20 is $.05 higher than the current rate. The Committee expects the industry to handle 262,500 50-pound bags or equivalent of Walla Walla sweet onions during the 2023 fiscal period. Thus, the $0.20 per 50-pound bag or equivalent rate should provide $52,500

in assessment income (262,500 50-pound bags or equivalent multiplied by $0.20). The Committee also expects to use $17,900 from its financial reserve to cover remaining expenses. Income derived from handler assessments, along with reserve funds, should be adequate to meet budgeted expenditures for the 2023 fiscal period.

The major expenditures recommended by the Committee for the 2023 fiscal period include $43,400 for administrative expenses, $17,000 for promotions, $5,000 for research, and $5,000 for Committee travel. Budgeted expenditures for the 2022 fiscal period were $43,400, $31,870, $5,000 and $4,000, respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to better fund 2023 fiscal period budgeted expenditures and refrain from excessively drawing down the funds held in its reserve. This action would maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and the proposed assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.15 per 50-pound bag or equivalent and increasing the assessment rate by different amounts. However, the Committee determined that the recommended assessment rate would be able to fund most of the budgeted expenses and avoid drawing down reserves at an unsustainable rate. The assessment rate of $0.20 per 50-pound bag or equivalent of Walla Walla sweet onions was derived by considering anticipated expenses, the projected volume of assessable Walla Walla sweet onions, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2018–21 fiscal period was $5.44 per 50-pound bag or equivalent. Further, the Committee reported the quantity of assessable Walla Walla sweet onions harvested in the 2022 fiscal period was 299,993 50-pound bags or equivalent, which yields estimated total producer revenue for 2022 of $1,631,962 ($5.44 per 50-pound bag or equivalent multiplied by 299,993). Therefore, utilizing the assessment rate of $0.20 per 50-pound bag or equivalent, assessment revenue for the 2022 fiscal period, as a percentage of total producer revenue, would be approximately 3.68 percent ($0.20 multiplied by 299,993 per 50-pound bags or equivalent divided by $1,631,962 and multiplied by 100).

This proposed action would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The Walla Walla sweet onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 5, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this proposed rule.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 956 as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON.

■ 1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 956.202 to read as follows:

§ 956.202 Assessment rate.

On and after January 1, 2023, an assessment rate of $0.20 per 50-pound bag or equivalent is established for Walla Walla sweet onions.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–12917 Filed 6–15–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1213; Project Identifier MCAI–2022–01615–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–18–12, which applies to all Airbus SAS Model A330–841 and –941 airplanes. AD 2022–18–12 requires installing serviceable engine electronic control (EEC) software or EEC units having the serviceable software, limiting certain parts installation configurations, and prior or concurrent modification of EEC software. Since the FAA issued AD 2022–18–12, there was a determination

that engine crystal icing protection could be (temporarily) lost if an erroneous total pressure value is provided by the airplane system, which is addressed through EEC software. This proposed AD would continue to require certain actions in AD 2022–18–12 and would require adding new limitations for intermixing of certain EEC software standards and a new operational limitation for engines with certain EEC software installed, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of certain engines under certain conditions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 31, 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–2023–1213; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA AD identified in this NPRM, you may contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1213.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tim Dowling, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3667; email *timothy.p.dowling@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–2023–1213; Project Identifier MCAI–2022–01615–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tim Dowling, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3667; email *timothy.p.dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–18–12, Amendment 39–22163 (87 FR 56561, September 15, 2022) (AD 2022–18–22), for all Airbus SAS Model A330–841 and –941 airplanes. AD 2022–18–12 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0198, dated August 27, 2021, to correct an unsafe condition.

AD 2022–18–12 requires installing serviceable EEC software or EEC units having the serviceable software, limiting certain parts installation configurations, and prior or concurrent modification of EEC software, as specified in an EASA AD. The FAA issued AD 2022–18–12 to address erroneous electronic centralized airplane monitoring (ECAM) engine oil pressure warnings, which could lead to dual engine in-flight shutdown and result in reduced control of the airplane.

Actions Since AD 2022–18–12 Was Issued

Since the FAA issued AD 2022–18–12, EASA superseded EASA AD 2021–0198, dated August 27, 2021, and issued EASA AD 2022–0253, dated December 19, 2022 (EASA AD 2022–0253) (also referred to as the MCAI), to correct an unsafe condition for all Airbus A330–841 and –941 airplanes. The MCAI states that it has been determined that engine crystal icing protection could be (temporarily) lost if an erroneous total pressure value is provided by the airplane system, which, if not corrected, also could lead to dual engine in-flight shutdown and result in reduced control of the airplane. To address this unsafe condition, Rolls-Royce developed new EEC full-authority digital engine control software (EEC standard 5.3) for the affected Trent 7000 engines.

While AD 2022–18–12 was issued to address a different unsafe condition (to address erroneous ECAM engine oil pressure warnings), and requires installation of a different EEC software (standard 3.1), the EEC software requires modification to address both unsafe conditions, and should run simultaneously. The issue here is that certain EEC software standards for the different unsafe conditions should not be intermixed on an airplane, so this proposed AD would add new limitations for intermixing of certain EEC software. This proposed AD would also add an operational limitation for airplanes having an engine with certain EEC software installed (including EEC software standard 3.1 installed as specified in AD 2022–18–12). Modifying an airplane by installing serviceable EEC software (standard 5.3, having part number (P/N) RRY46T7K0020014, or later approved software standard and part number) would be acceptable for

compliance with the operational limitation, provided no affected EEC software, affected EEC unit, or affected engine is installed on that airplane.

The FAA is proposing this AD to address the unsafe condition identified above. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1213.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2022–18–12, this proposed AD would retain certain requirements of AD 2022–18–12. Those requirements are referenced in EASA AD 2022–0253, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0253 specifies limitations for intermixing of certain EEC software and an operational limitation for engines with certain EEC software installed. EASA AD 2022–0253 specifies that installation of serviceable EEC software is acceptable for compliance with (terminates) the operational limitation, provided that no affected EEC software, affected EEC unit, or affected engine is subsequently installed on the airplane. EASA AD 2022–0253 also prohibits the installation of engines with certain EEC software. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0253 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0253 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0253 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 2022–0253 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0253. Service information required by EASA AD 2022–0253 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1213 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–18–12 (parts limitations).	1 work-hours × $85 per hour = $85	$0	$85	$1,700
New proposed actions	Up to 25 work-hours × $85 per hour = $2,125.	*0	2,125	42,500

*The FAA has received no definitive data on which to base the cost estimates for the parts specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2022–18–12, Amendment 39–22163 (87 FR 56561, September 15, 2022); and
■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–1213; Project Identifier MCAI–2022–01615–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 31, 2023.

(b) Affected ADs

This AD replaces AD 2022–18–12, Amendment 39–22163 (87 FR 56561, September 15, 2022) (AD 2022–18–12).

(c) Applicability

This AD applies to all Airbus SAS Model A330–841 and –941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 73, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by a determination that engine crystal icing protection could be (temporarily) lost if an erroneous total pressure value is provided by the airplane system and the engine electronic control (EEC) software used to correct the system requires modification. This modification may conflict with EEC software to address erroneous electronic centralized airplane monitoring (ECAM) engine oil pressure warnings. The FAA is issuing this AD to address erroneous total pressure values being provided by the airplane system and any EEC software that should not be intermixed. The unsafe condition, if not addressed, could result in dual engine in-flight shut-down, and subsequent reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0253, dated December 19, 2022 (EASA AD 2022–0253).

(h) Exceptions to EASA AD 2022–0253

(1) Where EASA AD 2022–0253 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0253 refers to ''10 September 2021,'' this AD requires using October 20, 2022 (the effective date of AD 2022–18–12).

(3) Where EASA AD 2022–0253 refers to ''10 September 2023,'' this AD requires using October 20, 2024 (24 months after October 20, 2022, the effective date of AD 2022–18–12).

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0253.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact Tim Dowling, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3667; email *timothy.p.dowling@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0253, dated December 19, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0253, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on June 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–12866 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1338; Airspace Docket No. 22–AWP–86]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–401 in the Vicinity of Paynesville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–401 in the vicinity of Paynesville, CA.

DATES: Comments must be received on or before July 31, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1338 and Airspace Docket No. 22–AWP–86 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

Effective May 21, 2020, the FAA amended Very High Frequency (VHF) Omnidirectional Radio (VOR) Federal Airway V–165 (85 FR 12997; March 6, 2020). This action revoked a segment of the airway due to the decommissioning of the VOR portion of the Clovis VOR/Tactical Air Navigation (VORTAC). The currently proposed action would replace the previously revoked segment of V–165 with a new RNAV route, T–401.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing RNAV route T–401. This route would replace a segment of V–165 that was previously revoked due to the decommissioning of the VOR portion of the Clovis VORTAC. T–401 would extend between MARRI, CA, Fix and EXTRA, CA, Fix.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–401 MARRI, CA to EXTRA, CA [New]

MARRI, CA	FIX	(Lat. 38°45′47.21″ N, long. 119°42′00.31″ W)
OVRRR, CA	WP	(Lat. 38°32′14.57″ N, long. 119°46′21.21″ W)
UNDRR, CA	WP	(Lat. 38°05′31.13″ N, long. 119°45′59.22″ W)
BNAKI, CA	WP	(Lat. 37°53′25.61″ N, long. 119°40′02.43″ W)
NOHIT, CA	WP	(Lat. 37°08′36.00″ N, long. 119°23′02.00″ W)
ALTTA, CA	FIX	(Lat. 36°33′08.91″ N, long. 119°19′36.45″ W)
EXTRA, CA	FIX	(Lat. 36°19′39.06″ N, long. 119°13′06.84″ W)

* * * * *

Issued in Washington, DC, on June 7, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–12852 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1339; Airspace Docket No. 22–ANM–84]

RIN 2120–AA66

Establishment of Class E Airspace, Grand Coulee Dam Airport, Electric City, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Grand Coulee Dam Airport, Electric City, WA, in support of the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Comments must be received on or before July 31, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1339 and Airspace Docket No. 22–ANM–84 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Grand Coulee Dam Airport, Electric City, WA, to support the airport's transition from VFR to IFR operations.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E5 Airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish Class E airspace extending upward from 700 feet above the surface at Grand Coulee Dam Airport, Electric City, WA, in support of the airport's transition from VFR to IFR operations.

The proposed airspace design—which extends from the airport reference point (ARP) 10.2 miles east and 9.7 miles southwest—would contain departing and missed approach IFR operations until reaching 1,200 feet above the surface on the Area Navigation (RNAV) (Global Positioning System [GPS]) Z Runway (RWY) 22 missed approach and the SINGG (RNAV) obstacle departure procedure (ODP) as well as arriving IFR operations below 1,500 feet above the surface on the RNAV (GPS) Y RWY 22 and RNAV (GPS) Z RWY 22 approaches.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WA E5 Electric City, WA [New]

Grand Coulee Dam Airport, WA
(Lat. 47°55′19″ N, long. 119°4′59″ W)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at the airport's 063° bearing at 10.2 miles, then clockwise along the airport's 10.2-mile radius to the 99° bearing at 10.2 miles, to the 172° bearing at 4.7 miles, to the 216° bearing at 9.7 miles, then clockwise along the airport's 9.7-mile radius to the 237° bearing at 9.7 miles to the 329° bearing at 3.6 miles, thence to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on June 12, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–12887 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0473]

RIN 1625–AA08

Special Local Regulation; Los Angeles Harbor, San Pedro, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation in Los Angeles Harbor during the Sail Grand Prix Race event from July 21, 2023, through July 23, 2023. This proposed rulemaking is necessary to ensure the safety of race participants, participant vessels, spectators, and mariners transiting the area from the dangers associated with high-speed sailing activities during the event. This proposed regulation will prohibit vessels and persons not participating in the race event from entering the dedicated race area unless authorized by the Captain of the Port Sector Los Angeles-Long Beach or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 26, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0473 using the Federal Decision-

Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On March 17, 2023, the F50 League LLC notified the Coast Guard that it will be holding a sailing race from 2 p.m. to 6 p.m. daily from July 21, 2023, through July 23, 2023. The race will take place between Los Angeles Berth 46 and Cabrillo Beach in the Los Angeles Harbor within the San Pedro Breakwater in San Pedro, CA. Due to the high-profile nature of this event, spectator vessels and support craft will be present and have the potential to cause vessel congestion in proximity of the Main Channel. The Captain of the Port Sector Los Angeles-Long Beach (COTP) has determined that potential hazards associated with the race and race location would be a safety concern for anyone within the race box and adjacent navigable waters.

The purpose of this rulemaking is to ensure the safety of participants, spectators, and the navigable waters within the racing area of the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from July 21, 2023, through July 23, 2023. The special local regulation would be enforced daily from 2 p.m. to 6 p.m. This special local regulation would cover a portion of the Los Angeles Harbor designated as the race box area between Cabrillo Beach and the Los Angeles Harbor entrance. A transit lane on the northern side of the race box near Los Angeles Berth 46 will allow for transiting vessel traffic. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 2 to 6 p.m. sailing race. No vessel or person would be permitted to enter the area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic would be able to safely transit around this area via the northern boundary transit lane, which would impact a small, designated area of the Los Angeles harbor for less than 4 hours each day during the afternoon when vessel traffic is normally limited to recreational vessels. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulation, 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the area may be small entities, for the reasons stated in section IV. A. above, this proposed rule would not have a significant economic impact on any vessel owner or operator. Routes around the sailing race are present for transiting the area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulation lasting 4 hours that would limit entry to the race box without authorization from the Captain of the Port or their designated representatives. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0473 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T11–0473 to read as follows:

§ 100.T11–0473 Sail Grand Prix Los Angeles 2023, Los Angeles Harbor, San Pedro, CA.

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of San Pedro Harbor, from surface to bottom, encompassed by a line connecting the following points beginning at 33°42.835′ N, 118°16.712′ W; thence to 33°42.921′ N, 118°16.593′ W; thence to 33°42.829′ N, 118°16.441′ W; thence to 33°42.925′ N, 118°16.357′ W; thence to 33°43.077′ N, 118°16.409′ W; thence to 33°43.130′ N, 118°16.144′ W; thence to 33°42.837′ N, 118°15.729′ W; thence to 33°42.516′ N, 118°5.103′ W; thence to 33°42.245′ N, 118°15.929′ W; thence to 33°42.249′ N, 118°16.184′ W; and back to the beginning point. These coordinates are based on North American Datum 1983 (NAD 1983).

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Angeles-Long Beach in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Los Angeles-Long Beach or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM Channel 16. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 2 p.m. to 6 p.m. daily on July 21, 2023, through July 23, 2023.

R.D. Manning,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles-Long Beach.

[FR Doc. 2023–12837 Filed 6–15–23; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3030

[Docket No. RM2021–2; Order No. 6537]

Market Dominant Products

AGENCY: Postal Regulatory Commission.

ACTION: Order reactivating docket.

SUMMARY: The Commission established a review seeking input from the public regarding any additional regulations that may be necessary to achieve the objectives of the Postal Accountability and Enhancement Act (PAEA) over the longer-term, particularly for issues related to maximizing incentives to increase efficiency and reduce costs, maintaining high-quality service standards, and assuring financial stability (including retained earnings). This Order reactivating docket informs the public of the docket's reactivation, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 15, 2023. *Reply comments are due:* October 16, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: On January 15, 2021, the Commission established this proceeding to seek public input regarding any additional regulations that may be necessary to achieve the objectives of the Postal Accountability and Enhancement Act (PAEA) [1] over the longer-term, particularly for issues such as ''maximizing incentives to increase efficiency and reduce costs, maintaining high-quality service standards, and assuring financial stability (including retained earnings).'' [2] The Commission invited comments (*see* Order No. 5816 at 15) and subsequently extended the deadlines for filing comments (*see* Order No. 5862 at 3).

On June 24, 2021, the Postal Service filed a motion requesting that the Commission hold this proceeding in abeyance pending resolution of a consolidated appeal from a separate Commission docket then before the United States Court of Appeals for the District of Columbia Circuit.[3] The Commission granted the Motion and held the instant proceeding in abeyance until further notice.[4]

The appeal in question concerned Docket No. RM2017–3, a docket in which the Commission adopted final rules pursuant to 39 U.S.C. 3622(d)(3) implementing a modified ratemaking system. *See, e.g.,* Order No. 5928 at 1. This appeal has been resolved.[5] Consequently, the Commission will reactivate the instant proceeding.

The Commission invites comments on the topics identified in Order No. 5816. Initial comments are due by September 15, 2023. Reply comments are due by October 16, 2023. Because the previously designated public representative is unavailable, pursuant to 39 U.S.C. 505, the Commission will designate Katalin K. Clendenin as an officer of the Commission (Public Representative) to represent the interests of the general public.

It is ordered:

1. Docket No. RM2021–2 is reactivated.

2. Interested persons may submit Initial comments no later than September 15, 2023.

3. Interested persons may submit Reply comments no later than October 16, 2023.

4. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin shall serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–12894 Filed 6–15–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] Public Law 109–435, 201, 120 Stat. 3198, 3204 (2006).

[2] Advance Notice of Proposed Rulemaking Regarding Performance Incentive Mechanism, January 15, 2021, at 1 (Order No. 5816); *see* Order Extending Time to File Comments and Reply Comments, April 7, 2021, at 1 (Order No. 5862).

[3] *See* Motion of the United States Postal Service to Hold Proceeding in Abeyance, June 24, 2021 (Motion).

[4] Order Granting Motion to Hold Proceeding in Abeyance, July 2, 2021, at 3 (Order No. 5928).

[5] *See Nat'l Postal Policy Council* v. *Postal Regul. Comm'n,* 17 F.4th 1184 (D.C. Cir. 2021), *cert. denied,* 142 S.Ct. 2868 (2022).

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2023–8; Order No. 6538]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Three). This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 12, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On June 7, 2023, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Three.

II. Proposal Three

Background. The International Cost and Revenue Analysis (ICRA) model develops estimated settlement and international transportation costs for the various categories of outbound international Negotiated Service Agreement (NSA) mail by using NSA

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Three), June 7, 2023 (Petition). Proposal Three is attached to the Petition. The Postal Service also filed a notice of filing of non-public material relating to Proposal Three. Notice of Filing of USPS–RM2023–8–NP1 and Application for Nonpublic Treatment, June 7, 2023.

activity to calculate product pricing group average rates. Petition, Proposal Three at 4–5. In Docket No. RM2022–9, the Commission approved changes in analytical principles to allow for more precise reporting of Revenue, Pieces, and Weight (RPW) data used in the ICRA.[2] As relevant here, the System for International Revenue and Volume, Outbound–International Origin-Destination Information System (SIRVO) data, which the Postal Service uses in its RPW methodology, includes fields at the destination-country level, a ''Tracked'' indicator for First-Class Package International Service (FCPIS), and gross weights for outbound international NSA mailpieces. Petition, Proposal Three at 5.

In addition, in January 2023, the Commission approved the Postal Service's proposal to collapse zoned prices based on origin ZIP Code for Priority Mail International (PMI) destined to Canada into uniform rates as a single country group.[3] In the Fiscal Year 2022 Annual Compliance Determination (ACD), the Commission noted that the Postal Service had included a file in a Library Reference that altered ICRA unit costs used as input to the financial models for NSAs as a result of the pricing changes for PMI destined to Canada, but did not mention the relevant computational change in the preface.[4] Although the new file did not alter the results of the FY 2022 ACD, the Commission reminded the Postal Service of its obligations to identify any input data or quantification techniques that changed in the prior year and to request changes to analytical principles as appropriate. FY 2022 ACD at 86–87.

Proposal. The Postal Service proposes five revisions to analytical principles related to the ICRA. Three of those five revisions pertain to the use of Outbound International NSA SIRVO data.

First, the Postal Service proposes to use Outbound International NSA SIRVO data to attribute outbound settlement expenses and international transportation costs to international NSA products at the country-level. Petition, Proposal Three at 1. Currently, Outbound International NSA data used in the ICRA are reported by pricing group only. *Id.* at 11. Following the approval of Docket No. RM2022–9, Proposal Three, the underlying report data used in the ICRA contains more granularity, including NSA country-level detail. *Id.* Thus, the Postal Service proposes to assign settlement and international transportation rates to International NSA products using actual country-level International NSA data rather than product average pricing group rates. *Id.* at 5.

Second, the Postal Service proposes to use the Outbound International NSA SIRVO data ''Tracked'' indicator to attribute settlement expenses more accurately to NSA FCPIS. *Id.* at 2. The Postal Service explains that Outbound FCPIS tracking remuneration is included for some countries in settlement costs, but data used in the ICRA do not distinguish between tracked and un-tracked NSA FCPIS. *Id.* at 13. As a result, the ICRA applies a higher tracked per-piece settlement rate to all countries to calculate NSA FCPIS settlement expenses. *Id.* The Postal Service proposes to incorporate the ''Tracked'' indicator to apply the tracked per-piece settlement rate only to countries that include FCPIS tracking remuneration in settlements. *Id.*

Third, the Postal Service proposes to use Outbound International NSA SIRVO gross weight data to attribute settlement expenses and domestic and international transportation costs to outbound International NSA products. *Id.* at 2. Previously, data for outbound International NSA products included only net weights, so the ICRA applied gross-to-net-weight conversion factors using non-NSA product data. *Id.* at 2, 14. Following the Commission's approval of Docket No. RM2022–9, Proposal Three, NSA gross weight is now included in the underlying data used in the ICRA. *Id.* at 14. Accordingly, the Postal Service proposes to incorporate the gross weights for outbound International NSA products to refine its calculations of settlement expenses and domestic and international transportation costs, and to make the International NSA approach consistent with the non-NSA approach. *Id.*

Fourth, beginning with Postal Quarter 2 of FY 2023, the Postal Service proposes to apply PMI average domestic transportation unit cost to calculate the domestic transportation costs for NSA PMI destined to Canada. *Id.* at 3. Currently, the Postal Service applies PMI zone-based domestic transportation unit costs to zone profile data for NSA PMI destined to Canada. *Id.* However, in Docket No. CP2023–42, the Commission approved the Postal Service's request to collapse zone-based prices for PMI destined to Canada into a single country group. *See* Order No. 6384. Consequently, the Postal Service explains that the estimated zone-based unit costs that are developed in the ICRA are no longer useful for PMI destined to Canada. Petition, Proposal Three at 6.

Finally, the Postal Service proposes several ''maintenance and aesthetic changes that clarify and streamline the ICRA model'' in advance of the FY 2023 Annual Compliance Report (ACR). *Id.* at 4. For instance, the Postal Service proposes to remove sections of the ICRA model that are redundant or no longer used, refresh nomenclature used in the model, update product labels to align with the Mail Classification Schedule (MCS), and modify or eliminate certain workbooks to promote clarity and efficiency. *Id.* at 7.

Impact. According to the Postal Service, the proposed changes are ''relatively minor, because, in total, they have a percentage impact of less than one percent.'' *Id.* at 1. Specifically, the Postal Service asserts that if this proposal had been in effect in FY 2022, the net impact on total costs of Market Dominant products and Competitive products would have been zero. *Id.* at 8. Further, with respect to International NSAs, the Postal Service represents that there would have been no impact on Inbound International NSAs, all positive contribution Outbound International NSAs would have remained positive, and all negative contribution Outbound International NSAs would have remained negative. *Id.*

III. Notice and Comment

The Commission establishes Docket No. RM2023–8 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *https://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Three no later than July 12, 2023. Pursuant to 39 U.S.C. 505, Samuel Koroma is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2023–8 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Three), filed June 7, 2023.

[2] Docket No. RM2022–9, Order on Analytical Principles Used in Periodic Reporting (Proposal Three), September 12, 2022 (Order No. 6272).

[3] Docket No. CP2023–42, Order Approving Price Adjustments for Competitive Products, December 22, 2022 (Order No. 6384).

[4] Docket No. ACR2022, Annual Compliance Determination, March 29, 2023, at 86 (FY 2022 ACD).

2. Comments by interested persons in this proceeding are due no later than July 12, 2023.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel Koroma to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–12895 Filed 6–15–23; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2023–0072; FRL–8536–03–OAR]

RIN 2060–AV09

New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 23, 2023, the Environmental Protection Agency (EPA) issued a proposal titled, ''New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule''. The EPA is extending the comment period on the proposed rules from July 24, 2023, to August 8, 2023.

DATES: The public comment period for the proposed rule published in the **Federal Register** (FR) on May 23, 2023 (88 FR 33240) is being extended by 15 days. The comment period will now remain open until August 8, 2023, to allow additional time for stakeholders to review and comment on the proposals.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2023–0072, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2023–0072 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2023–0072.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2023–0072, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation 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 **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Mr. Christian Fellner, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4003; and email address: *fellner.christian@epa.gov* or Ms. Lisa Thompson, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–9775; and email address: *thompson.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

Rationale. On May 23, 2023, the Environmental Protection Agency (EPA) issued a proposal titled, ''New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule,'' 88 FR 33240 (May 23, 2023). In that proposal, the EPA provided a public comment period until July 24, 2023. The EPA has received several requests for additional time to review and comment on the proposed rules. After considering these requests, the EPA has decided to extend the public comment period another 15 days, until August 8, 2023, so that the comment period will be a total of 77 days. This extension will ensure that the public has additional time to review the proposed rules.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2023–0072. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2023–0072. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you

send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in instructions above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2023–0072. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Penny Lassiter,

Director, Sector Policies and Programs Division.

[FR Doc. 2023–12834 Filed 6–15–23; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 88, No. 116
Friday, June 16, 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

Foreign Agricultural Service

WTO Agricultural Quantity-Based Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, Department of Agriculture.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade Organization (WTO) agreement on agriculture.

SUMMARY: This notice lists the updated quantity-based trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products.

DATES: This notice is applicable on June 16, 2023.

ADDRESSES: Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1070, 1400 Independence Avenue SW, Washington, DC 20250–1070.

FOR FURTHER INFORMATION CONTACT: Sonya Wahi-Miller, 202–649–3870, *sonya.wahi-miller@usda.gov.*

SUPPLEMENTARY INFORMATION: Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round, if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties when the volume of imports of that product exceeds the sum of (1) a base trigger level multiplied by the average of the last three years of available import data and (2) the change in yearly consumption in the most recent year for which data are available (provided that the final trigger level is not less than 105 percent of the three-year import average). The base trigger level is set at 105, 110, or 125 percent of the three-year import average, depending on the percentage of domestic consumption that is represented by imports. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994, 60 FR 1007 (Jan. 4, 1995). The Secretary of Agriculture further delegated this duty, which lies with the Administrator of the Foreign Agricultural Service (7 CFR 2.*601*(a)(42)). The Annex to this notice contains the updated quantity trigger levels, consistent with the provisions of Article 5.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (2023) and in the Secretary of Agriculture's Notice of Uruguay Round Agricultural Safeguard Trigger Levels, published in the **Federal Register** at 60 FR 427 (Jan. 4, 1995).

Notice: As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the WTO Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superseded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 (Jan. 4, 1995).

Daniel Whitley,
Administrator, Foreign Agricultural Service.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGER

Product	2023 Quantity-based safeguard trigger		
	Trigger level	Unit	Period
Beef	347,198	MT	Jan 1, 2023–Dec 31, 2023.
Mutton	4,552	MT	Jan 1, 2023–Dec 31, 2023.
Cream	9,985,720	Liters	Jan 1, 2023–Dec 31, 2023.
Evaporated or Condensed Milk	6,653,570	Kilograms	Jan 1, 2023–Dec 31, 2023.
Nonfat Dry Milk	1,756,313	Kilograms	Jan 1, 2023–Dec 31, 2023.
Dried Whole Milk	4,143,647	Kilograms	Jan 1, 2023–Dec 31, 2023.
Dried Cream	53,297	Kilograms	Jan 1, 2023–Dec 31, 2023.
Dried Whey/Buttermilk	223,737	Kilograms	Jan 1, 2023–Dec 31, 2023.
Butter [1]	48,065,758	Kilograms	Jan 1, 2023–Dec 31, 2023.
Butteroil	26,189,838	Kilograms	Jan 1, 2023–Dec 31, 2023.
Chocolate Crumb	12,725,670	Kilograms	Jan 1, 2023–Dec 31, 2023.
Lowfat Chocolate Crumb	829,149	Kilograms	Jan 1, 2023–Dec 31, 2023.
Animal Feed Containing Milk	193,835	Kilograms	Jan 1, 2023–Dec 31, 2023.
Ice Cream	14,903,971	Liters	Jan 1, 2023–Dec 31, 2023.
Dairy Mixtures	24,530,673	Kilograms	Jan 1, 2023–Dec 31, 2023.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGER—Continued

Product	2023 Quantity-based safeguard trigger		
	Trigger level	Unit	Period
Infant Formula Containing Oligosaccharides	9,621,394	Kilograms	Jan 1, 2023–Dec 31, 2023.
Blue Cheese	3,819,960	Kilograms	Jan 1, 2023–Dec 31, 2023.
Cheddar Cheese	12,221,307	Kilograms	Jan 1, 2023–Dec 31, 2023.
American-Type Cheese	74,528	Kilograms	Jan 1, 2023–Dec 31, 2023.
Edam/Gouda Cheese	12,097,071	Kilograms	Jan 1, 2023–Dec 31, 2023.
Italian-Type Cheese	23,283,445	Kilograms	Jan 1, 2023–Dec 31, 2023.
Swiss Cheese with Eye Formation	23,441,766	Kilograms	Jan 1, 2023–Dec 31, 2023.
Gruyere Process Cheese	4,168,160	Kilograms	Jan 1, 2023–Dec 31, 2023.
NSPF Cheese	45,793,590	Kilograms	Jan 1, 2023–Dec 31, 2023.
Lowfat Cheese	120,534	Kilograms	Jan 1, 2023–Dec 31, 2023.
Peanut Butter/Paste	4,738	MT	Jan 1, 2023–Dec 31, 2023.
Peanuts [1]	673	MT	April 1, 2022–Mar 31, 2023.
	5,947	MT	April 1, 2023–Mar 31, 2024.
Raw Cane Sugar [1]	634,554	MT	Oct 1, 2022–Sep 30, 2023.
	899,349	MT	Oct 1, 2023–Sep 30, 2024.
Refined Sugars and Syrup [1]	280,612	MT	Oct 1, 2022–Sep 30, 2023.
	639,299	MT	Oct 1, 2023–Sep 30, 2024.
Articles over 65% Sugar	662	MT	Oct 1, 2022–Sep 30, 2023.
	975	MT	Oct 1, 2023–Sep 30, 2024.
Articles over 10% Sugar	22,852	MT	Oct 1, 2022–Sep 30, 2023.
	25,111	MT	Oct 1, 2023–Sep 30, 2024.
Blended Syrups	463	MT	Oct 1, 2022–Sep 30, 2023.
	965	MT	Oct 1, 2023–Sep 30, 2024.
Sweetened Cocoa Powder	727	MT	Oct 1, 2022–Sep 30, 2023.
	671	MT	Oct 1, 2023–Sep 30, 2024.
Mixes and Doughs	4,420	MT	Oct 1, 2022–Sep 30, 2023.
	4,400	MT	Oct 1, 2023–Sep 30, 2024.
Mixed Condiments and Seasonings	446	MT	Oct 1, 2022–Sep 30, 2023.
	799	MT	Oct 1, 2023–Sep 30, 2024.
Short Staple Cotton [2]	18,889	Kilograms	Sep 20, 2022–Sep 19, 2023.
	13,415	Kilograms	Sep 20, 2023–Sep 19, 2024.
Harsh or Rough Cotton	0	Kilograms	Aug 1, 2022–July 31, 2023.
	0	Kilograms	Aug 1, 2023–July 31, 2024.
Extra Long Staple Cotton	724,706	Kilograms	Aug 1, 2022–July 31, 2023.
	747,139	Kilograms	Aug 1, 2023–July 31, 2024.
Medium Staple Cotton	173	Kilograms	Aug 1, 2022–July 31, 2023.
	163	Kilograms	Aug 1, 2023–July 31, 2024.
Cotton Waste [2]	1,510,045	Kilograms	Sep 20, 2022–Sep 19, 2023.
	1,385,381	Kilograms	Sep 20, 2023–Sep 19, 2024.
Cotton Processed but not Spun [2]	202	Kilograms	Sep 11, 2022–Sep 10, 2023.
	18,752	Kilograms	Sep 11, 2023–Sep 10, 2024.

[1] Includes change in U.S. consumption.
[2] 12-month period from October to September.

[FR Doc. 2023–12892 Filed 6–15–23; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Handbook 5509.11, Chapter 10 Title Claims and Encroachments

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability for public comment.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture (USDA), is revising directives related to Title Claims and Encroachments (FSH 5509.17 Chapter 10). The contents of the handbook have been reorganized to align with the case processing activities in the Title Claims and Encroachment Management System Database (TCEMS) which was deployed in August 2012. The new directive will include clear direction on how to process a trespass case from start to finish, including exhibits and example letters that should be used and followed. All trespass and encroachments will be stored in the TCEMS database for ease and tracking. In addition, internal processing steps were included in the handbook to provide clarity for Forest Service staff.

DATES: Comments must be received in writing by July 17, 2023.

ADDRESSES: Comments may be submitted electronically to *https://cara.fs2c.usda.gov/Public/CommentInput?project=ORMS-3650*. Written comments may be mailed to Nathan Price, Chief Land Surveyor, Lands and Realty, 201 14th Street SW, Washington, DC 20024. All timely received comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at *https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-3650*.

FOR FURTHER INFORMATION CONTACT: Nathan Price, Chief Land Surveyor, at 202–205–1353 or *nathan.price@usda.gov*. Individuals who use telecommunications devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the changes to the handbook formulate standards, criterion, or guidelines applicable to a Forest Service program and are therefore publishing the proposed manual for public comment in accordance with 36 CFR part 216. The Forest Service is seeking public comment on the proposed directive, including the sufficiency of the proposed directive in meeting its stated objectives, ways to enhance the utility and clarity of information within the direction, or ways to streamline processes outlined.

The National Environmental Policy Act (NEPA) procedures exclude from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions'' (36 CFR 220.6(d)(2)). The Agency's conclusion is that these proposed directives fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

After the public comment period closes, the Forest Service will consider timely comments that are within the scope of the proposed directive in the development of the final directive. A notice of the final directive, including a response to timely comments, will be posted on the Forest Service's web page at *https://www.fs.usda.gov/about-agency/regulations-policies/comment-on-directives*.

Dated: June 12, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–12922 Filed 6–15–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–23–ELECTRIC–0003]

Amended Notice of Funding Opportunity for the Powering Affordable Clean Energy (PACE) Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; amendment.

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development (RD) Agency of the United States Department of Agriculture (USDA), announced its intent to solicit Letters of Interest (LOI) for Applications under the Powering Affordable Clean Energy (PACE) Program in a Notice of Funding Opportunity (NOFO) on May 16, 2023, in the **Federal Register**. In addition, the NOFO announced the Application process and deadlines, and the criteria that RUS will use to evaluate applications under the Powering Affordable Clean Energy (PACE) Program. These loan funds will be made to qualified PACE Applicants to finance power generation Projects for Renewable Energy Resource (RER) systems or Energy Storage Systems (ESS) that support RER Projects. The PACE Program has $1,000,000,000 available in appropriated funds under the Inflation Reduction Act of 2022 (IRA). This notice is making amendments to ensure applicants know they are required to establish a Verified eAuthentication ID, to inform applicants that they are eligible for the PACE Program even if they are subject to a ''cooling off period'' under the Rural Electrification Act, and to notify applicants that the Agency will provide general assistance to applicants through the RUS' General Field Representatives (GFRs) prior to LOI submissions.

DATES: Letters of Interest (LOIs) can be submitted beginning at 11:59 a.m. Eastern Time (ET) on June 30, 2023, until 11:59 a.m. ET September 29, 2023. An applicant that is invited by RUS to proceed with the loan Application will have 60 days, or a time agreeable to the Agency, to complete and submit a loan Application beginning from the date the Invitation to Proceed is emailed to the PACE Applicant. If the deadline to submit the completed Application falls on Saturday, Sunday, or a Federal holiday, the Application is due the next business day. RUS reserves the right, in its sole discretion, to extend the deadline upon the written request of the applicant if the applicant demonstrates to the satisfaction of the Administrator that exceptional circumstances exist to warrant the extension.

ADDRESSES:

Letters of Interest (LOI) Submissions. All LOIs must be submitted to RUS electronically through an on-line application window. The Agency will finalize the specific requirements of submitting the LOI through the on-line application window by notice in the **Federal Register** and the RUS website at *https://www.rd.usda.gov/programs-services/electric-programs/powering-affordable-clean-energy-pace-program* on or before June 30, 2023.

Application Submissions. LOI submitters chosen to proceed with the loan Application must submit a completed loan Application package in accordance with the instructions provided in the RUS' Invitation to Proceed.

Other information. Additional information and resources are available at *https://www.rd.usda.gov/programs-services/electric-programs/powering-affordable-clean-energy-pace-program.* Information on IRA Funding for RD is located at the following website: *https://www.rd.usda.gov/inflation-reduction-act#fn.*

FOR FURTHER INFORMATION CONTACT: Christopher A. McLean, Assistant Administrator, Electric Program, RUS, RD, USDA, 1400 Independence Avenue SW, STOP 1568, Washington, DC 20250–1560; Telephone: 202–690–4492; Email: *SM.RD.RUS.IRA.Questions@usda.gov.*

SUPPLEMENTARY INFORMATION:

Corrections and Amendments

This program was initially announced in the **Federal Register** on May 16, 2023, in FR Document 2023–10388. As of this publication, the following changes are being implemented.

1. On page 31239, in the second column, section D.7, is being amended to add two new paragraphs, (g) and (h), to read as follows:

(g) Prior to accessing the on-line application window to submit an LOI or an Application, PACE Applicants must obtain a Verified USDA eAuthentication (eAuth) account for each member of their staff requiring access to the online application window. If an Applicant or staff member does not have a Verified eAuth account, then they will need to create an account or upgrade an existing account. To do so, a person will need to follow the instructions on the USDA eAuth website to create a Verified eAuth account or upgrade an existing account from ''unverified'' to ''verified.'' The USDA eAuth website can be found at: *https://www.eauth.usda.gov/eauth/b/usda/home.*

(h) The 120-month or 180-month exclusions referenced in sec. 306B of the Rural Electrification Act and related regulations do not apply to financing under this program.

2. On page 31243, in the first column, section I is being amended to add a new paragraph 9. to read as follows:

9. *Application of General Assistance.* Prior to official submission of an LOI, Applicants may request general assistance from the Agency if such requests are made prior to August 17, 2023. The Agency may provide general assistance as it is able, and Applicants may request assistance in the form of general assistance and consultation with an RUS GFR. Please note that RUS GFRs shall not provide strategic submission or

strategic LOI advice, and applicants are fully responsible for their submissions. Assistance may also be requested to Agency staff in the form of requests to speak at meetings, events, and conferences to explain program provisions and answer questions about this funding announcement. Such requests and responses will be posted to the PACE FAQ page. Information on contacting an RUS GFR can be found here: *https://www.rd.usda.gov/contact-us/electric-gfr.* For requests regarding speaking engagements, please email: *SM.RD.RUS.IRA.Questions@usda.gov.*

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023–12848 Filed 6–15–23; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–23–ELECTRIC–0005]

Amended Notice of Funding Opportunity for the Empowering Rural America (New ERA) Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; amendment.

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announced its intent to solicit Letters of Interest (LOI) for applications under the Empowering Rural America (New ERA) Program in a Notice of Funding Opportunity (NOFO) on May 16, 2023, in the **Federal Register**. In addition, the NOFO announced the eligibility requirements, application process and deadlines, and the criteria that RUS will use to assess New ERA Applications. This notice is making corrections and amendments to clarify timelines for application submission, ensure applicants know they are required to establish a Verified eAuthentication ID, inform applicants that they are eligible for the New ERA Program even if they are subject to a ''cooling off period'' under the Rural Electrification Act, and to notify applicants that the Agency will provide general assistance to applicants through the RUS' General Field Representatives (GFRs) prior to LOI submissions.

DATES: Letters of Interest can be submitted beginning at 11:59 p.m. Eastern Time (ET) on July 31, 2023, and until 11:59 p.m. ET on August 31, 2023. Letters of Interest will not be accepted after 11:59 p.m. ET on August 31, 2023.

Application Process: Applicants must submit an LOI in order to be considered for an Invitation to Proceed. An Eligible Entity that is invited by RUS to proceed will receive an Invitation to Proceed and will have sixty (60) days to complete and submit a New ERA Application beginning from the date the Invitation to Proceed is emailed to the Applicant. If the sixty (60)-day deadline to submit the completed application falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day. RUS reserves the right, in its sole discretion, to extend the sixty (60)-day deadline upon the written request of the Applicant if the Applicant demonstrates to the satisfaction of the Administrator that exceptional circumstances exist to warrant the extension. New ERA Awards will be made as soon as possible following the submission of a New ERA Application, and all New ERA funds must be fully disbursed on or before September 30, 2031.

ADDRESSES:

Letters of Interest (LOI) Submissions. All LOIs must be submitted to RUS electronically through an RUS on-line application portal. The Agency will finalize the specific requirements of submitting the LOI through the on-line application portal by separate notice in the **Federal Register**, the RUS website at *https://www.rd.usda.gov/programs-services/electric-programs/empowering-rural-america-new-era-program,* and *Grants.gov* on or before July 31, 2023.

Application Submissions. Eligible Entities selected to proceed with the New ERA Application must submit a completed New ERA Application package in accordance with the instructions that will be provided in the RUS Invitation to Proceed.

Other Information: Additional information, resources, and sample LOI are available at *https://www.rd.usda.gov/programs-services/electric-programs/empowering-rural-america-new-era-program.* The IRA Funding for Rural Development website is located at *www.rd.usda.gov/inflation-reduction-act.*

FOR FURTHER INFORMATION CONTACT: Christopher McLean, Assistant Administrator, Electric Program, Rural Utilities Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, STOP 1568, Washington, DC 20250–1560; Telephone: 202–690–4492. Email to: *SM.RD.RUS.IRA.Questions@usda.gov.*

SUPPLEMENTARY INFORMATION:

Corrections and Amendments

This program was initially announced in the **Federal Register** on May 16, 2023, in FR Doc 2023–10393. As of this publication, the following changes are being implemented.

1. On page 31225, in the first column, section D.2. in paragraph ii, the number of days to submit an application package after receipt of an Invitation to Proceed is amended from 90 day to 60 days. This section is amended and restated to read as follows:

ii. *Phase 2—Application Submission.* Upon receiving an Invitation to Proceed, the Applicant must submit its application package within sixty (60) days of receipt of such invitation. The Applicant's application package must contain the applicable information and documents required in 7 CFR part 1710, subpart D as well as the following information and documentation:

2. On page 31227, in the third column, section D.7, paragraph ii is being corrected from ninety (90) days to sixty (60) days. This section is amended and restated to read as follows:

ii. By submitting the LOI, the Eligible Entity certifies to RUS that it has the intent and ability to submit a complete New ERA Application within sixty (60) days of RUS emailing an Invitation to Proceed should RUS provide such Invitation to Proceed.

3. On page 31228, in the second column, section D.7 is being amended to add two new paragraphs, ix and x to read as follows:

ix. Prior to accessing the online application window to submit an LOI or an Application, an Applicant must obtain a Verified USDA eAuthentication (eAuth) account for each member of their staff requiring access to the online application window. If an Applicant or staff member does not have a Verified eAuth account, they will need to create an account or upgrade an existing account. To do so, a person will need to follow the instructions on the USDA eAuth website to create a Verified eAuth account or upgrade an existing account from ''unverified'' to ''verified.'' The USDA eAuth website can be found at: *https://www.eauth.usda.gov/eauth/b/usda/home.*

x. The 120-month or 180-month exclusions referenced in sec. 306B of the RE Act and related regulations do not apply to financing under this program.

4. On page 31232, in the second column, section I is being amended to add a new paragraph 9 to read as follows:

9. *Application of General Assistance.* Prior to official submission of an LOI,

Applicants may request general assistance from the Agency if such requests are made prior to August 17, 2023. The Agency may provide general assistance as it is able, and Applicants may request assistance in the form of general assistance and consultation with an RUS GFR. Please note that RUS GFR shall not provide strategic submission or strategic LOI advice, and applicants are fully responsible for their submissions. Assistance may also be requested to Agency staff in the form of requests to speak at meetings, events, and conferences to explain program provisions and answer questions about this funding announcement. Such requests and responses will be posted to the New ERA FAQ page. Information on contacting an RUS GFR can be found at *https://www.rd.usda.gov/contact-us/electric-gfr.* For requests regarding speaking engagements, please email: *SM.RD.RUS.IRA.Questions@usda.gov.*

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023–12849 Filed 6–15–23; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 2 p.m. MT on Friday, June 23, 2023. The purpose of the meeting is to continue discussing potential projects of study.

DATES: Friday, June 23, 2023, from 2 p.m.–3 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1612552440.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 255 2440.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Utah Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call

II. Discussion: Potential Project of Study

III. Public Comment

IV. Next Steps

V. Adjournment

Dated: June 12, 2023,

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–12880 Filed 6–15–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting via web conference. The purpose of the meetings will be to discuss panel planning as part of their project on the Effects of the Covid–19 Pandemic on K–12 Education in the state.

DATES: Wednesday, August 9, 2023 at 12:00 p.m. Central Time.

ADDRESSES: The meeting will be held via Zoom.

August 9th Business Meeting

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1605535001?pwd=bDhZUUhRT3VqOWw0aVdQbU1NMjBMZz09.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Meeting ID: 160 553 5001.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussions through the above call-in numbers (audio only) or online registration links (audio/visual). An open comment period at each meeting will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and/or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Victoria at *vmoreno@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meetings. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Approval of Minutes
IV. Discuss Panel Planning
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: June 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–12875 Filed 6–15–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a briefing meeting via web conference. The purpose of the meeting will be to hear testimony on project related to the Effects of the Covid–19 Pandemic on K–12 Education in the state.

DATES: Thursday, July 13, 2023 at 11:00 a.m. Central Time.

ADDRESSES: The meeting will be held via Zoom.

July 13th Briefing Meeting:

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1618058975?pwd=VDVWQ3ZsUkxxSU55bFk2SGRVbWZ5QT09.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Meeting ID: 161 805 8975.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussions through the above call-in numbers (audio only) or online registration links (audio/visual). An open comment period at each meeting will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and/or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Victoria at *vmoreno@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meetings. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Panel Presenations
IV. Committee Q & A
V. Committee Business
VI. Public Comment
VII. Adjournment

Dated: June 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–12884 Filed 6–15–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss and plan on matters related to the Committee's inaugural civil rights project.

DATES: Thursday, July 6, 2023, from 12 p.m.–1 p.m. Atlantic Time.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://www.zoomgov.com/j/1606877885.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 160 687 7885#.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the Zoom meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, U.S. Virgin Islands Advisory Committee link. Persons interested in the work of this

Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion: Committee's Inaugural Civil Rights Project
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: June 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–12879 Filed 6–15–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Connecticut Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene a business meeting on Thursday, June 29, 2023 at 11:00 a.m. Eastern Time. The purpose of the meeting is for the committee to discuss topics for their next civil rights study.

DATES: Thursday, June 29, 2023; 11:00 a.m. (ET).

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://tinyurl.com/3m735abx; passcode: USCCR–CT.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 161 555 2518#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at *bdelaviez@usccr.gov* or 202–381–8915.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Barbara Delaviez at *bdelaviez@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Connecticut Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Committee Discussion of Topics for Committee's Next Civil Rights Study
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Dated: June 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–12881 Filed 6–15–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a briefing meeting via web conference. The purpose of the meeting will be to hear testimony on project related to the Effects of the Covid–19 Pandemic on K–12 Education in the state.

DATES: Monday, July 10, 2023 at 2:00 p.m. Central Time.

ADDRESSES: The meeting will be held via Zoom.

July 10th Briefing Meeting

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1601663612?pwd=YjdTTkszNUR2MCt0RFI4NFIyOXBhdz09.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Meeting ID: 160 166 3612.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussions through the above call-in numbers (audio only) or online registration links (audio/visual). An open comment period at each meeting will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and/or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Victoria at *vmoreno@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meetings. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may

contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Panel Presenations
IV. Committee Q & A
V. Committee Business
VI. Public Comment
VII. Adjournment

Dated: June 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–12877 Filed 6–15–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting via web conference. The purpose of the meetings will be to discuss panel planning as part of their project on the Effects of the Covid–19 Pandemic on K–12 Education in the state.

DATES: Thursday, June 29, 2023 at 4:00 p.m. Central Time.

ADDRESSES: The meeting will be held via Zoom.

June 29th Business Meeting: Registration Link (Audio/Visual): https://www.zoomgov.com/j/1619037926?pwd=OTJSWU40aDBVZkxWNlFYMWR4SU5Rdz09.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Meeting ID: 161 903 7926.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussions through the above call-in numbers (audio only) or online registration links (audio/visual). An open comment period at each meeting will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and/or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Victoria at *vmoreno@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meetings. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Approval of Minutes
IV. Discuss Panel Planning
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: June 12, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–12878 Filed 6–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2144]

Establishment of a Foreign-Trade Zone Under the Alternative Site Framework in Western North Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Land of Sky Regional Council (the Grantee), a state agency, made application to the Board (B–36–2022, docketed August 17, 2022 and amended January 6, 2023) requesting the establishment of a foreign-trade zone under the ASF with a service area of Henderson County as well as portions of Buncombe, Haywood, Jackson and Transylvania Counties, North Carolina, adjacent to the Greenville-Spartanburg U.S. Customs and Border Protection port of entry, and proposed Subzone 301A would be categorized as an ASF subzone;

Whereas, notice inviting public comment was given in the **Federal Register** (87 FR 51651–51652, August 23, 2022) and the amended application was processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopted the findings and recommendations of the examiners' report, and found that the requirements of the FTZ Act and the Board's regulations are satisfied;

Therefore, on June 12, 2023, the Board granted to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 301, as described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit, and to an ASF sunset provision for subzones that would terminate authority for Subzone 301A if no foreign non-duty paid merchandise is admitted to the subzone for a *bona fide* customs purpose three years from the month of approval.

Dated: June 12, 2023.

Lisa W. Wang,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–12897 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2023]

Foreign-Trade Zone (FTZ) 121, Notification of Proposed Production Activity; GE Vernova Operations, LLC; (Turbines and Generators); Schenectady, New York

GE Vernova Operations, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Schenectady, New York within FTZ 121. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on June 8, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include: steam turbines; assemblies (steam turbine rotor; spindle; turbine blade; non-aircraft gas turbine; nacelle); wind turbine blades and hubs; valve type injectors; drive trains; turbine generators (gas; steam); stators and rotors; electrical connectors; motor starters; and, motor overload protectors (duty rate ranges from duty-free to 6.7%; 25¢ each + 3.9%).

The proposed foreign-status materials and components include: lubrication grease; acetone; petroleum oil; joint compound; stainless steel components (rivets; fittings; fasteners; cables; ladders; screws; pins; bolts; nuts; rods; washers; rings; dowels); electrical components (connectors; couplings; terminals; relays; switch limits); light-emitting diode lights; acrylic paints and varnishes; silicone and mastic; surface cleaning wipes; lubricants; adhesives and sealants; lubricant additives; anti-freeze coolants; polyvinyl chloride components (flexible trim; fittings); plastic components (pipe; hosing; plugs; shipping covers); anti-slip mat; tapes (electrical; adhesive; temperature resistant); labels (adhesive; magnetic; paper); nylon components (cable ties; connectors; trim; mounts; clamps; washers; pressure sleeves); rubber components (seals; hose kits; cable protectors; mats; O-rings; gaskets; grommets); generator mounts; wood components (plates; shipping enclosures; steps; walkways); rope; flexible textile hose pipe; sandpaper; steel components (catwalks; walkways; brackets; columns; stiffeners; deflectors; support beams; spacers; trusses; platforms; screws; anchors; bolts; fasteners; wire; clamps; nuts; shims; mesh; supports; bushings; flanges; plates; hinges; latches; sign plates); copper components (fittings; wire; rails; conductors); aluminum components (catwalks; walkways; escape hatches; plates; clamps; brackets; ladders); hand tools; locks; friction system assemblies; turbine parts; cooling system pump units; grease pumps; fans and fan assemblies; passive cooling systems (heat exchanger; manifold); gas separation screens; cranes; pitch bearings, retractors, and drives; grease distributors; roller bearings; transmission cranks and shafts; pillow block bearings; gearboxes; universal joints; parts of gearboxes, transmissions, bearing housings, and shaft bearings; lubrication seals; multi-phase AC motors and motor assemblies; AC generators; generator parts; transformers; power supplies and converters; static converter plates; magnets; heater assemblies; modems and modem assemblies; keypad alarms; temperature cable harnesses; circuit breakers; surge protectors; terminals; programmable controllers; switchgear assemblies and switchboards; switchgear and switchboard rails and covers; alarms and sensors; cable harnesses, electrical cables, patches, and connectors; fiber optic cables; carbon brushes; ceramic electrical insulators; plastic insulating fittings and reducers; anemometers; speed sensor parts; accelerometer parts; and, brushes with polyester bristles (duty free to 8.5%; 1.3¢/kg + 5.7%; 84¢/bbl.; 25¢ each + 3.9%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is July 26, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: June 13, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–12965 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Eli Espinoza, Inmate Number: 19495–479, FCI Three Rivers, Federal Correctional Institution, P.O. Box 4200, Three Rivers, TX 78071; Order Denying Export Privileges

On December 14, 2020, in the U.S. District Court for the Southern District of Texas, Eli Espinoza (''Espinoza'') was convicted of violating 18 U.S.C. 554(a). Specifically, Espinoza was convicted of smuggling and attempting to smuggle from the United States to Mexico firearms components to include, front trunnion, AK bolt body, upper hand guard and gad tube, rear sight block, recoil spring rear guide, dust cover, trigger for semi-automatic rifle, bolt carrier assembly and bolt catch, without a license or written approval from the US Department of Commerce. As a result of his conviction, the Court sentenced Espinoza to 63 months of confinement, three years of supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Espinoza's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Espinoza to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Espinoza.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

Director, and the facts available to BIS, I have decided to deny Espinoza's export privileges under the Regulations for a period of 10 years from the date of Espinoza's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Espinoza had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until December 14, 2030, Eli Espinoza, with a last known address of Inmate Number: 19495–479, FCI Three Rivers, Federal Correctional Institution, P.O. Box 4200, Three Rivers, TX 78071, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Espinoza by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Espinoza may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Espinoza and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until December 14, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12953 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Samet Doyduk, 32 E 10th Avenue, Runnemede, NJ 08078–1128; Order Denying Export Privileges

On July 12, 2022, in the U.S. District Court for the District of New Jersey, Samet Doyduk (''Doyduk'') was convicted of violating 18 U.S.C. 371. Specifically, Doyduk was convicted of conspiring to export firearm parts purchased in the United States to be shipped to Turkey and the Republic of Georgia. As a result of his conviction, the Court sentenced Doyduk to 15 months of imprisonment, three years of supervised release and $100 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS has received notice of Doyduk's conviction for violating 18 U.S.C. 371. The Regulations provide that before taking action to deny a person's export privileges under section 766.25, BIS shall provide the person written notice of the proposed action and an opportunity to comment through a written submission, ''unless exceptional circumstances exist.'' 15 CFR 766.25(b). In this case, BIS made two unsuccessful attempts to serve Doyduk written notice and an opportunity to comment through a written submission. The first attempt was sent via UPS and was returned to BIS stamped ''RECEIVER DID NOT WANT, REFUSED DELIVERY''. The second attempt was sent via certified mail—return receipt requested. BIS has not received a receipt and the United States Post Office tracker indicates the ''STATUS IS NOT AVAILABLE''. As a result, exceptional circumstances exist. However, as set forth below, the opportunity to appeal this Order pursuant to Part 756 of the Regulations remains available to Doyduk.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Doyduk's export privileges under the Regulations for a period of seven years from the date of Doyduk's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

Doyduk had an interest at the time of his conviction.[2]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until July 12, 2029, Samet Doyduk, with a last known address of 32 E 10th Avenue, Runnemede, NJ 08078–1128, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Doyduk by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Doyduk may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Doyduk and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 12, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12948 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DT–P

[2] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Patrick Lee Sousa, Inmate Number: 79996–112, FCI Sheridan, Federal Correctional Institution, P.O. Box 5000, Sheridan, OR 97378; Order Denying Export Privileges

On October 29, 2021, in the U.S. District Court for the Central District of California, Patrick Lee Sousa (''Sousa'') was convicted of violating 18 U.S.C. 371. Specifically, Sousa was convicted of conspiring to knowingly, intentionally, and willfully engage in the business of dealing firearms without a license. As a result of his conviction, the Court sentenced Sousa to 57 months of confinement, three years of supervised release, and a $300 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Sousa's conviction for violating 18 U.S.C. 371. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Sousa to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Sousa.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Sousa's export privileges under the Regulations for a period of 10 years from the date of Sousa's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Sousa had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until October 29, 2031, Patrick Lee Sousa, with a last known address of Inmate Number: 79996–112, FCI Sheridan, Federal Correctional Institution, P.O. Box 5000, Sheridan, OR 97378, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Sousa by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Sousa may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Sousa and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 29, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12951 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Luis David Armendariz, Inmate Number: 66994–509, FCI Texarkana, Federal Correctional Institution, P.O. Box 7000, Texarkana, TX 75505

Order Denying Export Privileges

On May 11, 2022, in the U.S. District Court for the Western District of Texas, Luis David Armendariz (''Armendariz'') was convicted of violating 18 U.S.C. 554(a). Specifically, Armendariz was convicted of smuggling from the United States to Mexico approximately 19,000 rounds of assorted ammunition which is a controlled item as defined in the Commerce Control List, without the required license. As a result of his conviction, the Court sentenced Armendariz to 37 months of confinement, two years of supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Armendariz's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Armendariz to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Armendariz.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Armendariz's export privileges under the Regulations for a period of 10 years from the date of Armendariz's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Armendariz had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until May 11, 2032, Luis David Armendariz, with a last known address of Inmate Number: 66994–509, FCI Texarkana, Federal Correctional Institution, P.O. Box 7000, Texarkana, TX 75505, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Armendariz by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Armendariz may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Armendariz and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 11, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12952 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Shaohua ''Eric'' Wang, 972 Red Granite Road, Chula Vista, CA 91913; Order Denying Export Privileges

On February 3, 2020, in the U.S. District Court for the Southern District of California, Shaohua ''Eric'' Wang (''Wang'') was convicted of violating 18 U.S.C. 371. Specifically, Wang was convicted of conspiring to willfully export from the United States to China, controlled military equipment and supplies for profit, without the required licenses. As a result of his conviction, the Court sentenced Wang to 46 months of confinement, three years of supervised release, $200 special assessment, and a $25,000 criminal fine.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Wang's conviction for violating 18 U.S.C. 371. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Wang to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Wang.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Wang's export privileges under the Regulations for a period of 10 years from the date of Wang's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Wang had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until February 3, 2030, Shaohua ''Eric'' Wang, with a last known address of 972 Red Granite Road, Chula Vista, CA 91913, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Wang by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Wang may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Wang and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 3, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12949 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jorge Jesus Sigala, 734 S Mesa Hills Drive, Apt. 161, El Paso, TX 79912; Order Denying Export Privileges

On April 22, 2021, in the U.S. District Court for the Western District of Texas, Jorge Jesus Sigala (''Sigala'') was convicted of violating 18 U.S.C. 554(a). Specifically, Sigala was convicted of smuggling from the United States to Mexico, various pistols. As a result of his conviction, the Court sentenced Sigala to 12 months and one day of confinement, three years of supervised release, and a $100 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Sigala's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Sigala to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Sigala.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Sigala's export privileges under the Regulations for a period of five years from the date of Sigala's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Sigala had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until April 22, 2026, Jorge Jesus Sigala, with a last known address of 734 S Mesa Hills Drive, Apt. 161, El Paso, TX 79912, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person,

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

firm, corporation, or business organization related to Sigala by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Sigala may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Sigala and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 22, 2026.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12950 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Khalid Jarrah, 127 Harriri Street, El Marj, Lebanon; Order Denying Export Privileges

On August 11, 2021, in the U.S. District Court for the Central District of California, Khalid Jarrah (''Jarrah'') was convicted of violating 18 U.S.C. 371. Specifically, Jarrah was convicted of conspiring to knowingly, intentionally, and willfully engage in the business of dealing firearms without a license. As a result of his conviction, the Court sentenced Jarrah to 15 months of confinement, three years of supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Jarrah's conviction for violating 18 U.S.C. 371. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Jarrah to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Jarrah.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Jarrah's export privileges under the Regulations for a period of 10 years from the date of Jarrah's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Jarrah had an interest at the time of his conviction.[3]

Accordingly, it is hereby *Ordered*:

First, from the date of this Order until August 11, 2031, Khalid Jarrah, with a last known address of 127 Harriri Street, El Marj, Lebanon, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Jarrah by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Jarrah may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Jarrah and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 11, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12947 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Conduct Restoration Planning for Discharge of Oil From the Amplify Energy Corp Pipeline P00547 Into the Pacific Ocean Near Huntington Beach, Orange County, California

AGENCY: Office of Response and Restoration (ORR), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of intent to conduct restoration planning activities.

SUMMARY: Notice is hereby given of intent to proceed with restoration planning actions to address injuries to natural resources resulting from the discharge of oil from the Amplify Energy Corp Pipeline P00547 into the Pacific Ocean near Huntington Beach, Orange County, California (Incident). The purpose of this restoration planning effort is to further evaluate injuries to natural resources and services and to use that information to determine the need for, type of, and scale of restoration actions.

FOR FURTHER INFORMATION CONTACT: For further information contact one or more of the following Trustee representatives: Troy Baker (NOAA) at *troy.baker@noaa.gov;* Mike Anderson (California Department of Fish and Wildlife) at *michael.anderson@wildlife.ca.gov;* Damian Higgins (U.S. Fish and Wildlife Service) at *damian_higgins@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2021, Pipeline P00547, an oil pipeline owned and operated by Amplify Energy Corp., Beta Operating Company, LLC, dba, ''Beta Offshore''; and San Pedro Bay Pipeline Company (collectively, Amplify) ruptured. The underwater pipeline running from Platform Elly to Long Beach spilled a minimum of approximately 24,696 gallons of crude oil into San Pedro Bay. Product initially floated to the surface forming surface slicks and strands that extended from the source mainly south and southeast along prevailing ocean currents. Southern California beaches from at least Surfside Beach to potentially past the U.S./Mexico Border, including coastal marshes and lagoons, were either freshly oiled or received varying levels of tarballs in the weeks following the spill. This discharge affected natural resources in the area.

Pursuant to section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.,* Federal and State Trustees for natural resources are authorized to (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities, and (2) develop and implement a plan for restoration of such injured resources. The Federal Trustees are designated pursuant to the National Contingency Plan, 40 CFR 300.600 and Executive Order 12777. State trustees for California are designated pursuant to the National Contingency Plan, 40 CFR 300.605, and the Governor's Designation of State Natural Resource Trustees under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Oil Pollution Act of 1990, and California Health and Safety Code section 25352(c), dated October 5, 2007, and the Delegation of Authority of Natural Resource Trustee, dated November 15, 2007. The natural resources trustees (Trustees) under OPA for this Incident are NOAA; the United States Department of the Interior, acting through the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management; the California Department of Fish and Wildlife; the California State Lands Commission; and the California Department of Parks and Recreation.

Amplify is the Responsible Party (RP) for this Incident. The Trustees have coordinated with representatives of the RP on Natural Resource Damage Assessment (NRDA) activities.

The Trustees began the Preassessment Phase of the NRDA in accordance with 15 CFR 990.40, to determine if they had jurisdiction to pursue restoration under OPA, and, if so, whether it was appropriate to do so. During the Preassessment Phase, the Trustees collected and analyzed the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction or a determination to conduct restoration planning, (2) ephemeral data, and/or (3) information needed to design or implement anticipated emergency restoration and/or assessment activities as part of the Restoration Planning Phase.

The NRDA regulations under OPA, 15 CFR 990 (NRDA regulations), provide that the Trustees are to prepare a Notice of Intent to Conduct Restoration Planning (Notice) if they determine certain conditions have been met, and if they decide to quantify the injuries to natural resources and to develop a restoration plan.

This Notice is to announce, pursuant to 15 CFR 990.44, that the Trustees, having collected and analyzed data, intend to proceed with restoration planning actions to address injuries to natural resources resulting from the Incident. The purpose of this restoration planning effort is to further evaluate injuries to natural resources and services and to use that information to determine the need for, type of, and scale of restoration actions.

Determination of Jurisdiction

The Trustees have made the following findings pursuant to 15 CFR 990.41:

1. The rupture of Pipeline P00547 on October 1, 2021, resulted in a discharge of oil into and upon navigable waters of the United States, including the Pacific Ocean, as well as adjoining shorelines. Such occurrence constitutes an ''Incident'' within the meaning of 15 CFR 930.30.

2. The Incident was not permitted pursuant to Federal, State, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident. The crude oil discharged from Pipeline P00547 is harmful to certain aquatic organisms, birds, wildlife, and vegetation that were exposed to the oil. Accordingly, the discharged oil and the response activities to address the discharge have had an adverse effect on the natural resources of the Pacific Ocean and its adjoining shorelines and impaired the services which those resources provide. Documents in the Administrative Record contain more information regarding the basis upon which the Trustees reached this determination.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under OPA.

Determination To Conduct Restoration Planning

The Trustees have determined, pursuant to 15 CFR 990.42(a), that:

1. Observations and data collected in accordance with 15 CFR 990.43 (including but not limited to dead and live oiled birds; oiling at beaches, rocky intertidal habitats, subtidal habitats, and other habitats; beach and fishery closures; and impacts from response activities) demonstrate that injuries to natural resources have resulted from the Incident. Immediately following the Incident, the Trustees, in cooperation with the RPs, identified several categories of impacted and potentially impacted natural resources, including

birds, marine mammals, fish, and shoreline and subtidal habitats, as well as effects to human use resulting from impacts on these natural resources. The Trustees then began conducting activities, in cooperation with the RPs, to evaluate injuries and potential injuries within these categories. More information on these resource categories is available in the Administrative Record, including information gathered during the Preassessment.

2. Spill response actions did not address all injuries resulting from the Incident to the extent that restoration would not be necessary. Although response actions were initiated soon after the spill, the nature and location of the discharge prevented recovery of all of the oil and precluded prevention of injuries to some natural resources. In addition, certain response efforts, such as the removal of wrack from beaches and excavation of submerged oil, caused additional injuries to natural resources. It is anticipated that injured natural resources will eventually return to baseline levels (the condition they would have been in had it not been for the Incident), but interim losses have occurred or have likely occurred and will continue until a return to baseline is achieved. In addition, there were lost and diminished human uses of the resources resulting from the impacts to the natural resources and from spill response actions.

3. Feasible primary and compensatory restoration actions exist to address injuries to natural resources and lost human uses resulting from the Incident. The Trustees have compiled a list of restoration projects that could potentially be implemented to compensate for interim losses resulting from the Incident. The Trustees have also sought suggestions from the public on potential restoration projects to compensate for the services and functions provided by natural resources. In addition, assessment procedures such as Habitat Equivalency Analysis and Resource Equivalency Analysis are available to scale the appropriate amount of compensatory restoration required to offset ecological service losses resulting from this Incident. To quantify lost human uses resulting from the Incident, the Trustees, in cooperation with the RP, have collected and compiled data regarding visitor use of impacted sites and associated activities. To value those lost uses, the Trustees are investigating use of a Travel Cost Model and Benefits Transfer Method. To compensate for the lost and diminished human uses arising from the Incident, the Trustees intend to solicit project ideas from local, regional, State, and Federal managers of parks and other recreational areas, as well as from the general public. The final selection of projects will be informed by project costs, the value of lost use, distribution and character of impacts, and other criteria consistent with state and federal laws and practice.

During restoration planning, the Trustees evaluate potential restoration projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Damage Assessment and Restoration Plan for public review and comment.

Based upon the foregoing determinations and information in the Administrative Record, the Trustees intend to proceed with restoration planning for this Incident.

Administrative Record

The Trustees have opened an Administrative Record (Record) in accordance with 15 CFR 990.45. The Record will include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident. The Record will be augmented with additional information over the course of the NRDA process.

The Administrative Record may be viewed at the following website: *https://www.diver.orr.noaa.gov/web/guest/diver-admin-record/14901.*

Opportunity To Comment

Pursuant to 15 CFR 990.14(d), the Trustees seek public involvement in restoration planning for this Incident through public review of, and comment on, documents contained in the Record. The Trustees also intend to seek public comment on a draft Damage Assessment and Restoration Plan when it becomes available.

Scott Lundgren,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–12787 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD063]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 87 data scoping webinar for Gulf of Mexico white, pink, and brown shrimp.

SUMMARY: The SEDAR 87 assessment process of Gulf of Mexico white, pink, and brown shrimp will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 87 Data scoping webinar will be held July 11, 2023, from 11 a.m. until 1 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center.

Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Data scoping webinar are as follows:

Participants will discuss what data may be available for use in the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: June 12, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–12841 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD078]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 Assessment Webinar VIII for Gulf of Mexico red snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Assessment Webinar VIII will be held Wednesday, July 12, 2023, from 1 p.m. to 4 p.m., Eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in webinar are as follows:

Participants will discuss modeling approaches for use in the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: June 12, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–12842 Filed 6–15–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Quarterly Public Meeting

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of public meeting.

DATES: July 13, 2023, from 1:00 p.m. to 4:00 p.m., ET.

Place: The meeting will be held virtually only via Zoom webinar.

FOR FURTHER INFORMATION CONTACT: Angela Phifer, 355 E Street SW, Suite 325, Washington, DC 20024; (703) 798–5873, or *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Committee for Purchase From People Who Are Blind or Severely Disabled is an independent government agency operating as the U.S. AbilityOne Commission. It oversees the

AbilityOne Program, which provides employment opportunities through Federal contracts for people who are blind or have significant disabilities in the manufacture and delivery of products and services to the Federal Government. The Javits-Wagner-O'Day Act (41 U.S.C. chapter 85) authorizes the contracts.

Registration: Attendees *not* requesting speaking time should register not later than 11:59 p.m. ET on July 12, 2023. Attendees requesting speaking time must register not later than 11:59 p.m. ET on July 7, 2023, and use the comment fields in the registration form to specify the intended speaking topic/s. The registration link is accessed from the Commission's home page, *www.abilityone.gov.*

Commission Statement: This regular quarterly meeting will include updates from the Commission Chairperson, Executive Director, and Inspector General. The meeting will provide significant time for public participation.

Public Participation: The Commission will hold a public engagement session on the Notice of Proposed Rulemaking (NPRM) Supporting Competition in the AbilityOne Program (RIN 3037–AA14), published on March 13, 2023. The Commission particularly invites discussion on how the Commission can consider a nonprofit agency's positive performance in improving employment opportunities for people who are blind or have significant disabilities, both within the AbilityOne workplace and placements outside the AbilityOne Program, in initial Procurement List additions and in any competitive process covered by the NPRM. The Commission will invite some attendees to present their views during the meeting. The Commission will also recognize individuals who request to speak, to the maximum extent time permits. Speakers are requested to keep their presentations to three (3) minutes to allow the maximum number of participants during the meeting.

Personal Information: Speakers should not include any information that they do not want publicly disclosed.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–12973 Filed 6–15–23; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the procurement list.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* July 16, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 2/10/2023 and 2/17/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
6645–01–456–5008—Clock, Wall, Slimline, Bronze, Custom Logo, 9¼ Quartz
6645–01–456–6018—Clock, Wall, Slimline, Brown, Custom Logo, 12¾″ Quartz
6645–01–557–3149—Clock, Wall, Self-Set, Brown, 12″ Diameter
6645–01–557–8131—Clock, Wall, Self-Set, Custom Logo, Brown, 12″ Diameter
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR 2, NEW YORK, NY

NSN(s)—Product Name(s):
MR 1080—Refill, Scrub Brush with Eraser, Utility, 2PK
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
7520–01–645–9512—Pen, Stick, Plastic Fine Point, Water Resistant Permanent Blue Ink
7520–01–645–9513—Pen, Stick, Plastic Fine Point, Water Resistant Permanent Red Ink
7520–01–645–9514—Pen, Stick, Plastic Medium Point, Water Resistant Permanent Black Ink
7520–01–645–9515—Pen, Stick, Plastic Fine Point, Water Resistant Permanent Black Ink
7520–01–645–9516—Pen, Stick, Plastic Medium Point, Water Resistant Permanent Blue Ink
7520–01–645–9517—Pen, Stick, Plastic Medium Point, Water Resistant Permanent Red Ink
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Sourcing, Cutting, Kitting and Fulfillment Service
Mandatory for: Federal Prison Industries, 400 1st Street NW, Washington, DC—ECWS, GEN III, Layer 6, Jacket
Designated Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: FEDERAL PRISON SYSTEM/BUREAU OF PRISONS, CO BUSINESS OFFICE

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–12911 Filed 6–15–23; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to Delete product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* July 16, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7510–01–664–8783—DAYMAX SYSTEM, 2022 Calendar Pad, Type I
7510–01–664–9513—DAYMAX System, 2022, Calendar Pad, Type II

Designated Source of Supply: Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort Wayne, IN

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR 2, NEW YORK, NY

NSN(s)—Product Name(s):
8415–01–518–4594—Jacket, Physical Training Uniform, USAF, Blue, X-Small/Short
8415–01–518–4599—Jacket, Physical Training Uniform, USAF, Blue, X-Small/Regular
8415–01–518–4600—Jacket, Physical Training Uniform, USAF, Blue, X-Small/Long
8415–01–518–4601—Jacket, Physical Training Uniform, USAF, Blue, Small/Short
8415–01–518–4603—Jacket, Physical Training Uniform, USAF, Blue, Small/Regular
8415–01–518–4604—Jacket, Physical Training Uniform, USAF, Blue, Small/Long
8415–01–518–4605—Jacket, Physical Training Uniform, USAF, Blue, Medium/Short
8415–01–518–4607—Jacket, Physical Training Uniform, USAF, Blue, Medium/Regular
8415–01–518–4608—Jacket, Physical Training Uniform, USAF, Blue, Medium/Long
8415–01–518–4609—Jacket, Physical Training Uniform, USAF, Blue, Large/Short
8415–01–518–4610—Jacket, Physical Training Uniform, USAF, Blue, Large/Regular
8415–01–518–4611—Jacket, Physical Training Uniform, USAF, Blue, Large/Long
8415–01–518–4612—Jacket, Physical Training Uniform, USAF, Blue, X-Large/Short
8415–01–518–4613—Jacket, Physical Training Uniform, USAF, Blue, X-Large/Regular
8415–01–518–4615—Jacket, Physical Training Uniform, USAF, Blue, X-Large/Long
8415–01–518–4616—Jacket, Physical Training Uniform, USAF, Blue, XX-Large/Short
8415–01–518–4617—Jacket, Physical Training Uniform, USAF, Blue, XX-Large/Regular
8415–01–518–4618—Jacket, Physical Training Uniform, USAF, Blue, XX-Large/Long
8415–01–518–4619—Jacket, Physical Training Uniform, USAF, Blue, XXX-Large/Short
8415–01–518–4620—Jacket, Physical Training Uniform, USAF, Blue, XXX-Large/Regular
8415–01–518–4621—Jacket, Physical Training Uniform, USAF, Blue, XXX-Large/Long
8415–01–518–4622—Jacket, Physical Training Uniform, USAF, Blue, XXXX-Large/Short
8415–01–518–4623—Jacket, Physical Training Uniform, USAF, Blue, XXXX-Large/Regular
8415–01–518–4647—Jacket, Physical Training Uniform, USAF, Blue, XXXX-Large/Long
8415–01–521–0841—Jacket, Physical Training Uniform, USAF, Blue, X Small/X Short
8415–01–521–0844—Jacket, Physical Training Uniform, USAF, Blue, Small/X Short
8415–01–521–0845—Jacket, Physical Training Uniform, USAF, Blue, Medium/X Short
8415–01–521–0846—Jacket, Physical Training Uniform, USAF, Blue, Large/X Short
8415–01–521–0847—Jacket, Physical Training Uniform, USAF, Blue, X Large/X Short
8415–01–521–0848—Jacket, Physical Training Uniform, USAF, Blue, XX Large/X Short
8415–01–521–0849—Jacket, Physical Training Uniform, USAF, Blue, XXX Large/X Short
8415–01–521–0851—Jacket, Physical Training Uniform, USAF, Blue, XXXX Large/X Short

Designated Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8415–01–518–4594—Jacket, Physical Training Uniform, USAF, Blue, X-Small/Short
8415–01–518–4599—Jacket, Physical Training Uniform, USAF, Blue, X-Small/Regular
8415–01–518–4600—Jacket, Physical Training Uniform, USAF, Blue, X-Small/Long
8415–01–518–4601—Jacket, Physical Training Uniform, USAF, Blue, Small/Short
8415–01–518–4603—Jacket, Physical Training Uniform, USAF, Blue, Small/Regular
8415–01–518–4604—Jacket, Physical Training Uniform, USAF, Blue, Small/Long
8415–01–518–4605—Jacket, Physical Training Uniform, USAF, Blue, Medium/Short
8415–01–518–4607—Jacket, Physical Training Uniform, USAF, Blue, Medium/Regular
8415–01–518–4608—Jacket, Physical Training Uniform, USAF, Blue, Medium/Long
8415–01–518–4609—Jacket, Physical Training Uniform, USAF, Blue, Large/Short
8415–01–518–4610—Jacket, Physical Training Uniform, USAF, Blue, Large/Regular
8415–01–518–4611—Jacket, Physical Training Uniform, USAF, Blue, Large/Long
8415–01–518–4612—Jacket, Physical Training Uniform, USAF, Blue, X-Large/Short
8415–01–518–4613—Jacket, Physical Training Uniform, USAF, Blue, X-Large/Regular
8415–01–518–4615—Jacket, Physical Training Uniform, USAF, Blue, X-Large/Long
8415–01–518–4616—Jacket, Physical Training Uniform, USAF, Blue, XX-Large/Short
8415–01–518–4617—Jacket, Physical Training Uniform, USAF, Blue, XX-Large/Regular
8415–01–518–4618—Jacket, Physical Training Uniform, USAF, Blue, XX-Large/Long
8415–01–518–4619—Jacket, Physical Training Uniform, USAF, Blue, XXX-Large/Short
8415–01–518–4620—Jacket, Physical Training Uniform, USAF, Blue, XXX-Large/Regular
8415–01–518–4621—Jacket, Physical Training Uniform, USAF, Blue, XXX-Large/Long

8415–01–518–4622—Jacket, Physical Training Uniform, USAF, Blue, XXXX-Large/Short
8415–01–518–4623—Jacket, Physical Training Uniform, USAF, Blue, XXXX-Large/Regular
8415–01–518–4647—Jacket, Physical Training Uniform, USAF, Blue, XXXX-Large/Long
8415–01–521–0841—Jacket, Physical Training Uniform, USAF, Blue, X Small/X Short
8415–01–521–0844—Jacket, Physical Training Uniform, USAF, Blue, Small/X Short
8415–01–521–0845—Jacket, Physical Training Uniform, USAF, Blue, Medium/X Short
8415–01–521–0846—Jacket, Physical Training Uniform, USAF, Blue, Large/X Short
8415–01–521–0847—Jacket, Physical Training Uniform, USAF, Blue, X Large/X Short
8415–01–521–0848—Jacket, Physical Training Uniform, USAF, Blue, XX Large/X Short
8415–01–521–0849—Jacket, Physical Training Uniform, USAF, Blue, XXX Large/X Short
8415–01–521–0851—Jacket, Physical Training Uniform, USAF, Blue, XXXX Large/X Short

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–12913 Filed 6–15–23; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (hereafter, ''Board'') will take place.

DATES: Open to the public Friday, July 28, 2023, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: This meeting will be held virtually. For information on accessing the meeting, please contact Inger Pettygrove, (703) 225–8803 or *Inger.M.Pettygrove.civ@mail.mil* before Friday, July 14, 2023, at 12:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225–8803 (Voice), *Inger.M.Pettygrove.civ@mail.mil* (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350–8000. Website: *https://actuary.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held in accordance with chapter 10 of title 5 United States Code (U.S.C.) (formerly known as the Federal Advisory Committee Act (FACA) (5 U.S.C., app.)), under the provisions of the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to execute the provisions of 10 U.S.C. chapter 56 (10 U.S.C. 1114 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda: Discussion includes:

1. Approve actuarial assumptions and methods needed for calculating *:
   —September 30, 2022, unfunded liability (UFL)
   —FY 2025 per capita full-time and part-time normal cost amounts
   —October 1, 2023, Treasury UFL amortization payment
2. Approve per capita full-time and part-time normal cost amounts for the October 1, 2023 (FY 2024) normal cost payments *
3. Trust Fund Update—Investment Experience
4. Medicare-Eligible Retiree Health Care Fund Update
5. September 30, 2021, Actuarial Valuation Results
6. September 30, 2022, Actuarial Valuation Proposals

* Board approval required

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public.

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received at least 10 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via email to Inger Pettygrove at *Inger.M.Pettygrove.civ@mail.mil,* by July 14, 2023, in either Adobe or Microsoft Word format. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board website.

Dated: June 13, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–12981 Filed 6–15–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid open meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 19, 2023; 4:00 p.m.–8:00 p.m. PDT.

The opportunity for public comment is at 4:10 p.m. PDT.

This time is subject to change; please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator (below) for confirmation of time prior to the meeting.

ADDRESSES: This meeting will be open to the public in-person at the Molasky Corporate Center (address below) or virtually via Microsoft Teams. To attend virtually, please contact Barbara Ulmer, NSSAB Administrator, by email *nssab@emcbc.doe.gov* or phone (702) 523–0894, no later than 4:00 p.m. PDT on Monday, July 17, 2023.

Molasky Corporate Center, 15th Floor Conference Room, 100 North City Parkway, Las Vegas, NV 89106.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, NSSAB Administrator, by phone: (702) 523–0894 or email: *nssab@emcbc.doe.gov* or visit the Board's internet homepage at *www.nnss.gov/NSSAB/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-

up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

1. DOE–EM Work Plan Presentations
2. Public Comment Period
3. Updates from DOE Deputy Designated Federal Officer
4. Updates from Liaisons
5. Development of Round Robin for Presentation at the EM SSAB National Chairs' Meeting

Public Participation: The in-person/online virtual hybrid meeting is open to the public either in-person at the Molasky Corporate Center or via Microsoft Teams. To sign-up for public comment, please contact the NSSAB Administrator (above) no later than 4:00 p.m. PDT on Monday, July 17, 2023. In addition to participation in the live public comment session identified above, written statements may be filed with the Board either before or within seven days after the meeting by sending them to the NSSAB Administrator at the aforementioned email address. Written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so in 2-minute segments for the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *http://www.nnss.gov/nssab/pages/MM_FY23.html.*

Signed in Washington, DC, on June 13, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–12986 Filed 6–15–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Bonneville Power Administration, Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE), Bonneville Power Administration (BPA), invites public comment on a proposed collection of information that BPA is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before August 15, 2023. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Bonneville Power Administration, Attn: Stephanie Noell, Privacy Program, CGI–7, P.O. Box 3621, Portland, OR 97208–3621, or by email at *privacy@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Attn: Stephanie Noell, Privacy Program, by email at *privacy@bpa.gov,* or by phone at (503) 230–3881.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5190;

(2) *Information Collection Request Titled:* Contracting;

(3) *Type of Review:* Extension;

(4) *Purpose:* This information collection is associated with BPA's management and oversight of contracting requirements in fulfillment of BPA vendor contracts;

(5) *Annual Estimated Number of Respondents:* 1,853;

(6) *Annual Estimated Number of Total Responses:* 13,115;

(7) *Annual Estimated Number of Burden Hours:* 2,740;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: The Bonneville Project Act codified in 16 U.S.C. 832a; the Federal Columbia River Transmission System Act of 1974 in 16 U.S.C. 838 *et seq.;* and the Pacific Northwest Electric Power Planning and Conservation Act in 16 U.S.C. 839 *et seq.,* IRS Code 26 U.S.C. 6109, and Department of Energy Establishment Act 42 U.S.C. 7101 *et seq.*

Signing Authority

This document of the Department of Energy was signed on June 1, 2023, by Candice D. Palen, Information Collection Clearance Manager, Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 13, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–12942 Filed 6–15–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2107–000]

Clearwater Wind II, 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 Clearwater Wind II, 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 July 3, 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: June 12, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12969 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2113–000]

ETEM Remediation Two 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 ETEM Remediation Two 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 July 3, 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 12, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12968 Filed 6–15–23; 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 Instituting Proceedings

Docket Numbers: CP23–495–000.

Applicants: Texas Eastern Transmission, LP, Gulf South Pipeline Company, LLC.

Description: Texas Eastern Transmission, LP et. al. submits Abbreviated Joint Application for Abandonment of Exchange Services re Various X Rate Schedules.

Filed Date: 6/9/23.

Accession Number: 20230609–5035.

Comment Date: 5 p.m. ET 6/30/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: June 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12862 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15310–000]

Rye Development, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 5, 2023, Rye Development, LLC, on behalf of Neptune Pumped Storage 1, LLC (the Applicant), filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Elephant Rock Pumped Storage Project to be located in Curry County, Oregon, near the Sixes River, approximately 12.5 miles east-northeast of Port Orford, Oregon. The sole purpose of a preliminary permit is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project would require constructing new water storage, water conveyance, and generation facilities at off-channel locations where no such facilities exist. It would consist of the following: (1) an upper reservoir with a surface area of 51.5 acres and a storage volume of 3,605 acre-feet at a maximum water-surface elevation of 2,070 feet mean sea level (MSL); (2) an 820-foot-long, 24-foot diameter vertical shaft that connects the upper reservoir to a 4,200-foot-long horizontal power tunnel, having a horse-shoe-shaped cross section approximately 450 square-foot in area, leading to the powerhouse; (3) a 60-ft high, 40-foot-diameter steel surge tower connected to the power tunnel upstream of the powerhouse; (4) a 100-foot-wide, 500-foot-long, 100-foot-high reinforced-concrete powerhouse with four 79.5 megawatt (MW) Francis pump-turbine units, with a combined installed capacity of 318 MW, that discharge into the lower reservoir; (5) a lower reservoir, located adjacent to the powerhouse, with a surface area of 51.5 acres and a storage volume of 3,605 acre-feet at a maximum water-surface elevation of 1,150 feet MSL; (6) and a 15-mile-long, 230 kV overhead transmission line extending from the powerhouse to the existing substation on Elk River Road, approximately 3 miles northeast of Port Orford. Both the upper and lower reservoirs would be created by zoned rockfill embankment dikes approximately 70 feet high and 7,200 feet in circumference. The project would have an annual generation capacity of 929,000 megawatt-hours.

Applicant Contact: Mr. Nate Sandvig, Vice President, Rye Development, LLC, 220 NW 8th Ave., Portland, OR 97202; email: *nathan@ryedevelopment.com;* phone: (503) 309–2496.

FERC Contact: David Froehlich; email: *david.froehlich@ferc.gov;* phone (202) 502–6769.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.* Comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications should be submitted within 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters without prior registration using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please get in touch with FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll-free), or (202) 502–8659 (TTY). Instead of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15310–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15310) in the docket number field to access the document. For assistance, do not hesitate to get in touch with FERC Online Support.

Dated: June 12, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12944 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2459–279]

Lake Lynn Generation, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. Project No.: 2459–279.

c. Date filed: November 30, 2022.

d. *Applicant:* Lake Lynn Generation, LLC (Lake Lynn Generation).

e. *Name of Project:* Lake Lynn Hydroelectric Project.

f. *Location:* On the Cheat River, near the city of Morgantown, in Monongalia County, West Virginia, and near the borough of Point Marion, in Fayette County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jody Smet, Lake Lynn Generation, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD 20814; Phone at (240) 482–2700; or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or email at *allan.creamer@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Lake Lynn Hydroelectric Project (P–2459–279).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *The Lake Lynn Project consists of:* (1) a 13 mile-long, 1,729-acre impoundment (Cheat Lake; originally named Lake Lynn) with a maximum storage capacity of 72,300 acre-feet at a normal water surface elevation of 870 feet National Geodetic Vertical Datum of 1929 (NGVD 29) and a normal minimum storage capacity of 51,100 acre-feet at 857 feet NGVD 29; (2) a 1,000-foot-long, 125-foot-high, concrete gravity dam with a 624-foot-long spillway section controlled by 26, 21-foot-wide by 17-foot-high, Tainter gates; (3) a concrete intake structure equipped with a log boom and eight trash racks with 4-inch clear bar spacing; (4) eight 12-foot-wide by 18-foot-deep gated reinforced concrete penstocks; (5) a 160-foot-long by 94.5-foot-wide powerhouse containing four Francis generating units with a combined capacity of 51.2 megawatts; and (6) two 800-foot-long transmission lines that run from the powerhouse to a substation within the project boundary.

The Lake Lynn Project is currently operated as a peaking facility with storage. Peaking hours and operations are dictated by market value. Seasonal peaking during winter typically occurs in the morning for 5 hours and in the afternoon for 5 hours to meet demand. During the summer, peaking occurs between 6:00 p.m.–11:00 p.m. in the evening. The maximum drawdown rate to meet peak demand is one-half a foot/hour. Typical drawdown is 0.2–0.4 feet/day, which can vary depending on environmental and economic considerations. The current license requires Lake Lynn Generation to maintain Cheat Lake between 868 feet and 870 feet NGVD 29 from May 1 through October 31, 857 feet and 870 feet NGVD 29 from November 1 through March 31, and 863 feet and 870 feet NGVD 29 from April 1 through April 30 each year. The current license also requires Lake Lynn Generation to release a downstream minimum flow of 212 cubic-feet-per-second (cfs), or inflow, from the dam when not generating, with an absolute minimum flow of 100 cfs regardless of inflow, when not generating. The project generates about 144,741 megawatt-hours annually.

Lake Lynn Generation proposes to continue operating the project as a peaking facility with storage, and does not propose any new development at the project.

m. 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call (886) 208–3676 (toll free) or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595, or *OPP@ferc.gov.*

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005.

Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments—August 2023

Request Additional Information (if necessary)—October 2023

Issue Scoping Document 2—November 2023

Issue Notice of Ready for Environmental Analysis—November 2023

Dated: June 12, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12943 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–7–000]

PJM Capacity Market Forum; Second Supplemental Notice of Forum

As announced in the April 19, 2023 Notice in this proceeding, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led forum to examine the PJM Interconnection, L.L.C. (PJM) capacity market in the above-captioned proceeding on June 15, 2023 from approximately 12:00 p.m. to 5:00 p.m. Eastern Time, following the Commission's scheduled open meeting. The forum will be held in-person at the Commission headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room.

The purpose of this forum is to solicit varied perspectives on the current state of the PJM capacity market, potential improvements to the market, and to consider related proposals to address resource adequacy. The forum will include three panels that will explore whether the PJM capacity market is achieving its objective of ensuring resource adequacy at just and reasonable rates, discuss potential market design reforms that may be needed to achieve this objective, and discuss state Commissioners' and state representatives' views on these issues.

A finalized agenda for this forum is attached to this Supplemental Notice, which includes the forum program and expected panelists.

While the forum is not for the purpose of discussing any specific matters before the Commission, some forum discussions may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

PJM Interconnection, L.L.C	Docket Nos. ER22–962, et al.
PJM Interconnection, L.L.C	Docket Nos. ER23–729, et al.; EL23–19, et al.
PJM Interconnection, L.L.C	Docket No. ER23–1038–001.
PJM Interconnection, L.L.C	Docket No. ER23–1067–000.
PJM Interconnection, L.L.C	Docket No. ER23–1609–000.
PJM Interconnection, L.L.C	Docket No. ER23–1700–000.
PJM Interconnection, L.L.C	Docket No. EL21–78–000.
PJM Interconnection, L.L.C	Docket No. ER23–1996–000.
SOO Green HVDC Link ProjectCo, LLC v. *PJM Interconnection, L.L.C*	Docket No. EL21–103–000.
Roy J. Shanker v. *PJM Interconnection LLC*	Docket No. EL23–13–000.
Essential Power OPP, LLC, et al v. *PJM Interconnection, L.L.C*	Docket No. EL23–53–000.
Aurora Generation, LLC, et al. v. *PJM Interconnection, L.L.C*	Docket No. EL23–54–000.
Coalition of PJM Capacity Resources v. *PJM Interconnection, L.L.C*	Docket No. EL23–55–000.
Talen Energy Marketing, LLC v. *PJM Interconnection, L.L.C*	Docket No. EL23–56–000.
Lee County Generating Station, LLC v. *PJM Interconnection, L.L.C*	Docket Nos. EL23–57, et al.
SunEnergy1, LLC v. *PJM Interconnection, L.L.C*	Docket No. EL23–58–000.
Lincoln Generating Facility, LLC v. *PJM Interconnection, L.L.C*	Docket No. EL23–59–000.
Parkway Generation Keys Energy Center LLC v. *PJM Interconnection, L.L.C*	Docket No. EL23–60–000.
Old Dominion Electric Cooperative v. *PJM Interconnection, L.L.C*	Docket No. EL23–61–000.
Energy Harbor LLC v. *PJM Interconnection, L.L.C*	Docket No. EL23–63–000.
Calpine Corp. v. *PJM Interconnection, L.L.C*	Docket No. EL23–66–000.
Invenergy Nelson LLC v. *PJM Interconnection, L.L.C*	Docket No. EL23–67–000.
East Kentucky Power Cooperative, Inc. v. *PJM Interconnection, L.L.C*	Docket No. EL23–74–000.
LSP University Park, LLC	Docket No. RP23–809–000.

The forum will be open to the public and there is no fee for attendance. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The forum will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Commission forums are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this forum, please contact Katherine Scott at *katherine.scott@ferc.gov* or (202) 502–8190. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: June 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12863 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1439–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Response to Commission's 5/10/23 Deficiency Letter in ER23–1439 to be effective 5/22/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5100.
Comment Date: 5 p.m. ET 6/30/23.

Docket Numbers: ER23–1588–001.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Tariff Amendment: ISO New England Inc. submits tariff filing per 35.17(b): ISO–NE Response to Deficiency Notice to be effective 8/4/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5072.
Comment Date: 5 p.m. ET 6/30/23.

Docket Numbers: ER23–1710–001.
Applicants: El Paso Electric Company.
Description: Tariff Amendment: Concurrence of EPE to APS Service Agreement No. 387, Sonoran Solar Energy to be effective 5/7/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5152.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2107–000.
Applicants: Clearwater Wind II, LLC.
Description: Baseline eTariff Filing: Clearwater Wind II, LLC Application for Market-Based Rate Authorization to be effective 8/9/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5030.
Comment Date: 5 p.m. ET 6/30/23.

Docket Numbers: ER23–2108–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 912 to be effective 5/10/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5062.
Comment Date: 5 p.m. ET 6/30/23.

Docket Numbers: ER23–2109–000.
Applicants: RE Gaskell West 1 LLC.
Description: § 205(d) Rate Filing: RE Gaskell West 1 Concurrence to Amended & Restated LGIA Co-Tenancy Agreement to be effective 6/8/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5065.
Comment Date: 5 p.m. ET 6/30/23.

Docket Numbers: ER23–2110–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Service Agreement FERC No. 820 to be effective 5/10/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5067.
Comment Date: 5 p.m. ET 6/30/23.

Docket Numbers: ER23–2112–000.
Applicants: Sandy Ridge Wind 2, LLC.
Description: Initial rate filing: Reactive Rate Service as FERC Rate Schedule No. 2 to be effective 8/8/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5130.
Comment Date: 5 p.m. ET 6/30/23.

Docket Numbers: ER23–2113–000.
Applicants: ETEM Remediation Two LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 7/24/2023.
Filed Date: 6/9/23.
Accession Number: 20230609–5159.
Comment Date: 5 p.m. ET 6/30/23.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM23–5–000.
Applicants: WPPI Energy.
Description: Application of WPPI Energy to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.
Filed Date: 6/8/23.
Accession Number: 20230608–5169.
Comment Date: 5 p.m. ET 7/6/23.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12864 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–492–000]

Florida Gas Transmission Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on June 2, 2023, Florida Gas Transmission Company, LLC, (FGT) 1300 Main St., Houston, Texas 77002, filed an application under section 7(c) of the Natural Gas Act (NGA), and part 157 and 284 of the Federal Energy Regulatory Commission's (Commission) requesting the authorization to increase the certificated capacity by increasing certain compression station from construct, install, modify, operate and maintain its Louisiana Project located at St. Landry, East Baton Rouge, and Washington Parishes, Louisiana and Perry County, Mississippi which will provide an additional 100,000 million cubic feet per day of firm transportation service back into FGT's Zone 2 and provide gas to downstream customers from power generation and local distribution companies.

Specifically, FGT is requesting approval to (1) uprate two existing natural gas-fired compressor turbine units (Units 7501 and 7502), each from 6,500 horsepower (HP); to 7,700 HP at its Compressor station (CS) 7.5 in St. Landry Parish, Louisiana; (2) At CS (8), add process cooling units to support the existing gas compressor units at FGT's existing Mainline in East Baton Rouge Parish; (3) At CS 9, install one new 7,700 HP natural gas-fired turbine compressor unit on FGT's Mainline in Washington Parish, Louisiana; (4) At CS 10, install one new 15,900 HP natural gas-fired turbine compressor unit on FGT's Mainline in Perry County, Mississippi; (5) The total estimated cost

of the project is approximately $74.9 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Blair Lichtenwalter, Senior Director, Certificates, Florida Gas Transmission Company, LLC., 4700 1300 Main St. P.O. Box 4967, Houston, Texas 77210–4967, by phone at (713) 989–2605, or by email at *Blair.Lichtenwalter@energytransfer.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on July 3, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is July 3, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is July 3, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 3, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–492–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–483–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Blair Lichtenwalter, Senior Director, Certificates, Florida Gas Transmission Company, LLC., 4700 1300 Main St. P.O. Box 4967, Houston, Texas 77210–4967, or by email at *Blair.Lichtenwalter@energytransfer.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 12, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12946 Filed 6–15–23; 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 Instituting Proceedings

Docket Numbers: RP23–837–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 6.12.23 Negotiated Rates—Macquarie Energy LLC H–4090–89 to be effective 6/15/2023.

Filed Date: 6/12/23.

Accession Number: 20230612–5016.

Comment Date: 5 pm ET 6/26/23.

Docket Numbers: RP23–838–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 6.12.23 Negotiated Rates—ConocoPhillips Company R–3015–05 to be effective 6/13/2023.

Filed Date: 6/12/23.

Accession Number: 20230612–5070.

Comment Date: 5 pm ET 6/26/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–501–000.

Applicants: ANR Pipeline Company.

Description: Refund Report: Settlement Refund Report to be effective N/A.

Filed Date: 6/9/23.

Accession Number: 20230609–5008.

Comment Date: 5 pm ET 6/21/23.

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 12, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12966 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD22–11–000; AD21–9–000]

Office of Public Participation Fundamentals for Participating in FERC Matters; Notice of Virtual Workshop: Workshop on ''Public Participation in the Natural Gas Pre-Filing Review Process''

Take notice that the Federal Energy Regulatory Commission (Commission) staff will convene, in the above-referenced proceeding, a virtual workshop on July 13, 2023, from 8:00 p.m. to 8:45 p.m. Eastern time or 7:00 p.m. to 7:45 p.m. Central time, to discuss public participation in the natural gas and liquified natural gas pre-filing review process. Commission staff will describe the pre-filing review process which was designed to encourage involvement in the development of a project by all stakeholders, including affected landowners, area residents, and other concerned parties in a manner that allows for the early identification and resolution of potential environmental issues and impacts. The intent of the workshop is to provide an overview of the pre-filing review process, emphasize public participation opportunities, and to outline resources available to assist the public. The workshop will be held virtually.

The workshop will be open for the public to participate virtually, and there is no fee for attendance. Further details on the workshop can be found on the FERC's Office of Public Participation website. Information about the workshop will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The workshop will be accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY) or send a FAX to 202–208–2106 with the required accommodations.

For more information about the workshop, please contact Kelley Muñoz Lytle of the Commission's Office of Public Participation at 202–502–6739 or send an email to *OPP@ferc.gov.*

Dated: June 12, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12954 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–95–000.
Applicants: Quantum Pleasants, LLC, ETEM Remediation Two LLC, Pleasants LLC, Energy Harbor LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Quantum Pleasants, et al.
Filed Date: 6/8/23.
Accession Number: 20230608–5174.
Comment Date: 5 p.m. ET 6/29/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–191–000.
Applicants: ETEM Remediation Two LLC.
Description: ETEM Remediation Two LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 6/9/23.
Accession Number: 20230609–5206.
Comment Date: 5 p.m. ET 6/30/23.
Docket Numbers: EG23–192–000.
Applicants: Glover Creek Solar, LLC.
Description: Glover Creek Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 6/12/23.
Accession Number: 20230612–5107.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: EG23–193–000.
Applicants: PGR 2022 Lessee 9, LLC.
Description: PGR 2022 Lessee 9, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 6/12/23.
Accession Number: 20230612–5109.
Comment Date: 5 p.m. ET 7/3/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1298–005.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2023–06–12_MISO TO's Order 864 Additional Deficiency Response to be effective N/A.
Filed Date: 6/12/23.
Accession Number: 20230612–5129.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–1407–001.
Applicants: Transource Pennsylvania, LLC, PJM Interconnection, L.L.C.
Description: Tariff Amendment: Transource Pennsylvania, LLC submits tariff filing per 35.17(b): Transource Responses to Deficiency Letter in ER23–1407 to be effective 5/16/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5104.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–1731–001.
Applicants: GSG 6, LLC.
Description: Tariff Amendment: Supplement to SFA with Shady Oaks 2 with Waivers to be effective 4/28/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5098.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2111–000; TS23–7–000.
Applicants: Umbriel Solar, LLC, Umbriel Solar, LLC.
Description: Request for Waiver, et al. of Umbriel Solar, LLC.
Filed Date: 6/9/23.
Accession Number: 20230609–5115.
Comment Date: 5 p.m. ET 6/30/23.
Docket Numbers: ER23–2114–000.
Applicants: Energy Harbor LLC.
Description: Request for Waiver and Expedited Consideration of Energy Harbor LLC.
Filed Date: 6/8/23.
Accession Number: 20230608–5172.
Comment Date: 5 p.m. ET 6/29/23.
Docket Numbers: ER23–2115–000.
Applicants: ITC Midwest LLC.
Description: Tariff Amendment: Cancellation of Agreements with CIPCO to be effective 6/20/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5039.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2116–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 5472; Queue No. AD2–194 to be effective 5/11/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5058.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2117–000.
Applicants: NSTAR Electric Company.
Description: Tariff Amendment: Cancellation of Medway Grid, LLC—Engineering, Design and Procurement Agreement to be effective 6/13/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5068.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2118–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original UCSA, Service Agreement No. 6946; Queue Position J1464 to be effective 5/12/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5069.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2119–000.
Applicants: SP Cimarron I, LLC.
Description: § 205(d) Rate Filing: SP Cimarron I MBR Tariff Amendment Filing (Seller Category) to be effective 8/11/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5089.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2120–000.
Applicants: Campo Verde Solar, LLC.
Description: § 205(d) Rate Filing: Campo Verde MBR Tariff Amendment Filing (Seller Category) to be effective 8/11/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5091.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2121–000.
Applicants: Freeport-McMoRan Copper & Gold Energy Services, LLC.
Description: Compliance filing: WECC Soft Price Cap September 2022 Sale to be effective N/A.
Filed Date: 6/12/23.
Accession Number: 20230612–5094.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2122–000.
Applicants: Jersey Central Power & Light Company.
Description: Jersey Central Power & Light Submits A Notice of Cancellation of the Interchange Agreement between Central Hudson Gas & Electric Corporation and Jersey Central Power & Light Company, designated as JCP&L Rate Schedule FPC 34.
Filed Date: 6/9/23.
Accession Number: 20230609–5215.
Comment Date: 5 p.m. ET 6/30/23.
Docket Numbers: ER23–2123–000.
Applicants: Silver Run Electric, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Silver Run Electric, LLC submits tariff filing per 35.13(a)(2)(iii: Silver Run Incentive Rate Abandonment Recovery And Formula Rate Updates to be effective 8/14/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5113.
Comment Date: 5 p.m. ET 7/3/23.
Docket Numbers: ER23–2124–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to NSA, SA No. 6376; Queue Nos. AC2–100/AD1–131 (amend) to be effective 8/12/2023.
Filed Date: 6/12/23.
Accession Number: 20230612–5114.
Comment Date: 5 p.m. ET 7/3/23.

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.

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Dated: June 12, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12967 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–194–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Alabama Georgia Connector Project

On April 19, 2023, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP23–194–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Alabama Georgia Connector Project (Project), and would provide Transco's Project Customers with firm access to 63,800 dekatherms per day of incremental natural gas supply, increase overall system reliability, and add natural gas infrastructure to meet growing demand in Georgia.

On May 3, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—November 27, 2023
90-day Federal Authorization Decision Deadline [2]—February 25, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Transco proposes to construct and operate various modifications at five existing compressor stations in Marengo and Randolph Counties, Alabama, and Coweta, Henry, and Walton Counties, Georgia. These modifications include re-wheeling two existing compressors at Compressor Station 90 in Marengo County; increasing horsepower (hp) of two natural gas-fired compressor units from 35,500 hp to 39,365 hp at Compressor Station 110 in Randolph County; re-wheeling three compressor units at Compressor Station 115 in Coweta County; replacing a 12,000 hp compressor unit with a 22,500 hp unit at Compressor Station 120 in Henry County; and increasing the hp of Compressor Station 125 in Walton County from 49,800 hp to 55,800 hp.

Background

On June 2, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Alabama Georgia Connector Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. All substantive comments received in response to the Notice of Scoping will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others access publicly available information and navigate the Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP23–194), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: June 12, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12945 Filed 6–15–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–073]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed June 5, 2023 10 a.m. EST Through June 12, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230073, Final, USACE, TX, Harris Reservoir Expansion Project Final Environmental Impact Statement Prepared for Permit Application No. SWG–2016–01027, Review Period Ends: 07/17/2023, Contact: Jayson Hudson 409–766–3108.

EIS No. 20230074, Final, BLM, OR, Southeastern Oregon Proposed Resource Management Plan and Final EIS, Review Period Ends: 07/17/2023, Contact: Shane DeForest 541–473–3144.

EIS No. 20230075, Draft, USACE, VA, SPSA Landfill Expansion DEIS, Comment Period Ends: 08/15/2023, Contact: Melissa Nash 757–201–7489.

Dated: June 12, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–12915 Filed 6–15–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11001–01–OA]

Public Meeting of the Science Advisory Board Biosolids Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing a public meeting of the Science Advisory Board Biosolids Panel. The purpose of the meeting is to review and discuss the panel's draft report on the EPA's biosolid risk assessment framework.

DATES:

Public Meeting: The Science Advisory Board Biosolids Panel will meet on July 5, 2023, from 1 p.m. to 5 p.m. Eastern Time.

Comments: See the section titled ''Procedures for Providing Public Input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The July 5, 2023, meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Shaunta Hill-Hammond, Designated Federal Officer (DFO), via telephone (202) 564–3343, or email at *hill-hammond.shaunta@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice, can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board Biosolids Panel will hold a public meeting to review and discuss the Panel's draft report on the EPA's biosolid risk assessment framework.

Availability of Meeting Materials: All meeting materials, including the agenda, will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comments should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted under **FOR FURTHER INFORMATION CONTACT**, by June 28, 2023, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by June 28, 2023, for consideration at the July 5, 2023, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days before the meeting, to give the EPA as much time as possible to process your request.

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–11632 Filed 6–15–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2013–0292; FRL–11021–01–ORD]

Public Comment on the Cumulative Risk Assessment Guidelines for Planning and Problem Formulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period on the draft Cumulative Risk Assessment (CRA) Guidelines for Planning and Problem Formulation. The CRA Guidelines for Planning and Problem Formulation describe steps for the planning and problem formulation of CRAs and offer guidelines for when cumulative risk assessments could be appropriate. Planning defines both the process for conducting the risk assessment and its general scope, while problem formulation identifies major factors considered in a specific assessment to inform its technical approach. The draft CRA Guidelines for Planning and Problem Formulation are not final, and do not represent, and should not be construed to represent, Agency policy or views.

DATES: The 60-day public comment period begins June 16, 2023 and ends August 15, 2023. Comments must be received on or before August 15, 2023to be considered by EPA.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–ORD–2013–0292, 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, [insert Program Office Name] Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* 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. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. 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 public comment process, see the PUBLIC PARTICIPATION heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.* For technical information on the draft guidelines or information on the public comment period, contact Dr. Lawrence Martin, via email at: *martin.lawrence@epa.gov;* or via phone/voicemail at 202–308–5642.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Written Comments: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0292, 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 EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. If you are commenting on specific text in the document, please use the page and line number to identify the text to which you refer. General recommendations or comments are best tied to a specific section in the text that comes closest to addressing the issue you are commenting upon. If no such section exists, then a recommendation for a new section heading is helpful. Please provide citations for any technical information and/or data used to support the information you provide. 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). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. Background on the CRA Guidelines for Planning and Problem Formulation

The draft CRA Guidelines for Planning and Problem Formulation is available at *https://www.epa.gov/risk/guidelines-cumulative-risk-assessment-planning-and-problem-formulation* and in the public docket at *http://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2013–0292.

The CRA Guidelines for Planning and Problem Formulation focus on this first phase of a cumulative risk assessment. The document does not address other elements of the cumulative risk assessment process, including conducting an analysis, risk characterization, risk communication, or risk management. Public comments focused on the planning and problem formulation phase of a cumulative risk assessment would be most useful.

EPA undertook the development of methods for CRA beginning with the 1997 *Guidance on Cumulative Risk Assessment, Part 1, Planning and Scoping.* In 2003, EPA published *A Framework for Cumulative Risk Assessment.* EPA continued to advance CRA methods to support understanding and reducing risks to people in disproportionately impacted communities, in 2008 publishing *Concepts, Methods, and Data Sources for Cumulative Health Risk Assessment of Multiple Chemicals, Exposures and Effects.* This draft CRA Guidelines for Planning and Problem Formulation build off the 2003 CRA Framework and updates the 1997 CRA Guidance. The draft CRA Guidelines for Planning and Problem Formulation provides methods by which stressors are identified and incorporated into problem formulation and a conceptual model. In June 2021, the draft CRA Guidelines for Planning and Problem Formulation received an independent contractor-led external panel peer review. Subsequent revision has produced the draft CRA Guidelines for Planning and Problem Formulation that is now released for public comment.

III. How will comments be used?

Public comment received on the draft CRA Guidelines for Planning and Problem Formulation will be reviewed and considered to be incorporated into or modify text in the final revised draft of the Guidelines. The final draft Guidelines will then undergo internal

EPA review and revision, and then be finalized for publication.

Mary A. Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2023–12972 Filed 6–15–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0264 and OMB 3060–0297; FR ID 147792]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 15, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0264.

Title: Section 80.413, On-Board Station Equipment Records.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,000 respondents; 1,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 307(e), 309 and 332 and 151–155 and sections 301–609 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,000 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission is seeking an extension of this expiring information collection in order to obtain the full three-year approval from OMB. There is no change to the recordkeeping requirement. The information collection requirements contained in Section 80.413 require the licensee of an on-board station to keep equipment records which show:

(1) The ship name and identification of the on-board station;

(2) The number of and type of repeater and mobile units used on-board the vessel; and

(3) The date the type of equipment which is added or removed from the on-board station.

The information is used by FCC personnel during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel. If this information were not maintained, no means would be available to determine if this type of radio equipment is authorized or who is responsible for its operation. Enforcement and frequency management programs would be negatively affected if the information were not retained.

OMB Control Number: 3060–0297.

Title: Section 80.503, Cooperative Use of Facilities.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 16 hours.

Frequency of Response: Occasion reporting requirement and Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–155, 301–609 of the Communications Act of 1934, as amended; and 3 UST 3450, 3 UST 4726, 12 UST 2377.

Total Annual Burden: 1,600 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements contained in Section 80.503 require that a licensee of a private coast station or marine utility station on shore may install ship radio stations on board United States commercial transport vessels of other persons. In each case these persons must enter into a written agreement verifying that the ship station licensee has the sole right of control of the ship stations, that the vessel operators must use the ship stations subject to the orders and instructions of the coast station or marine utility station on shore, and that the ship station licensee will have sufficient control of the ship station to enable it to carry out its responsibilities under the ship station license. A copy of the contract/written agreement must be kept with the station records and made available for inspection by Commission representatives.

The information is used by FCC personnel during inspection and investigations to ensure compliance with applicable rules. If this information was not available, enforcement efforts could be hindered; frequency congestion in certain bands could increase; and the financial viability of some public coast radiotelephone stations could be threatened.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–12867 Filed 6–15–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0791; FR ID 148662]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before August 15, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0791.

Title: Section 32.7300, Accounting for Judgments and Other Costs Associated With Litigation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 2 respondents; 2 responses.

Estimated Time per Response: 4–36 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in *47 U.S.C. 151, 152, 154, 161, 201–205* and *218–220;* 47 CFR 1, 2, 4, 11, 201–205, and 218–220 of the Communications Act of 1934, as amended.

Total Annual Burden: 40 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting and/or recordkeeping requirements). The Commission will submit this information collection after this 60-day comment period to the OMB.

The Commission adopted accounting rules that require carriers to account for adverse federal antitrust judgments and post-judgment special charges. With regard to settlements of such lawsuits, there will be a presumption that carriers can recover the portion of the settlement that represents the avoidable costs of litigation; provided that the carrier makes a required showing. To receive recognition of its avoided cost of litigation a carrier must demonstrate, in a request for special relief, the avoided costs of litigation by showing the amount corresponding to the additional litigation expenses discounted to present value, that the carrier reasonably estimates it would have paid if it had not settled. Settlement costs in excess of the avoided costs of litigation are presumed not recoverable unless a carrier rebuts that presumption by showing the basic factors that enticed the carrier to settle and demonstrating that ratepayers benefited from the settlement.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–12869 Filed 6–15–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0849, OMB 3060–1035, OMB 3060–1133 and OMB 3060–1290; FR ID 148505]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 17, 2023.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box,

(5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 26 respondents; 10,025 responses.

Estimated Time per Response: 0.00278 hours-40 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority is contained in Sections 4(i), 303(r) and 629 of the Communications Act of 1934, as amended.

Total Annual Burden: 181 hours.

Total Annual Cost: $1,800.

Needs and Uses: The information collection requirements contained in the collection are as follows: 47 CFR 15.123(c)(3) states subsequent to the testing of its initial unidirectional digital cable product model, a manufacturer or importer is not required to have other models of unidirectional digital cable products tested at a qualified test facility for compliance with the procedures of Uni-Dir-PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma'' (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in § 15.123(c)(1). The manufacturer or importer shall ensure that all subsequent models of unidirectional digital cable products comply with the procedures in the Uni-Dir-PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma'' (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. The manufacturer or importer shall further submit documentation verifying compliance with the procedures in the Uni-Dir-PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma'' (incorporated by reference, see § 15.38) to the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States.

47 CFR 15.123(c)(5)(iii) states subsequent to the successful testing of its initial M–UDCP, a manufacturer or importer is not required to have other M–UDCP models tested at a qualified test facility for compliance with M-Host UNI–DIR–PICS–IO1–061101 (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in § 15.123(c)(5)(i). The manufacturer or importer shall ensure that all subsequent models of M–UDCPs comply with M-Host UNI–DIR–PICS–IO1–061101 (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. For each M–UDCP model, the manufacturer or importer shall further submit documentation verifying compliance with M-Host UNI–DIR–PICS–IO1–061101 to the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States.

47 CFR 76.1203 provides that a multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service.

47 CFR 76.1205 states that technical information concerning interface parameters which are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request.

47 CFR 76.1207 states that the Commission may waive a regulation related to subpart P (''Competitive Availability of Navigation Devices'') for a limited time, upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Such waiver requests are to be made pursuant to 47 CFR 76.7.

47 CFR 76.1208 states that any interested party may file a petition to the Commission for a determination to provide for a sunset of the navigation devices regulations on the basis that (1) the market for multichannel video distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest.

47 CFR 15.118(a) and 47 CFR 15.19(d) state that consumer electronics equipment that is labeled as ''cable

ready'' or ''cable compatible'' must meet certain technical standards.

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F International Broadcast Stations.

Form No.: FCC Forms 309–IBFS, 310–IBFS, 311–IBFS, and 426.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 258 respondents; 258 responses.

Estimated Time per Response: 2–720 hours.

Frequency of Response: Recordkeeping requirement; On occasion, semi-annual, weekly and annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i), 301, 303, 307, 308(b) 334, 336, 554 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 307, 308(b), 334, 336, 554, and Part 73 of the Commission's rules.

Total Annual Burden: 20,125 hours.

Annual Cost Burden: $123,230.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a revision of the information collection titled ''Part 73, Subpart F International Broadcast Stations'' under OMB Control No. 3060–1035.

The Commission has updated the International Bureau Filing System (IBFS) to allow for filing of electronic forms directly into the system through an integrated web-based program with fillable fields. The integrated web-based program requires the use of an FCC Registration Number (FRN) and includes support for Form 309–IBFS, 310–IBFS, and 311–IBFS. The new system also includes a standardized form to file frequency requests, Form 426, which were previously done through email correspondence and approved as part of this collection. Applicants will be required to submit these forms through the integrated web-based program. Filing through the web-based program will reduce the burden hours on the on applicants. Therefore, this information collection is being revised to reflect the new form format for Forms 309–IBFS, 310–IBFS and 311–IBFS, the new Form 426, and changes in costs associated with the automated functions of the forms.

On July 13, 2021, the Commission released an Order titled, ''In the Matter of Mandatory Electronic Filing of Section 325(c) Applications, International Broadcast Applications, and Dominant Carrier Section 63.10(c) Quarterly Reports'' (FCC 21–87). Over the past decades, the Commission has made significant progress to upgrade and modernize its filing systems and procedures. The purpose of this Order is to require that any remaining applications and reports administered by the International Bureau and filed on paper or through an alternative filing process be filed only electronically through the Commission's International Bureau Filing System (IBFS).

The information collected pursuant to the rules set forth in 47 CFR part 73 subpart F is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations, and to determine if interference or adverse propagation conditions exists that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

The full title and purpose of each application are summarized below:

1. Application for Authority to Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station (FCC Form 309–IBFS)—The FCC Form 309–IBFS is filed on occasion when the applicant is requesting authority to construct or make modifications to the international broadcast station.

2. Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License (FCC Form 310–IBFS)—The FCC Form 310–IBFS is filed on occasion when the applicant is submitting an application for a new international broadcast station.

3. Application for Renewal of an International or Experimental Broadcast Station License (FCC Form 311–IBFS)—The FCC Form 311–IBFS is filed by applicants who are requesting renewal of their international broadcast station licenses.

4. Application for International High Frequency Broadcasting—Frequency Coordination Request (Form 426)—The FCC Form 426 is filed by applicants who are requesting frequencies for an upcoming broadcast season.

As part of and in addition to the FCC Forms 309–IBFS, 310–IBFS and 311–IBFS, this information collection includes the following collections of information:

1. 47 CFR 1.1301–1.1319 cover certifications of compliance with the National Environmental Policy Act and how the public will be protected from radio frequency radiation hazards.

2. 47 CFR 73.702(a) states that six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission electronically in the International Bureau Filing System (IBFS), indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. Requests will be honored to the extent that interference and propagation conditions permit and that they are otherwise in accordance with the provisions of section 47 CFR 73.702(a).

3. 47 CFR 73.702(b) states that two months before the start of each season, the licensee or permittee must electronically inform the Commission in IBFS as to whether it plans to operate in accordance with the Commission's authorization or operate in another manner.

4. 47 CFR 73.702(c) permits entities to file requests for changes to their original request electronically in IBFS for assignment and use of frequencies if they are able to show good cause. Because international broadcasters are assigned frequencies on a seasonal basis, as opposed to the full term of their eight-year license authorization, requests for changes need to be filed by entities on occasion.

5. 47 CFR 73.702(d) (note) states that permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission in IBFS not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies.

6. 47 CFR 73.702(e) states within 14 days after the end of each season, each licensee or permittee must file a report with the Commission electronically in IBFS, stating whether the licensee or permittee has operated the number of frequency hours authorized by the seasonal schedule to each of the zones or areas of reception specified in the schedule.

7. 47 CFR 73.702(h)(2) states that International Broadcast Stations must

submit sufficient antenna performance information electronically in IBFS to ensure that during the hours of 0800–1600 UTC (Coordinated Universal Time) antenna gain with reference to an isotropic radiator in any easterly direction that would intersect any area in Region 2 shall not exceed 2.15 dBi.

8. 47 CFR 73.702(i) Note 4 specifies that seasonal requests for frequency-hours will be only for transmissions to zones or areas of reception specified in the basic instrument of authorization. Changes in such zones or areas will be made only on separate application for modification of such instruments electronically in IBFS.

9. 47 CFR 73.702(j) requires a showing of good cause made electronically in IBFS a licensee may be authorized to operate on more than one frequency at any one time to transmit any one program to a single zone or area of reception.

10. 47 CFR 73.702(m) requires a showing made electronically in IBFS that good cause exists for not having its requested number of frequency-hours reduced and that operation of its station without such reduction would be consistent with the public interest may be authorized the frequency-hours requested, when the total maximum number of frequency-hours which will be authorized to all licensees of international broadcasting stations during any one day for any season is 100.

11. 47 CFR 73.713—Program Tests (a) Upon completion of construction of an international broadcasting station in accordance with the terms of the construction permit, the technical provisions of the application therefor, and the rules and regulations and the applicable engineering standards, and when an application for station license has been filed showing the station to be in satisfactory operating condition, the permittee may request authority to conduct program tests. Such request shall be electronically filed with the FCC in the International Filing System (IBFS) at least 10 days prior to the date on which it is desired to begin such operation. All data necessary to show compliance with the terms and conditions of the construction permit must be filed with the license application.

(b) Program tests shall not commence until specific Commission authority is received. The Commission reserves the right to change the date of the beginning of such tests or to suspend or revoke the authority for program tests as and when such action may appear to be in the public interest, convenience, and necessity.

(c) Unless sooner suspended or revoked, program test authority continues valid during Commission consideration of the application for license and during this period further extension of the construction permit is not required. Program test authority shall be automatically terminated by final determination upon the application for station license.

(d) All operation under program test authority shall be in strict compliance with the rules governing international broadcasting stations and in strict accordance with representations made in the application for license pursuant to which the tests were authorized.

(e) The granting of program test authority shall not be construed as approval by the Commission of the application for station license.

12. 47 CFR 73.731—Licensing Requirements

(a) A license for an international broadcasting station will be issued only after a satisfactory showing has been made in regard to the following, among others:

(1) That there is a need for the international broadcasting service proposed to be rendered.

(2) That the necessary program sources are available to the applicant to render the international service proposed.

(3) That the production of the program service and the technical operation of the proposed station will be conducted by qualified persons.

(4) That the applicant is legally, technically and financially qualified and possesses adequate technical facilities to carry forward the service proposed.

(5) That the public interest, convenience and necessity will be served through the operation of the proposed station.

13. 47 CFR 73.732—Authorizations—Authorizations issued to international broadcasting stations by the Commission will be authorizations to permit the construction or use of a particular transmitting equipment combination and related antenna systems for international broadcasting, and to permit broadcasting to zones or areas of reception specified on the instrument of authorization. The authorizations will not specify the frequencies to be used or the hours of use. Requests for frequencies and hours of use will be made by electronic filing in the International Bureau Filing system (IBFS) as provided in § 73.702. Seasonal schedules, when issued pursuant to the provisions of § 73.702, will become attachments to and part of the instrument of authorization, replacing any such prior attachments.

14. 47 CFR 73.759(c)(2) states that the transmission of regular programs during maintenance or modification work on the main transmitter, necessitating discontinuance of its operation for a period not to exceed 5 days. (This includes the equipment changes which may be made without authority as set forth elsewhere in the rules and regulations or as authorized by the Commission by letter or by construction permit. Where such operation is required for periods in excess of 5 days, request therefor shall be made electronically in the International Bureau Filing System (IBFS) in accordance with § 73.3542 of this chapter.)

15. 47 CFR 73.759(d) states that the licensee or permittee must keep records of the time and results of each auxiliary transmitter test performed at least weekly.

16. 47 CFR 73.761 states that specific authority, upon electronic filing of a formal application (FCC Form 309) therefor in the International Bureau Filing System (IBFS), is required for some changes specified in this section. Other changes, not specified in this section, may be made at any time without the authority of the Commission: Provided, that the Commission shall be immediately notified electronically in IBFS thereof and such changes shall be shown in the next application for renewal of license.

17. 47 CFR 73.762(b) requires that licensees notify the Commission in by electronic filing in the International Bureau Filing System (IBFS) of any limitation or discontinuance of operation of not more than 10 days.

18. 47 CFR 73.762(c) states that the licensee or permittee must request by electronic filing in IBFS and receive specific authority from the Commission to discontinue operations for more than 10 days under extenuating circumstances.

19. 47 CFR 73.782 requires that licensees retain logs of international broadcast stations for two years. If it involves communications incident to a disaster, logs should be retained as long as required by the Commission.

20. 47 CFR 73.3533 Application for construction permit or modification of construction permit.

(a) Application for construction permit, or modification of a construction permit, for a new facility or change in an existing facility is to be made on the following forms:

(1) FCC Form 301, ''Application for Authority to Construct or Make Changes

in an Existing Commercial Broadcast Station.''

(2) FCC Form 309, ''Application for Authority to Construct or Make Changes in an Existing International or Experimental Broadcast Stations.'' For International Broadcast Stations, applications shall be filed electronically in the International Bureau Filing System (IBFS).

(3) [Reserved]

(4) FCC Form 340, ''Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station.''

(5) FCC Form 346, ''Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station.''

(6) FCC Form 349, ''Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.''

(7) FCC Form 318, ''Application for Construction Permit for a Low Power FM Broadcast Station.''

(b) The filing of an application for modification of construction permit does not extend the expiration date of the construction permit. Extension of the expiration date must be applied for on FCC Form 307, in accordance with the provisions of § 73.3533.

(c) In each application referred to in paragraph (a) of this section, the applicant will provide the Antenna Structure Registration Number (FCC Form 854R) of the antenna structure upon which it will locate its proposed antenna. In the event the antenna structure does not already have a Registration Number, either the antenna structure owner shall file FCC Form 854 (''Application for Antenna Structure Registration'') in accordance with part 17 of this chapter or the applicant shall provide a detailed explanation why registration and clearance of the antenna structure is not necessary.

21. 47 CFR 73.3536(b)(2) Application for license to cover construction permit.

(a) The application for station license shall be filed by the permittee pursuant to the requirements of § 73.1620 Program tests.

(b) The following application forms shall be used:

(1)

i. Form 302–AM for AM stations, ''Application for New AM Station Broadcast License.''

ii. Form 302–FM for FM stations, ''Application for FM Station License.''

iii. Form 302–TV for television stations, ''Application for TV Station Broadcast License.''

(2) FCC Form 310, ''Application for an International or Experimental Broadcast Station License.''

(3) [Reserved]

(4) FCC Form 347, ''Application for a Low Power TV, TV Translator or TV Booster Station License.''

(5) FCC Form 350, ''Application for an FM Translator or FM Booster Station License.''

(6) FCC Form 319, ''Application for a Low Power FM Broadcast Station License.''

(c) Eligible low power television stations which have been granted a certificate of eligibility may file FCC Form 302–CA, ''Application for Class A Television Broadcast Station Construction Permit Or License.''

22. 47 CFR 73.3539 Application for renewal of license.

(a) Unless otherwise directed by the FCC, an application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed, except that applications for renewal of license of an experimental broadcast station shall be filed not later than the first day of the second full calendar month prior to the expiration date of the license sought to be renewed. If any deadline prescribed in this paragraph falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter. For International Broadcast Stations, applications shall be filed electronically in the International Bureau Filing System (IBFS).

(b) No application for renewal of license of any broadcast station will be considered unless there is on file with the FCC the information currently required by §§ 73.3612 through 73.3615, inclusive, for the particular class of station.

(c) Whenever the FCC regards an application for a renewal of license as essential to the proper conduct of a hearing or investigation, and specifically directs that it be filed by a date certain, such application shall be filed within the time thus specified. If the licensee fails to file such application within the prescribed time, the hearing or investigation shall proceed as if such renewal application had been received.

(d) Renewal application forms titles and numbers are listed in § 73.3500, Application and Report Forms.

OMB Control No.: 3060–1290.

Title: Application for Voluntary Assignment of Transfers and Controls, 47 CFR 73.3540.

Form No.: FCC Forms 314–IBFS, 315–IBFS, and 316–IBFS.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals and Households.

Number of Respondents/Responses: 2 respondents; 2 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: Recordkeeping requirement and On occasion reporting requirement.

Obligation To Respond: The statutory authority for this information collection is contained in Sections The statutory authority for this information collection is contained in Sections 1, 4(i), 301, 303, 307, and 308(b) 334, 336, 554 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 307, 308(b), 334, 336, 554, and Part 73 of the Commission's rules.

Total Annual Burden: 20 hours.

Annual Cost Burden: $1,305.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a revision of the information collection titled ''Application for Voluntary Assignment of Transfers and Controls, 47 CFR 73.3540'' under OMB Control Number 3060–1290.

The Commission has updated the International Bureau Filing System (IBFS) to allow for filing of electronic forms directly into the system through an integrated web-based program with fillable fields. The integrated web-based program requires the use of an FCC Registration Number (FRN) will include support for Forms 314–IBFS, 315–IBFS, and 316–IBFS. Applicants will be required to submit these forms through the integrated web-based program. The forms were previously in development but are now completed and included as part of this collection.

On July 13, 2021, the Commission released an Order titled, ''In the Matter of Mandatory Electronic Filing of Section 325(c) Applications, International Broadcast Applications, and Dominant Carrier Section 63.10(c) Quarterly Reports.'' The purpose of this Order is to require that any remaining applications and reports administered by the International Bureau and filed on paper or through an alternative filing process be filed only electronically through the Commission's International Bureau Filing System (IBFS). In July 2021, OMB approved this information collection under OMB Control No 3060–1290 to implement mandatory electronic filing of International Broadcast station applications in the International Bureau Filing System (IBFS). The versions of FCC Forms 314, 315, and 316 to be used by International

Bureau licensees were renamed as FCC Form 314–IBFS, FCC Form 315–IBFS and FCC Form 316–IBFS. These forms will only be used by the International Broadcast stations in IBFS.

Under 47 CFR 73.3540, the filings of the FCC Forms 314–IBFS, 315–IBFS, and 316–IBFS are required when applying for consent for assignment of a broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment or transfer of control of a broadcast station construction permit or license has been consummated.

The FCC Forms 314, 315, and 316 were previously shared between the Media Bureau and the International Bureau. The forms were used by the International Bureau for International Broadcast stations and by the Media Bureau for other broadcast licenses. These FCC Forms were previously approved by Office of Management and Budget (OMB) for use by Media Bureau licensees under OMB 3060–0031 and OMB 3060–0009.

Accordingly, the early forms included references to all broadcast services. The new version of the forms removes references to all services except for International Broadcast stations, since they are only used for these stations. The changes also remove references to rules that do not apply to International Broadcast stations and updates the instructions to comport with the new sections.

Specifically, the Commission modified its rules to mandate the electronic filing of, among other things, applications for International Broadcast Stations, including applications for voluntary assignments and transfers of control. These mandatory electronic filing requirements will reduce costs and administrative burdens, result in greater efficiencies, facilitate faster and more efficient communications, and improve transparency to the public. The changes to section 73.3540 (c) and (d) state that ''[f]or International Broadcast Stations, the application shall be filed electronically in the International Bureau Filing System (IBFS).'' There are currently fewer than 20 International Broadcast stations subject to obligations in section 73.3540, and the International Bureau receives an average of one application involving voluntary transactions per year pursuant to section 73.3540.

§ 73.3540 Application for Voluntary Assignment or Transfer of Control

(a) Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.

(b) Application should be filed with the FCC at least 45 days prior to the contemplated effective date of assignment or transfer of control.

(c) Application for consent to the assignment of construction permit or license must be filed on FCC Form 314 ''Assignment of license'' or FCC Form 316 ''Short form'' (See paragraph (f) of this section). For International Broadcast Stations, the application shall be filed electronically in the International Bureau Filing System (IBFS).

(d) Application for consent to the transfer of control of a corporation holding a construction permit or license must be filed on FCC Form 315 ''Transfer of Control'' or FCC Form 316 ''Short form'' (see paragraph (f) of this section). For International Broadcast Stations, the application shall be filed electronically in the IBFS.

(e) Application for consent to the assignment of construction permit or license or to the transfer of control of a corporate licensee or permittee for an FM or TV translator station, a low power TV station and any associated auxiliary station, such as translator microwave relay stations and UHF translator booster stations, only must be filed on FCC Form 345 ''Application for Transfer of Control of Corporate Licensee or Permittee, or Assignment of License or Permit for an FM or TV translator Station, or a Low Power TV Station.''

(f) The following assignment or transfer applications may be filed on FCC ''Short form'' 316:

(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;

(4) Corporate reorganization which involves no substantial change in the beneficial ownership of the corporation;

(5) Assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or

(6) Assignment of less than a controlling interest in a partnership.

OMB Control Number: 3060–1133.

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308); 47 CFR 73.3545 and 73.3580.

Form No.: FCC Form 308.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 26 respondents; 70 responses.

Estimated Time per Response: 0.75 hours–1.5 hours.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 325(c) of the Communications Act of 1934, as amended.

Total Annual Burden: 66 hours.

Annual Cost Burden: $26,681.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a revision of OMB Control No. 3060–1133 titled, ''Application for Permit to Deliver Programs to Foreign Broadcast Stations FCC Form 308)—47 CFR 73.3545 and 73.3580.''

The Commission has updated the International Bureau Filing System (IBFS) to allow for filing of electronic forms directly into the system through an integrated web-based program with fillable fields. The integrated web-based program requires the use of an FCC Registration Number (FRN) and includes support for Form 308. Applicants will be required to submit Form 308 through the integrated web-based program. Therefore, this information collection is being revised to reflect the new form format and the addition of a requirement to provide an FRN on the Form. See Mandatory Electronic Filing of Section 325(c) Applications, International Broadcast Applications, and Dominant Carrier Section 63.10(c) Quarterly Reports, FCC 21–87, released on July 13, 2021.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–12868 Filed 6–15–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,

pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 17, 2023.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Affinity Bancshares, Inc., Covington, Georgia;* to become a bank holding company upon the charter conversion of its subsidiary, Affinity Bank, also of Covington, Georgia, from a federal stock savings bank to a national bank.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–12955 Filed 6–15–23; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the National Institute for Communicable Diseases, Republic of South Africa

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $2,000,000, with an expected total funding of approximately $11,500,000 over a five-Year period, to the National Institute for Communicable Diseases, Republic of South Africa. The award will support research studies on influenza and other respiratory pathogens of public health import in South Africa.

DATES: The period for this award will be September 1, 2024 through August 31, 2029.

FOR FURTHER INFORMATION CONTACT: Dr. Amy Yang, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329 Telephone: 404–718–8836. Email: *AYang@cdc.gov*.

SUPPLEMENTARY INFORMATION: The single-source award will conduct research on surveillance (including epidemiology, disease burden, transmission, and laboratory methods), preventive tools and strategies (*e.g.,* vaccines, antivirals), and strategies for increasing coverage of morbidity and mortality mitigating interventions. Data will be used to inform prioritization of public health interventions in high-risk populations in South Africa, regionally and globally.

The National Institute for Communicable Diseases is in a unique position to conduct this work, as it is the only sufficiently advanced governmental research, public health institute, and laboratory in the sub-region that can perform sophisticated studies and laboratory analyses required to understand influenza disease burden, evaluate intervention efficacy and effectiveness, and intervention scale-up that is in the Southern Hemisphere.

Summary of the Award

Recipient: National Institute for Communicable Diseases, Republic of South Africa

Purpose of the Award: The purpose of this award is to conduct research studies on influenza and other respiratory pathogens of public health import in South Africa, specifically, focusing on surveillance (including epidemiology, disease burden, transmission, and laboratory methods), preventive tools and strategies (*e.g.,* vaccines, antivirals), and strategies for increasing coverage of morbidity and mortality mitigating interventions. Data will be used to inform prioritization of public health interventions in high-risk populations in South Africa, regionally and globally.

Amount of Award: $2,000,000 in Federal fiscal year (FFY) 2024 funds, with a total estimated $11,500,000 for the 5-year period of performance, subject to availability of funds.

Authority: This program is authorized under Public Health Service Act, section 307 [42 U.S.C. 242l], as amended.

Period of Performance: September 1, 2024 through August 31, 2029.

Dated: June 13, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–12963 Filed 6–15–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1308]

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 Validated Interview and Survey of Outpatient Providers on Antibiotic Stewardship Interventions to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 31, 2023, to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Validated Interview and Survey of Outpatient Providers on Antibiotic Stewardship Interventions (OMB Control No. 0920–1308)—Reinstatement—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), 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 Validated Follow-up Interview of Clinicians on Outpatient Antibiotic Stewardship Interventions. This collection aims to perform an interview of outpatient clinicians regarding the acceptability and perceived clinician-level barriers associated with our year-long implementation of interventions designed around the Core Elements of Outpatient Antibiotic Stewardship.

Data will be collected through semi-structured, in-person interviews with a sample of 40 clinicians, including nine clinicians from our original qualitative study to determine changes in perceptions over time from this baseline. In addition, we are proposing to sample an additional 31 clinicians to ensure that we do not introduce unnecessary bias and limit generalizability of the deep contextual information that would put our results at risk with a smaller sample size. Data will also be collected through a validated survey disseminated to clinicians employed by Intermountain. CDC expects about 250 clinicians to respond to our survey. Information gained from respondents to the two methods of collection will be used to refine, enhance and improve our stewardship program while allowing us to more deeply understand the unique environment and barriers found in clinics.

CDC requests OMB approval for an estimated 123 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)
Urgent Care Clinician	Interview Guide	40	1	1
Urgent Care Clinician	Survey	250	1	20/60

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. 2023–12937 Filed 6–15–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1331; Docket No. CDC–2023–0050]

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 Heat-related Changes in Cognitive Performance. This data collection is designed to evaluate and assess the cognitive impacts of heat exposure on workers.

DATES: CDC must receive written comments on or before August 15, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0050 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

Heat-related Changes in Cognitive Performance (OMB Control No. 0920–1331, Exp. 3/31/2024)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–173 as amended by Public Law 95 –164 (Federal Mine Safety and Health Act of 1977), and Public Law 109–236 (Mine Improvement and New Emergency Response Act of 2006) has the responsibility to conduct research to improve working conditions and to prevent accidents and occupational diseases in U.S. mines. Heat strain is one of these occupational diseases and is an increasing problem among many industries, including mining. As mines expand into deeper and hotter environments, and as heat waves occur with increasing frequency and severity, heat strain among underground and surface miners is likely to increase. Not only can heat strain lead to heat illness, but studies have demonstrated associations between heat exposure and work injuries. Although the underlying mechanism between heat exposure and injury is not known, reduced cognitive function is likely contributory. Despite the increasing importance of heat strain in mining, few studies have focused on heat strain among U.S. miners. The few studies that are available have demonstrated that miners often exceed a core body temperature of 38 °C during work activities, which is above the recommended threshold, but more information on frequency, duration, and intensity of elevated core body temperatures is needed to focus future heat strain research to better serve the mining industry.

In addition to determining the patterns of duration and intensity of heat strain among U.S. miners, investigating the additional effects of heat strain beyond the risk of heat illness is an important step in improving miner health and safety. Studies have demonstrated associations between heat stress and cognitive deficits, but substantial inter- and intra-individual variability exists in the physiologic and cognitive responses to heat exposure. More information is needed about the most important factors (*e.g.,* age, sex, chronic disease, fitness level, hydration) contributing to individual variability as well as interactions between these factors, because individual variability likely affects the usefulness of one-size-fits-all heat stress indices that are currently used in mining. It is also unclear which characteristics of core body temperature (*e.g.,* absolute temperature thresholds vs. rising or falling temperatures vs rate of temperature change) are most associated with cognitive dysfunction. A better understanding of how individual variability and core body temperature relate to cognitive deficits would assist in developing strategies for screening and monitoring miners to mitigate or prevent heat strain. Therefore, this study aims to assess the following objectives: (1) Whether a core body temperature threshold exists at which cognitive performance begins to decline, (2) What factors most contribute to individual variability in cognitive and physiologic responses to heat, and (3) What patterns of duration and intensity of heat strain are most common among U.S. surface and underground miners.

To study these objectives, a dual-arm field and laboratory study will be conducted. The field study will be conducted at surface and underground mines. Data will be collected from miners working in warm or hot areas of participating mines. Participants will swallow temperature pills to measure core body temperature and will wear bio-harnesses to measure heart rate. Two six-minute assessments will be taken during each shift. The assessments include questions on sleepiness and work tasks and a Psychomotor Vigilance Test (PVT) to assess vigilant attention and reaction time. An initial screening questionnaire as well as post-shift questionnaires will be used to obtain information on risk factors for heat strain and cognitive deficits. The purpose of collecting data at the field sites is to evaluate the frequency, duration, and intensity of heat strain by monitoring core body temperature and heart rate throughout two complete shifts, as well as to assess associations between core body temperature and cognitive deficits.

The laboratory study will be conducted in an environmental chamber, in which environmental conditions can be highly controlled. Data will be collected from miners, construction workers, and firefighters. These three groups were chosen because of their risk of heat exposure and their proximity to the NIOSH laboratory where the study will be conducted. Participants will perform alternating resistance and aerobic exercises

followed by brief surveys to evaluate sleepiness (Karolinska Sleepiness Scale), affect (Positive and Negative Affect Schedule), and fatigue. Following these surveys, two cognitive tests (PVT and N-back, which measures vigilance, working memory, and complex tracking) will be administered. Testing will occur at room temperature and in hot conditions to compare cognitive test results between conditions. Participants will swallow temperature pills and wear bio-harnesses to enable the collection of real-time core body temperature and heart rate data. An initial health screening questionnaire as well as additional questionnaires administered prior to each test will be used to ensure that participants are able to withstand the physical demands of testing and to provide information on factors that affect individual variability to heat tolerance. Additionally, a physical examination and fingerstick blood tests will be used for health screening. The purpose of collecting data in the environmental chamber is to compare physiologic and cognitive measurements at different core body temperatures to evaluate factors contributing to individual variability in cognitive and physiologic responses to heat and to evaluate whether core body temperature thresholds exist above which cognitive deficits are observed.

NIOSH is requesting a Revision for this study, because the COVID pandemic substantially delayed the ability to begin data collection. We are also making minor changes to data collection instruments. These questions were revised to improve flow and clarity, which will likely decrease the amount of time spent on questionnaires and decrease the interruptions required of field participants. The total estimated burden hours requested are 109 for the field study and 77 for the environmental chamber study. There are no costs to respondents other than their time. All data collection activities will be conducted in full compliance with the CDC regulations to maintain the privacy of data obtained on persons and to protect the rights and welfare of human subjects. Consistent with Section 301(d) of the Public Health Service Act, a Certificate of Confidentiality (CoC) applies to this research.

ESTIMATED TOTAL BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (hours)	Total burden (hours)
Field study					
Miners	Informed consent form (field)	59	1	30/60	30
Miners	Initial health screening questionnaire (field).	59	1	30/60	30
Miners	Mid-shift field questionnaire	59	4	1/60	4
Miners	PVT cognitive test	59	5	5/60	25
Miners	Post-shift field questionnaire	59	2	10/60	20
Chamber study					
Miners/firefighters/construction workers.	Informed consent form (chamber)	30	1	30/60	15
Miners/firefighters/construction workers.	Physical examination form	30	1	10/60	5
Miners/firefighters/construction workers.	Initial health screening questionnaire (chamber).	30	1	30/60	15
Miners/firefighters/construction workers.	Release of information form	5	1	1/60	1
Miners/firefighters/construction workers.	TSS and RPE	30	5	1/60	3
Miners/firefighters/construction workers.	PANAS and KSS	30	5	2/60	5
Miners/firefighters/construction workers.	Cognitive test: PVT	30	5	10/60	25
Miners/firefighters/construction workers.	Cognitive test: N-back	30	5	1/60	3
Miners/firefighters/ constructionworkers.	Pre-testing health questionnaire	30	2	5/60	5
Total					186

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. 2023–12940 Filed 6–15–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23–23GC; Docket No. CDC–2023–0049]

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 NCEZID Rapid Message Testing & Development System. This collection will enable the National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) to test health messages and gather information to inform the development of health messages.

DATES: CDC must receive written comments on or before August 15, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0049 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

NCEZID Rapid Message Testing & Development System—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) offers numerous powerful resources to anticipate, prevent, and address outbreaks of infectious diseases. From researchers to emergency responders; from laboratories to surveillance of mobile populations; from collaborations at the Federal level to partnerships at the local level, NCEZID keeps people safe from threats like anthrax, Ebola virus, Zika virus, sepsis, mpox, and foodborne illnesses like *Salmonella.* These efforts are vital to protect and save lives.

The ability to effectively communicate with the public about these threats is one of NCEZID's most vital roles. Particularly during an outbreak, it is critical that the public understands what is happening and why, and trusts and follows public health leaders' guidance. Recent public health responses to COVID–19 and mpox have underscored the need to improve the speed and content of health communications, particularly among populations at higher risk for zoonotic and infectious diseases. This Rapid Message Testing & Message Development System will enable NCEZID to collect information vital to the development of clear, salient, relevant, appealing, and persuasive messages related to outbreaks and other emerging and zoonotic diseases via a Generic mechanism. The Rapid Message Testing & Message Development System will also allow for the relatively rapid testing of messages when the need arises within the Center, prior to the dissemination of those messages and associated communications materials. The data collection is intended to ensure NCEZID messages are appropriate to target audiences. Data will guide revisions to existing or draft messages, inform the development of new messages, and otherwise enable message developers to make optimal decisions about message content, format, and dissemination so that NCEZID's messages effectively reach and resonate with their intended audiences. Proposed data collection methods include in-depth interviews, online or in-person focus groups, and online surveys.

CDC requests OMB approval for an estimated 2,615 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Online surveys (general public)	Content question bank	10,000	1	10/60	1,667
Online in-depth interview screening (healthcare and specialty audiences).	Screening question bank.	720	1	5/60	60
Online in-depth interviews (healthcare and specialty audiences).	Content question bank	72	1	1	72
Online focus group screening (general public)	Screening question bank.	1,440	1	5/60	120
Online focus groups (general public)	Content question bank	144	1	2	288
Online focus group screening (healthcare and specialty audiences).	Screening question bank.	1,440	1	5/60	120
Online focus groups (healthcare and specialty audiences).	Content question bank	144	1	2	288
Total					2,615

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. 2023–12939 Filed 6–15–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23FZ; Docket No. CDC–2023–0048]

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 Healthcare Outbreak Prevention and Response Curriculum for Public Health Departments. This data collection will allow CDC to evaluate whether the CDC-developed trainings are reaching the intended audience and achieving the intended goal of strengthening public health workforce capacity to prevent and respond to Healthcare-Associated Infections and Antibiotic Resistance (HAI/AR) outbreaks.

DATES: CDC must receive written comments on or before August 15, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0048 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

Healthcare Response and Prevention Training Curriculum for Health Departments—New—National Center for Emerging and Zoonotic Infectious Disease (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC funds Healthcare-Associated Infection and Antibiotic Resistance (HAI/AR) programs in 64 state, local and territorial health departments.

Funding is awarded through the Epidemiology and Laboratory cooperative agreements (ELC), and is intended to provide critical resources to recipients in support of a broad range of healthcare infection prevention and control and epidemiologic surveillance activities to detect, monitor, mitigate, and prevent the spread of HAI/AR in healthcare settings.

HAI/AR programs have experienced an increase in program size and scope through COVID–19 supplemental funds. To better support the growing programs, CDC has developed high-priority trainings requested by the health department programs with the goal of strengthening public health workforce capacity to prevent and respond to HAI/AR outbreaks in healthcare settings, including preventing the spread of SARS-CoV–2. The proposed training evaluation will be used to assess whether the CDC-developed trainings are reaching the intended audience and achieving the intended goal of strengthening public health workforce capacity to prevent and respond to HAI/AR outbreaks, including COVID–19, at the individual trainee and program level.

CDC requests OMB approval for an estimated 316 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Public Health Trainees	Registration	600	2	5/60	100
Public Health Trainees	Pre-test	600	2	5/60	100
Public Health Trainees	Post-test	600	2	5/60	100
HAI/AR Program Leads	Public Health program impact of trainings	64	1	15/60	16
Total					316

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. 2023–12938 Filed 6–15–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Statement of Delegation of Authority

I hereby delegate to the individual serving as the Administrator and Assistant Secretary for Aging for the Administration for Community Living the authority to oversee and administer the operations of the Interagency Coordinating Committee on Healthy Aging and Age-Friendly Communities as outlined in section 203(c) Older Americans Act of 1965 (Pub. L. 89–73, as amended through Pub. L. 116–131, enacted March 25, 2020).

This delegation excludes the authority to issue regulations and shall be exercised in accordance with the Department's applicable policies, procedures, and guidance. This authority may be redelegated.

This delegation of authority is effective immediately upon signature. I hereby affirm and ratify any actions taken by you or your subordinates that involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: June 13, 2023.

Xavier Becerra,

Secretary.

[FR Doc. 2023–12983 Filed 6–15–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. HHS–OASH–2022–0014]

Draft Guidance on Frequently Asked Questions: Limited Institutional Review Board Review and Related Exemptions

AGENCY: The Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, HHS.

ACTION: Notice of availability.

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health, is announcing the availability of a draft guidance document titled, ''Frequently Asked Questions: Limited Institutional Review Board Review and Related Exemptions.''

DATES: Submit written comments by August 15, 2023.

ADDRESSES: You may send comments, identified by docket number HHS–OASH–2022–0014, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OHRP@hhs.gov.*
- Fax: 240–453–8420.
- *Mail/Hand Delivery/Courier:* Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Instructions: All submissions received must include the docket number. All comments received, including attachments and any personal information, will be posted without change to *https://www.regulations.gov.*

Submit written requests for a single copy of the guidance document titled, ''Frequently Asked Questions: Limited Institutional Review Board Review and Related Exemptions'' to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request or fax your request to 240–453–8420. See the **SUPPLEMENTARY INFORMATION** section for information on access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Natalie Klein, Ph.D., Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, 240–453–6700; email *natalie.klein@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OHRP is announcing the availability of a draft guidance document for public comment titled ''Frequently Asked Questions: Limited Institutional Review Board Review and Related Exemptions.'' The draft guidance document applies to research activities involving human subjects that are conducted or supported by HHS. It is intended primarily to help

entities implement the requirement for limited review of research by an IRB to meet the conditions of four exemptions found at 45 CFR 46.104(d) of the 2018 Requirements (the Common Rule). The draft guidance discusses the concept of limited IRB review, which appears in these exemptions, and provides information about how limited review may be conducted. When finalized, this will provide OHRP's first formal guidance on this topic. This draft guidance was developed after taking into consideration input received from HHS and other Common Rule departments and agencies.

II. Equity and Justice Considerations

OHRP is particularly interested in public comments on any impact this guidance may have on considerations for equity and justice in human research protections.

III. Electronic Access

Persons with access may obtain the draft guidance documents on OHRP's website at *https://www.hhs.gov/ohrp/regulations-and-policy/requests-for-comments/index.html.*

Julie A. Kaneshiro,

Acting Director, Office for Human Research Protections.

[FR Doc. 2023–12924 Filed 6–15–23; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Implementation of the NIH SBIR and STTR Foreign Disclosure Pre-Award and Post-Award Requirements

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces publication and serves as Notice for the extramural community on recent policy changes made for the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR). This Notice implements additional disclosure requirements and post-award reporting requirements for small business concerns (SBCs) for covered relationships. In addition, this serves as notification of NIH's due diligence program to assess security risks and denial of award when foreign relationships or commitments with countries of concern pose a significant risk as provided in the SBIR and STTR Extension Act of 2022 at *https://www.congress.gov/117/plaws/publ183/PLAW-117publ183.pdf* under these programs. This policy serves as an update to section 18. Grants to For Profit Organizations of the NIH Grants Policy Statement (GPS) at *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_18/18_grants_to_for-profit_organizations.htm* and will be incorporated in the FY24 publication. In addition, the NIH Application Guide will be updated to reflect instructions for submission of required documentation.

DATES: The policy changes are now available for viewing.

ADDRESSES: Please visit our website to view the policy changes at *https://grants.nih.gov/policy/PolicyNotices.php.*

FOR FURTHER INFORMATION CONTACT: Stephanie Fertig, Health and Human Services (HHS) Small Business Program Lead, Small business Education and Entrepreneurial Development (SEED). Email: *SEEDinfo@nih.gov.* Phone number (301) 827–8595. Centers for Disease Control and Prevention (CDC) Contact: Terrance Perry, CDC Office of Grants Services, Office of Financial Resources. Email: *OGSPolicy@cdc.gov.* Phone number (770) 488–8424). Food and Drug Administration (FDA) Contact: Kimberly Pendleton, FDA Office of Finance, Budget, Acquisitions, and Planning. Email: *Kimberly.Pendleton@fda.hhs.gov.* Phone number (240) 402–7610.

SUPPLEMENTARY INFORMATION:

Background

The SBIR and STTR Extension Act of 2022 (the Act) Public Law 117–183, 136 stat. 2180 *https://www.congress.gov/117/plaws/publ183/PLAW-117publ183.pdf,* signed into law by President Biden on September 30, 2022, reauthorized the SBIR program, the STTR program, and related pilot programs through September 30, 2025.

The Act includes major changes to the SBIR and STTR programs, including:

- increased minimum performance standards (refer to *NOT–OD–23–092, https://grants.nih.gov/grants/guide/notice-files/NOT-OD-23-092.html*),
- disclosure requirements regarding ties to foreign countries,
- a requirement for federal agencies that manage SBIR and STTR programs to establish a due diligence program to assess security risks posed by applicants,
- denial of award and recovery authority provisions when ties to foreign countries of concern pose a significant risk.

Foreign countries of concern are defined in the Act as the People's Republic of China, the Democratic People's Republic of North Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the U.S. Secretary of State. An up-to-date list of countries determined to be countries of concern by the Secretary of State will be maintained and accessible on *SBIR.gov* on SBA's Required Disclosures of Foreign Affiliations or Relations web page at *https://www.sbir.gov/foreign_disclosures.*

In response to the passing of the Act, the U.S. Small Business Administration (SBA) has issued a form, *Required Disclosures of Foreign Affiliations or Relationships to Foreign Countries* (referred to as the ''disclosure form'' hereafter) that will be administered by federal agencies to identify and assess the risk of covered foreign relationships for SBC applicants applying for SBIR and STTR funding. Publication of the final form is forthcoming.

Applicability

This policy applies to all competing applications for funding under the NIH, CDC, and FDA SBIR and STTR programs submitted for due dates on or after September 5, 2023.

Policy

Each SBC applying for the SBIR and STTR programs under the NIH, CDC, and FDA is required to disclose all funded and unfunded relationships with foreign countries, using the disclosure form, for all owners and covered individuals. A ''covered individual'' is defined as all senior key personnel identified by the SBC in the application (*i.e.,* individuals who contribute to the scientific development or execution of a project in a substantive, measurable way). Applicants must include the following information on the disclosure form:

- the identity of all owners and covered individuals of the SBC who are a party to any malign foreign talent recruitment program;
- the existence of any parent company, joint venture, or subsidiary of the SBC that is based in or receives funding from, any foreign country of concern;
- any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity;
- whether the SBC is wholly owned in a foreign country;

• any venture capital or institutional investment and if the investing entity has a general partner or any other individual holding a leadership who has a foreign affiliation with any foreign country of concern;
• any technology licensing or intellectual property sales or transfers to a foreign country of concern during the 5-year period preceding submission of the proposal;
• any foreign business entity, offshore entity, or entity outside the United States related to the SBC;
• any owners, officers, or covered individuals that have a foreign affiliation with a research institution located in a foreign country of concern;
• information technology and information safeguarding plans.

Upon request, applicants will submit the completed disclosure form via the Just-In-Time (JIT) process described in the NIH GPS section 2.5.1 Just-in-Time Procedures at *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_2/2.5.1_just-in-time_procedures.htm.* The disclosure form and any additional agency-specific information must be submitted electronically using the Just-in-Time feature in the eRA Commons. Applicants must continue to comply with NIH Other Support disclosure requirements as provided in Section 2.5.1 at *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_2/2.5.1_just-in-time_procedures.htm.* SBC applicants applying to CDC and FDA will follow each agency's policies for submitting additional documents during the pre-award process. Applicants may be required to provide similar information on the disclosure form that is also submitted as a part of the other support reporting for senior/key personnel identified in the application. Applicants that do not submit the completed disclosure form during the JIT process will not be considered for funding.

SBIR/STTR Notices of funding opportunities and terms and conditions of award will be updated to reflect the policy above.

Due Diligence Program To Assess Security Risks

NIH, CDC, and FDA have implemented a due diligence program designed to assess security risks posed by applicants. The due diligence program will assess the cybersecurity practices, patent analysis, employee analysis, and foreign ownership of a SBC seeking an award, including the financial ties and obligations of the SBC and employees of the SBC to a foreign country, foreign person, or foreign entity. After reviewing the application, including JIT elements and the disclosure form, NIH, CDC, and FDA may request the SBC provide copies of any contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity in effect during the 5-year period (calendar year) preceding submission of the proposal. NIH, CDC, and FDA may decline to move forward with an award based on security risks determined during the assessment. NIH, CDC, and FDA will not issue an award prior to completing the assessment process.

Denial of Awards

Applicants and recipients are encouraged to consider whether their entity's relationships with foreign countries of concern will pose a security risk. Prior to issuing an award, NIH, CDC, and FDA will determine whether the SBC submitting the application:
• has an owner or covered individual that is party to a malign foreign talent recruitment program;
• has a business entity, parent company, or subsidiary located in the People's Republic of China or another foreign country of concern; or
• has an owner or covered individual that has a foreign affiliation with a research institution located in the People's Republic of China or another foreign country of concern.

A finding of foreign involvement with countries of concern will not necessarily disqualify an applicant. NIH, CDC, and FDA will provide SBC applicants the opportunity to address any identified security risks prior to award. Final award determinations will be based on whether the applicant's involvement falls within any of the following risk criteria, per the Act:
• interfere with the capacity for activities supported by NIH, CDC, or FDA to be carried out;
• create duplication with activities supported by NIH, CDC, or FDA;
• present concerns about conflicts of interest;
• were not appropriately disclosed to NIH, CDC, or FDA;
• violate Federal law or terms and conditions of NIH, CDC, or FDA; or
• pose a risk to national security.

NIH, CDC, and FDA will not issue an award under the SBIR/STTR program if the covered relationship with a foreign country of concern identified in this guidance is determined to fall under any of the criteria provided above, and the risk cannot be resolved.

Post-Award Reporting Requirements

Recipients are responsible for monitoring their relationships with foreign countries of concern post-award, for any changes that may impact previous disclosures. SBCs receiving an award under the SBIR/STTR program are required to submit an updated disclosure form to report any of the following changes to NIH, CDC, and FDA throughout the duration of the award:
• any change to a disclosure on the disclosure form;
• any material misstatement that poses a risk to national security; and
• any change of ownership, change to entity structure, or other substantial change in circumstances of the SBC that NIH, CDC, and FDA determine poses a risk to national security.

Updated disclosure forms are required within 30 days of any change in ownership, entity structure, covered individual, or other substantive changes in circumstance, as described above. In addition, regular updates are required at the time of all SBIR/STTR annual, interim, and final Research Performance Progress Reports (RPPRs). Recipients will be required to upload these updated disclosures using the Additional Materials (AM) tool in eRA Commons. System enhancements to facilitate these uploads are underway, with an anticipated deployment in calendar year 2024. The RPPR Instruction Guide will be updated to reflect this process.

If the recipient reports a covered foreign relationship that meets any of the risk criteria prohibiting funding described in this guidance, NIH, CDC, and FDA may withhold funding until the covered relationship has been dissolved. The recipient will be required to submit documentation verifying the relationship has been terminated. If the risk cannot be resolved, NIH, CDC, and FDA may deem it necessary to terminate the award for material failure to comply with the federal statutes, regulations, or terms and conditions of the federal award. Refer to Section 8.5.2 Remedies for Noncompliance or Enforcement Actions: Suspension, Termination, and Withholding of Support (*https://grants.nih.gov/grants/policy/nihgps/HTML5/section_8/8.5.2_remedies_for_noncompliance_or_enforcement_actions-_suspension__termination__and_withholding_of_support.htm?Highlight=termination* for more information. Recipients are encouraged to monitor their covered foreign relationships post-award and avoid entering into relationships, both funded and unfunded, that may pose a security risk and jeopardize their ability to retain their award.

Agency Recovery Authority and Repayment of Funds

An SBC will be required to repay all amounts received from NIH, CDC, and FDA under the award if either of the following determinations are made upon assessment of a change to their disclosure:

- the SBC makes a material misstatement that NIH, CDC, and FDA determine poses a risk to national security; or
- there is a change in ownership, change in entity structure, or other substantial change in circumstances of the SBC that NIH, CDC, and FDA determine poses a risk to national security.

The repayment requirements and procedures provided in Section 8.5.4 Recovery of Funds at *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_8/8.5.4_recovery_of_funds.htm* of the NIH GPS apply and may also be subject to additional noncompliance and enforcement actions as described in Section 8.5.2 of the GPS. Recipients are required to follow the repayment procedures provided in the Guidance for Repayment of Grant Funds to the NIH at *https://grants.nih.gov/policy/compliance.htm.*

Dated: June 6, 2023.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2023–12854 Filed 6–15–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 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: Center for Scientific Review Special Emphasis Panel; Therapeutic Immune Regulation.

Date: July 13–14, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Yue Wu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 803C, Bethesda, MD 20892, (301) 867–5309, *wuy25@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: July 13–14, 2023.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Washington DC/Georgetown, 2201 M Street NW, Washington, DC 20037.

Contact Person: Simone Chebabo Weiner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011K, Bethesda, MD 20892, (301) 435–1042, *weinersc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.

Date: July 13–14, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: July 13–14, 2023.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; HIV Immunopathogenesis and Vaccine Development Study Section.

Date: July 13–14, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Services and Systems.

Date: July 13, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology, and Trauma.

Date: July 13, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Pathogenic Eukaryotes.

Date: July 13, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435–0000, *drammehbs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Aging.

Date: July 13, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas Y Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710B, Bethesda, MD 20892, (301) 402–4179, *thomas.cho@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle and Exercise Physiology/Musculoskeletal Rehabilitation Sciences.

Date: July 13, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Bertoni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805B, Bethesda, MD 20892, (301) 867–5309, *bertonic2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 13, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12979 Filed 6–15–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Establishment of the Aging and Neurodegeneration Integrated Review Group

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. 1001–1014), the Director, National Institutes of Health (NIH) announces the establishment of the Aging and Neurodegeneration Integrated Review Group (IRG) as authorized by 42 U.S.C. 282(b)(16), section 402(b)(16) of the Public Health Service Act, as amended.

The Director, NIH, has determined that the Aging and Neurodegeneration IRG is in the public interest in connection with the performance of duties imposed on NIH by law, and that these duties can best be performed through the advice and counsel of the committee.

This committee provides advice and recommendations on funding applications and proposals, including but not limited to, the scientific and technical merit of applications for grants-in-aid for research, research training, or research-related grants and cooperative agreements, or contract proposals relating to scientific areas relevant to aging and neurodegeneration.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *Claire.Harris@nih.gov.*

Dated: June 13, 2023.

Lawrence A. Tabak,

Acting NIH Director, National Institutes of Health.

[FR Doc. 2023–12987 Filed 6–15–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of 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: Office of Research Infrastructure Programs Special Emphasis Panel; Office of Research Infrastructure Programs (ORIP): Applications for Scientific Conferences.

Date: July 12, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: June 13, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12978 Filed 6–15–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2348]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA

Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Boulder	Town of Superior (22–08–0512P).	The Honorable Mark Lacis, Mayor, Town of Superior, 124 East Coal Creek Drive, Superior, CO 80027.	Town Hall, 124 East Coal Creek Drive, Superior, CO 80027.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 28, 2023	080203
Broomfield	City and County of Broomfield (22–08–0512P).	The Honorable Guyleen Castriotta, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 28, 2023	085073
Connecticut: Fairfield.	Town of Greenwich (23–01–0011P).	Fred Camillo, First Selectman, Town of Greenwich Board of Selectmen, 101 Field Point Road, Greenwich, CT 06830.	Planning and Zoning Department, 101 Field Point Road, Greenwich, CT 06830.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 11, 2023	090008
Florida:						
Alachua ...	City of Gainesville (22–04–5738P).	The Honorable Harvey Ward, Mayor, City of Gainesville, 200 East University Avenue, Gainesville, FL 32601.	Public Works Department, 405 Northwest 39th Avenue, Gainesville, FL 32609.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2023	125107
Alachua ...	Unincorporated areas of Alachua County (22–04–5738P).	Michele L. Lieberman, Alachua County Manager, 12 Southeast 1st Street, Gainesville, FL 32601.	Alachua County Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32653.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2023	120001
Bay	Unincorporated areas of Bay County (22–04–5121P).	The Honorable Tommy Hamm, Chair, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2023	120004
Monroe	Unincorporated areas of Monroe County (23–04–1583P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 28, 2023	125129
Monroe	Village of Islamorada (23–04–1953P).	The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 5, 2023	120424
Orange	City of Orlando (22–04–5073P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2023	120186
Orange	Unincorporated areas of Orange County (22–04–5073P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2023	120179

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Sarasota ..	City of Sarasota (22–04–4970P).	The Honorable Kyle Battie, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2023	125150
Volusia	City of Edgewater (23–04–1432P).	The Honorable Diezel DePew, Mayor, City of Edgewater, P.O. Box 100, Edgewater, FL 32132.	Stormwater Department, 409 Mango Tree Drive, Edgewater, FL 32132.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 4, 2023	120308
Georgia: Fulton	City of Hapeville (22–04–5158P).	The Honorable Alan Hallman, Mayor, City of Hapeville, 3468 North Fulton Avenue, Hapeville, GA 30354.	Public Services Department, 3474 North Fulton Avenue, Hapeville, GA 30354.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 24, 2023	130502
Mississippi: Hancock.	City of Bay St. Louis (23–04–1766P).	The Honorable Michael Favre, Mayor, City of Bay St. Louis, 688 Highway 90, Bay Saint Louis, MS 39520.	Chiniche Engineering and Surveying, 407 Highway 90, Bay Saint Louis, MS 39520.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 25, 2023	285251
North Carolina: Durham.	Unincorporated areas of Durham County (22–04–5172P).	The Honorable Brenda Howerton, Chair, Durham County, Board of Commissioners, 101 City Hall Plaza, Durham, NC 27701.	Durham City-County Planning Department, 101 City Hall Plaza, Durham, NC 27701.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 1, 2023	370085
Pennsylvania:						
Blair	Borough of Williamsburg (23–03–0119P).	The Honorable Theodore Hyle, Mayor, Borough of Williamsburg, 305 East 2nd Street, Williamsburg, PA 16693.	Borough Hall, 305 East 2nd Street, Williamsburg, PA 16693.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 8, 2023	420165
Blair	Township of Catharine (23–03–0119P).	The Honorable Heather Flaig, Supervisor, Township of Catharine, 1229 Recreation Drive, Williamsburg, PA 16693.	Township Hall, 1229 Recreation Drive, Williamsburg, PA 16693.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 8, 2023	420962
Blair	Township of Woodbury (23–03–0119P).	The Honorable Joseph Lansberry, Chair, Township of Woodbury Board of Supervisors, 6385 Clover Creek Road, Williamsburg, PA 16693.	Township Hall, 6385 Clover Creek Road, Williamsburg, PA 16693.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 8, 2023	420963
Cumberland.	Township of Upper Allen (22–03–0959P).	The Honorable Kenneth M. Martin, President, Township of Upper Allen Board of Commissioners, 100 Gettysburg Pike, Mechanicsburg, PA 17055.	Township Hall, 100 Gettysburg Pike, Mechanicsburg, PA 17055.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2023	420372
Delaware	Township of Darby (23–03–0224P).	The Honorable John Lacey, President, Township of Darby Board of Commissioners, 21 Bartram Avenue, Glenolden, PA 19036.	Township Hall, 21 Bartram Avenue, Glenolden, PA 19036.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 14, 2023	421603
Philadelphia.	City of Philadelphia (23–03–0224P).	The Honorable James Kenney, Mayor, City of Philadelphia, 1 South Penn Square, Suite 215, Philadelphia, PA 19102.	Department of Licenses and Inspections, 1401 John F. Kennedy Boulevard, 11th Floor, Philadelphia, PA 19102.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 14, 2023	420757
Tennessee:						
Wilson	City of Mt. Juliet (23–04–1901P).	The Honorable James Maness, Mayor, City of Mt. Juliet, 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.	Public Works and Engineering Department, 71 East Hill Street, Mt. Juliet, TN 37122.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 3, 2023	470290
Wilson	Unincorporated areas of Wilson County (23–04–1901P).	The Honorable Randall Hutto, Mayor, Wilson County, 228 East Main Street, Lebanon, TN 37087.	Wilson County Planning Department, 228 East Main Street, Lebanon, TN 37087.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 3, 2023	470207
Texas:						
Bexar	City of San Antonio (22–06–1878P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 14, 2023	480045
Dallas	City of Dallas (23–06–0244P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Oak Cliff Municipal Center, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 7, 2023	480171
Dallas	City of Garland (22–06–2058P).	The Honorable Scott LeMay, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	City Hall, 200 North 5th Street, Garland, TX 75040.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 14, 2023	485471
Dallas	City of Sachse (22–06–2058P).	The Honorable Jeff Bickerstaff, Mayor, City of Sachse, 3815 Sachse Road, Sachse, TX 75048.	Engineering Department, 3815 Sachse Road, Sachse, TX 75048.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 14, 2023	480186

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Denton	City of Fort Worth (22–06–2050P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 21, 2023	480596
Denton	City of Justin (22–06–2978P).	The Honorable Elizabeth Woodall, Mayor, City of Justin, P.O. Box 129, Justin, TX 76247.	Department of Development Services, 415 North College Avenue, Justin, TX 76247.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 1, 2023	480778
Denton	Unincorporated areas of Denton County (22–06–2978P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 1, 2023	480774
El Paso	City of El Paso (22–06–2670P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Development Department, 801 Texas Avenue, El Paso, TX 79901.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 1, 2023	480214
Texas: El Paso.	Unincorporated areas of El Paso County (22–06–2670P).	The Honorable Ricardo A. Samaniego, El Paso County Judge, 500 East San Antonio Avenue, Suite 301, El Paso, TX 79901.	El Paso County Public Works Department, 800 East Overland Avenue, Suite 200, El Paso, TX 79901.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 1, 2023	480212
Virginia:						
Loudoun ..	City of Leesburg (22–03–0973P).	The Honorable Kelly Burk, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Town Hall, 25 West Market Street, Leesburg, VA 20176.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 28, 2023	510091
Washington.	City of Bristol (22–03–1191P).	Randy Eads, City of Bristol Manager, 300 Lee Street, Bristol, VA 24201.	Community Development and Planning Department, 300 Lee Street, Bristol, VA 24201.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 10, 2023	510022
Washington.	Unincorporated areas of Washington County (22–03–1191P).	Saul A. Hernandez, Chair, Washington County Board of Supervisors, 5411 Dishner Valley Road, Bristol, VA 24202.	Washington County Department of Zoning Administration, 1 Government Center Place, Suite A, Abingdon, VA 24210.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 10, 2023	510168

[FR Doc. 2023–12888 Filed 6–15–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of November 16, 2023 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below. (Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Alpine County, California Unincorporated Areas Docket No.: FEMA–B–2260	
Unincorporated Areas of Alpine County	Alpine County Public Works Community Development, 50 Diamond Valley Road, Markleeville, CA 96120.
Van Buren County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2223	
City of South Haven	City Hall, 539 Phoenix Street, South Haven, MI 49090.
Charter Township of South Haven	Township Hall, 09761 Blue Star Memorial Highway, South Haven, MI 49090.
Township of Covert	Township Hall, 73943 East Lake Street, Covert, MI 49043.
Oswego County, New York (All Jurisdictions) Docket No.: FEMA–B–2173	
City of Oswego	City Hall, Engineering Office, Third Floor, 13 West Oneida Street, Oswego, NY 13126.
Town of Mexico	Town Office, 64 South Jefferson Street, Mexico, NY 13114.
Town of New Haven	Town Hall, 4279 State Route 104, New Haven, NY 13121.
Town of Oswego	Town Hall, 2320 County Route 7, Oswego, NY 13126.
Town of Richland	Richland Town Hall, 1 Bridge Street, Pulaski, NY 13142.
Town of Sandy Creek	Town Hall, 1992 Harwood Drive, Sandy Creek, NY 13145.
Town of Scriba	Scriba Municipal Building, 42 Creamery Road, Oswego, NY 13126.
Grant County, North Dakota and Incorporated Areas Docket No.: FEMA–B–2263	
City of Carson	Nodak Mutual Insurance Building, 100 Main Street South, Carson, ND 58529.
City of Leith	Grant County Courthouse, 106 2nd Avenue Northeast, Carson, ND 58529.
City of New Leipzig	City Hall, 19 1st Street East, New Leipzig, ND 58562.
Unincorporated Areas of Grant County	Grant County Courthouse, 106 2nd Avenue Northeast, Carson, ND 58529.
Madison County, Ohio and Incorporated Areas Docket No.: FEMA–B–2269	
Village of West Jefferson	Village Hall, 28 East Main Street, West Jefferson, OH 43162.
Arlington County, Virginia (All Jurisdictions) Docket No.: FEMA–B–2134, FEMA–B–2256	
Unincorporated Areas of Arlington County	Arlington County Department of Environmental Services, 2100 Clarendon Boulevard, Suite 705, Arlington, VA 22201.
City of Fairfax,Virginia, Independent City Docket No.: FEMA–B–2129 and FEMA–B–2256	
City of Fairfax	Department of Public Works, 10455 Armstrong Street, City Hall Annex, Room 200 A, Fairfax, VA 22030.

[FR Doc. 2023–12874 Filed 6–15–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2347]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before September 14, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/*

prelimdownload and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2347, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Madison County, Alabama and Incorporated Areas Project: 22–04–0021S Preliminary Date: February 9, 2023	
City of Huntsville	City Hall, 308 Fountain Circle, Huntsville, AL 35801.
Unincorporated Areas of Madison County	Madison County Department of Public Works, Engineering Department, 266–C Shields Road, Huntsville, AL 35811.

[FR Doc. 2023–12882 Filed 6–15–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2023–0013]

Agency Information Collection Activities: DHS Individual Complaint of Employment Discrimination, 1610–0001

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-day notice and request for comments; generic clearance for formative data collections for evaluations, research, and evidence building.

SUMMARY: The Department of Homeland Security, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on 03/21/2023, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until July 17, 2023. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: This form provides information necessary for processing formal complaints of employment discrimination in accordance with EEOC Management Directive (EEO–MD) 110, and 29 CFR part 1614. It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age,

disability, protected genetic information, or status as a parent, and to promote the full realization of equal employment opportunity (EEO) through a continuing affirmative program in each agency.

Persons who claim to have been subjected to these types of discrimination, or to retaliation for opposing these types of discrimination or for participating in any stage of administrative or judicial proceedings relating to them, can seek a remedy under title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e *et seq.*) (race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*) (age), the Equal Pay Act (29 U.S.C. 206(d)) (sex), the Rehabilitation Act (29 U.S.C. 791 *et seq.*) (disability), the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*) (genetic information), and Executive Order 11478 (as amended by Executive Orders 13087 and 13152) (sexual orientation or status as a parent).

The Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) adjudicates discrimination complaints filed by current and former DHS employees, as well as applicants for employment at DHS. The complaint adjudication process for statutory rights is outlined in the Equal Employment Opportunity Commission (EEOC) regulations found at title 29, Code of Federal Regulations, part 1614, and EEOC Management Directive 110. For complaints alleging discrimination prohibited by Executive Order 11478, DHS follows procedures similar to the procedures for statutory rights, to the extent permitted by law.

The recordkeeping provisions are designed to ensure that a current employee, former employee, or applicant for employment claiming to be aggrieved or that person's attorney provide a signed statement that is sufficiently precise to identify the aggrieved individual and the agency and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted. The complaint form is used for original allegations of discrimination but also for amendments to underlying complaints of discrimination. The form also determines whether the person is willing to participate in mediation or other available types of alternative dispute resolution (ADR) to resolve their complaint; Congress has enacted legislation to encourage the use of ADR in the Federal sector and the form ensures that such an option is considered at this preliminary stage of the EEO complaint process.

A complainant may access the complaint form on the agency website and may submit a completed complaint form electronically to the relevant Component's EEO Office. The complaint form can then be directly uploaded into the DHS EEO Enterprise Complaints Tracking System, also known as ''iComplaints.''

There is no change or adjustment to the burden associated with the collection of information associated with the DHS complaint form. DHS is not proposing to make any changes to the DHS complaint form. This request is a renewal of the current ICR collection expiring in 60 days.

This is a renewal of the ICR request.

The Office of Management and Budget is particularly interested in comments which:

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.

Based on an average of the formal EEO complaints filed at DHS during Fiscal Years 2014 through 2021, there are approximately 1,200 respondents each year. Of the 1,200 respondents, 1,064 are Federal employees who are exempt (noted below). We estimate the information collection to take approximately 30 minutes.

136 respondents × ½ hour = 68 hours

3. Enhance the quality, utility, and clarity of the information to be collected; and

This information collection is conducted in manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

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. A complainant may access the complaint form on the agency website and may submit a completed complaint form electronically to the relevant Component's EEO Office. The complaint form can then be directly uploaded into the DHS EEO Enterprise Complaints Tracking System, also known as ''icomplaints.''

Analysis

Agency: Department of Homeland Security (DHS).

Title: DHS Individual Complaint of Employment Discrimination.

OMB Number: 1610–0001.

Frequency: Annually.

Affected Public: Individuals and households.

Number of Respondents: 1200.

Estimated Time Per Respondent: 30 mins.

Total Burden Hours: 600 hours.

Robert Porter Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2023–12655 Filed 6–15–23; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Lower Elwha Tribal Community; Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Lower Elwha Tribal Community Liquor Ordinance. This Ordinance certifies the Tribe's liquor licensing laws to regulate and control possession, sale, and consumption of liquor within the jurisdiction of the Tribe's reservation in conformity with the laws of the State of Washington for the purposes of generating Tribal revenues. Enactment of this statute will help provide a source of revenue to strengthen Tribal government, provide for economic viability of Tribal enterprises, and improve delivery of Tribal government services.

DATES: This ordinance shall become effective June 16, 2023.

FOR FURTHER INFORMATION CONTACT: Sharon Jackson, Tribal Government Services, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, OR 97232; telephone: (503) 231–6702; fax: (503) 231–2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control

ordinances for the purpose of regulating liquor transactions in Indian country.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Lower Elwha Tribal Community adopted Resolution Number: 04–23 (Liquor Ordinance) on January 09, 2023, as amended by Resolution Number 41–23 (Revised Liquor Ordinance) on April 03, 2023.

Bryan Newland,

Assistant Secretary–Indian Affairs.

The Lower Elwha Tribal Community—Alcoholic Beverages Ordinance shall read as follows:

1. General Purpose

The Lower Elwha Tribal Community, also known as the Lower Elwha Klallam Tribe (the ''Tribe'') has a paramount interest in protecting the health, safety, and general welfare of its members, residents, and persons doing business within or visiting the Tribe's territorial jurisdiction, and in promoting the orderly economic development of the tribal community. The purpose of this Ordinance is to exercise the Tribe's sovereign and delegated authority to regulate the sale, distribution, and taxation of liquor within the Tribe's territorial jurisdiction.

2. Authority

This Statute is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161) and by powers vested in the Tribal Business Committee of the Lower Elwha Tribal Community to develop, adopt and enforce statutes as authorized under Article IV, Section 1 of the Constitution of the Lower Elwha Tribal Community, adopted April 6, 1968, as subsequently amended.

3. Scope

3.1. This Ordinance applies to the full extent of the sovereign jurisdiction of the Tribe and any and all jurisdictional authority delegated by the United States under 18 U.S.C. 1161 and other laws. The Tribe has inherent authority under its Constitution to protect the public health and safety and to regulate the conduct of business within its territorial jurisdiction; specifically, Article IV, Section 1(b) of the Tribe's Constitution authorizes the Tribe to regulate the use of community property, and Article IV, Section 1(f) thereof authorizes the Tribe to enact ordinances to levy and collect taxes and to otherwise regulate the conduct of business activities within the Tribe's territorial jurisdiction.

3.2. Compliance with this Ordinance is a condition of any entry upon or use of any land or premises within the Tribe's territorial jurisdiction.

3.3 Any person who resides, conducts business, engages in a business transaction, patronizes a business operated by the Tribe, receives benefits from the Tribe, acts under Tribal authority, or enters the Tribe's territorial jurisdiction has consented to the following:

3.3.1. To be bound by the terms of this Ordinance;

3.3.2. To the exclusive authority of the Tribe for purposes of administering and enforcing this Ordinance and to the exclusive jurisdiction of the Lower Elwha Tribal Court for legal actions arising under this Ordinance; and

3.3.3. To detainment, service of summons and process, and search and seizure in conjunction with legal actions arising pursuant to this Ordinance.

3.4. This Ordinance is intended to be in addition to, supplementary to, and consistent with Federal law, and will not be construed as contrary to Federal law, or as inconsistent with any law of the State of Washington relative to the sale of liquor within the Tribe's territorial jurisdiction that has been made applicable by Federal law.

4. Repeal of Prior Liquor Control Laws

4.1. Any previously enacted ordinances and resolutions of the Tribe regulating, authorizing, prohibiting, or in any way dealing with the sale of liquor are hereby repealed and declared to be of no further force and effect, with the exception of the provisions of the Elwha Justice Code Section 9.12, Drug and Alcohol Violations.

4.2. The provisions of this Ordinance are prospective only from the date of its enactment. This Ordinance does not affect any valid license or permit held by a Tribal liquor retailer that may have been previously issued by the State of Washington, nor does it preclude the Tribe from replacing any such license or permit in accordance with a Tribal-State Liquor Compact or Agreement.

5. Definitions

As used in this Ordinance, the following definitions apply:

5.1. ''Community Council'' means the Lower Elwha Tribal Community Council, as defined in Article III, Section 1 of the Tribe's Constitution, as amended.

5.2. ''Business Committee'' means the Lower Elwha Tribal Business Committee, as defined in Article III, Section 2 of the Tribe's Constitution, as amended.

5.3. ''Territorial jurisdiction,'' consistent with the definition of ''Indian country'' in 18 U.S.C. 1151(a) and (c), means:

5.3.1. All land within the limits of the Lower Elwha Indian Reservation, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and

5.3.2. All other lands held by the United States in trust for the benefit of the Tribe, including rights of way running through the same.

5.4. ''Liquor'' has the same meaning as in the Revised Code of Washington, RCW 66.04.010 (1), (3), (25), (26) and (43), as of the effective date of this Ordinance.

5.5. ''Sale'' and ''sell'' has the same meaning as in the Revised Code of Washington in RCW 66.04010 (39), as of the effective date of this Ordinance.

5.6. ''Tribal liquor retailer'' means a liquor retailer wholly owned and controlled by the Lower Elwha Klallam Tribe and located within the Tribe's territorial jurisdiction.

5.7. ''Liquor distributor'' means a State-licensed entity located outside the Tribe's territorial jurisdiction that sells liquor to a Tribal liquor retailer for resale within the Tribe's territorial jurisdiction.

6. Liquor Sales by Tribal Liquor Retailers Only

6.1. Only Tribal liquor retailers may obtain a license under this Ordinance to sell liquor within the Tribe's territorial jurisdiction.

6.2. A Tribal liquor retailer must obtain authorization under this Ordinance by applying in writing to the Business Committee for a license to sell liquor at a specific location within the Tribe's territorial jurisdiction. The Business Committee, in its sole discretion, will determine whether to grant a license. Each license granted will specify what liquor products are authorized to be sold pursuant to the license as well as all other terms, which must be set forth in writing and approved by Resolution of the Business Committee.

6.3. All Tribal liquor retailers must comply with all provisions of this Ordinance, with all applicable provisions of any license issued hereunder, and with any rules and regulations promulgated hereunder by the Business Committee.

6.4. A tribal liquor retailer, or the Tribe on behalf of such retailer, must also obtain authorization from the State of Washington, or a certification from the State that no such authorization is required, before it may commence

selling liquor within the Tribe's territorial jurisdiction.

6.5. Liquor distributors located outside the Tribe's territorial jurisdiction that are duly licensed by the State of Washington are not required to obtain a license under this Ordinance in order to distribute liquor to any Tribal liquor retailer authorized under this Ordinance.

7. Tribal Liquor Tax

7.1. The Tribal Taxing Authority, vested in the office of the Chief Financial Officer, has the authority and responsibility to collect, audit, and issue fees, licenses, taxes, and permits in accordance with this Ordinance.

7.2. In consultation with the Office of Tribal Attorney, the Tribal Taxing Authority may propose a Tribal liquor tax on all sales of liquor within the Tribe's territorial jurisdiction, and any rules and regulations governing matters under Section 6.1 above. All such proposed taxes, fees, and regulations must be approved by written resolution of the Business Committee.

7.3. Any Tribal liquor tax must be remitted to the Tribe on a quarterly basis.

7.4. The Tribe will use its liquor tax revenue for essential tribal government functions and services.

8. Prohibitions and Enforcement; License Revocation

8.1. The purchase, sale, and dealing in liquor within Tribe's territorial jurisdiction by any Tribal liquor retailer, or any other person, party, firm, corporation, or entity, except as provided in this Ordinance is hereby declared unlawful. Without limitation as to any other penalties and fines that may apply, any violation of this subsection is a civil infraction punishable by a fine of up to five hundred dollars ($500.00).

8.2. Nothing in this Ordinance exempts a Tribal liquor retailer from compliance with the provisions of Section 9.12, Drug and Alcohol Violations, of the Elwha Justice Code.

8.3. The Elwha Tribal Police are authorized to enforce the provisions of this Ordinance. The Lower Elwha Tribal Court has exclusive jurisdiction to determine any and all cases or disputes arising under this Ordinance.

8.4. The Business Committee may revoke any license granted under this Ordinance for non-compliance, after providing written notice to the license holder and a fair and reasonable opportunity to appear in person to demonstrate why the license should not be revoked. The decision of the Business Committee to revoke a license is final, with no opportunity for judicial review. Any search or seizure of property related to such a revocation will be done in accordance with Sections 6.7 and 6.8 of the Lower Elwha Judicial Code and Court Procedures.

9. Authority To Enter Into Inter-Governmental Agreements; Compliance with the Laws of the State of Washington

9.1. The Business Committee is authorized to approve and enter into agreements with the Washington State Liquor and Cannabis Board, the Washington State Department of Revenue, and any other cognizant agency of the State concerning the authorization, taxation, or other regulation of liquor sales within the Tribe's territorial jurisdiction. The Business Committee's approval must be memorialized in a Resolution, with a copy of the agreement attached thereto.

9.2. Tribal liquor retailers must comply with any applicable Washington State liquor law standards to the extent required by 18 U.S.C. 1161 or any agreement entered into under Section 8.1 above.

10. Severability

If any section, provision, phrase, addition, word, sentence, or amendment of this Ordinance or its application to any person is held invalid, that invalidity will not affect the other provisions or applications of this Ordinance that can be given effect without the invalid application.

11. Sovereign Immunity Preserved

Nothing in this Ordinance constitutes or may be construed as a waiver of the Tribe's sovereign immunity from unconsented suit. The Tribe will not enter into any inter-governmental agreement regarding the regulation of liquor within the Tribe's territorial jurisdiction that waives the Tribe's sovereign immunity for any purpose unless such waiver is expressly approved in a Resolution of the Business Committee. No Tribal liquor retailer may waive the sovereign immunity it possesses as an entity of the Tribe, or waive the Tribe's sovereign immunity, without clear, express, written approval of the Business Committee.

12. Effective Date

Except where a different effective date is required by Federal law, this Ordinance is effective immediately upon publication by the United States Department of the Interior in the **Federal Register**.

13. Authority To Amend

The Business Committee is authorized to amend this Ordinance as it may see fit in the exercise of its sound judgment on behalf of the Tribe and to take any steps necessary to ensure that such amendment is properly approved and effective in accordance with applicable Federal law.

[FR Doc. 2023–12920 Filed 6–15–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500171905; F–14909–B, F–19148–38]

Alaska Native Claims Selections

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Kuukpik Corporation for the Native village of Nuiqsut, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). As provided by ANCSA, the BLM will convey the subsurface estate in the same lands to Arctic Slope Regional Corporation when the BLM conveys the surface estate to Kuukpik Corporation.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Eileen Ford, Chief, Branch of Adjudication, BLM Alaska State Office, 907–271–5715, or *eford@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is

hereby given that the BLM will issue an appealable decision to Kuukpik Corporation. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*). As provided by ANCSA, the subsurface estate in the same lands will be conveyed to Arctic Slope Regional Corporation when the surface estate is conveyed to Kuukpik Corporation. The lands are located in the vicinity of Nuiqsut, Alaska, and are described as:

Umiat Meridian, Alaska

T. 10 N., R. 2 E.,
Secs. 31 and 32.
Containing 1,262.68 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the ''Anchorage Daily News'' newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until July 17, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Eileen Ford,

Chief, Branch of Adjudication.

[FR Doc. 2023–12883 Filed 6–15–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500169742]

Notice of Availability of the Proposed Southeastern Oregon Resource Management Plan Amendment and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) Amendment/Final Environmental Impact Statement (EIS) for the 2002 Southeastern Oregon RMP, and by this notice is announcing the start of a 30-day protest period of the Proposed RMP Amendment.

DATES: This notice announces the beginning of a 30-day protest period to the BLM on the Proposed RMP Amendment. Protests must be postmarked or electronically submitted on the BLM's ePlanning site within 30 days of the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The Proposed RMP Amendment/Final EIS is available on the BLM's ePlanning page at *https://eplanning.blm.gov/eplanning-ui/project/87435/510.* On the project summary page, click on ''Documents'' on the left side of the screen to find the electronic version of the Proposed RMP Amendment/Final EIS. Hard copies of the Proposed RMP Amendment/Final EIS are also available for public inspection at the BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, telephone: (541) 473–3144.

Instructions for filing a protest with the BLM for the Proposed RMP Amendment/Final EIS for the 2002 Southeastern Oregon RMP can be found at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest* and at 43 CFR 1610.5–2.

FOR FURTHER INFORMATION CONTACT: Brent Grasty, Planning and Environmental Coordinator, Vale District Office; telephone: (541) 473–3144; email: *bgrasty@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Grasty. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The RMP amendment would change the existing 2002 Southeastern Oregon RMP. The Southeastern Oregon planning area covers approximately 4.6 million acres of public lands in Malheur, Grant, Harney, and Baker counties. The area is characterized by a basin and range topography with remote canyons, desert, and mountain systems. The Final EIS evaluates six alternatives that address lands with wilderness characteristics; determine open, limited, and closed off-highway vehicle area allocations; provide livestock grazing management practices related to areas that fail to meet the BLM's Standards for Rangeland Health; and address voluntary livestock grazing permit relinquishments. Resource uses not addressed by the alternatives in this focused amendment will continue to be managed under the direction of the 2002 Southeastern Oregon RMP and Record of Decision, as amended by the 2015 and 2019 Approved Oregon Greater Sage-Grouse RMP Amendments.

The Proposed RMP Amendment/Final EIS responds to comments the BLM received on the Draft EIS during the 90-day public comment period that began on May 29, 2019. During the public comment period, the BLM held open houses in Ontario and Jordan Valley, Oregon, and McDermitt, Nevada. A summary of the comments received during the public comment period and responses to those comments can be found in Appendix P of the Proposed RMP Amendment/Final EIS.

Under the Proposed RMP Amendment, the BLM would protect 33 of the 76 areas the BLM identified as having wilderness characteristics. These 33 areas, which total 417,190 acres, are the units that were prioritized for protection under Alternative D in the Draft RMP Amendment/Draft EIS. The 33 units were identified using criteria established by the BLM's Southeast Oregon Resource Advisory Council that emphasized vegetative conditions, hydrologic function, and the proximity to other protected areas. The Proposed RMP Amendment would also designate these 33 protected areas as: Visual Resource Management Class II public lands, which only allows for low levels of change to the landscapes' visual character; Land Tenure Zone 1, where the BLM would retain these lands in public ownership for the life of the RMP; exclusion areas for major rights-of-way and commercial renewable energy projects; and lands where no surface occupancy for the development and extraction of leasable and saleable minerals, including new mineral material sites, would be authorized. The Proposed RMP Amendment would establish a 250-foot setback area from the protected areas' boundaries to provide the BLM with management

flexibility to maintain the long-term sustainability of the public lands while still maintaining or enhancing the wilderness characteristics within the protected areas.

The Proposed RMP Amendment would also change 319,501 acres of off-highway vehicle (OHV) area allocations within the planning area from open to limited OHV areas, which would limit OHV travel to existing routes and prohibit cross-country travel. This would create a total of 4.5 million acres within the planning area where OHV use would be limited to existing routes, and all of the protected lands with wilderness characteristics are within this limited OHV area category. The Proposed RMP Amendment would retain two open OHV areas totaling 40,368 acres and maintain the current 15,829 acres of closed OHV areas.

The Proposed RMP Amendment would provide additional guidance on the implementation of the BLM's Standards for Rangeland Health and the processing of voluntary grazing permit relinquishments. The Proposed RMP Amendment calls for the consideration of taking appropriate action in areas that are not meeting Standards for Rangeland Health even if existing livestock grazing is not a causal factor for non-attainment of the standard. The Proposed RMP Amendment also clarifies that the BLM would not permit increases to animal unit months if analysis finds that doing so could cause negative impacts to other resources in an area where there is either no rangeland health assessment and evaluation or if the evaluation no longer represents the existing resource conditions. The Proposed RMP Amendment calls for the BLM to review the compatibility of livestock grazing use with other existing resources in the permitted area when a voluntary permit relinquishment is received. If livestock grazing is found to be incompatible, the area could become unavailable to grazing and the forage allocation would be made to another resource. If grazing is found to be compatible with the other resource considerations, then the area would remain available to livestock grazing, and/or could be designated as a reserve common allotment.

The other alternatives evaluated in the Final EIS are the No Action Alternative and Alternatives A, B, C, and D. These alternatives vary in the acreages of lands with wilderness characteristics identified for protection; the acreages of open, limited, and closed OHV area allocations; and various livestock grazing management approaches for implementing the Standards for Rangeland Health and processing voluntary permit relinquishments.

Protest of the Proposed RMP Amendment

BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the Proposed RMP Amendment may protest its approval to the BLM. Protest on the Proposed RMP Amendment constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP Amendment. Instructions for filing a protest with the BLM regarding the Proposed RMP Amendment may be found online (see **ADDRESSES**). All protests must be in writing and mailed to the appropriate address or submitted electronically through the BLM ePlanning project website (see **ADDRESSES**). Protests submitted electronically by any means other than the ePlanning project website or by fax will be invalid unless a hard copy of the protest is also submitted. The BLM will render a written decision on each protest. The protest decision of the BLM shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.* Upon resolution of protests, the BLM will issue a Record of Decision and Approved RMP Amendment.

Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5)

Barry R. Bushue,

State Director, Oregon/Washington.

[FR Doc. 2023–12847 Filed 6–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036003; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Illinois Urbana-Champaign, Champaign, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Illinois Urbana-Champaign has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Stanley County, SD.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 17, 2023.

ADDRESSES: Krystiana Krupa, University of Illinois Urbana-Champaign, 601 E. John Street, Champaign, IL 61820, telephone (217) 244–2587, email *klkrupa@illinois.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Illinois Urbana-Champaign. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Illinois Urbana-Champaign.

Description

In 1927, human remains representing, at minimum, two individuals were removed from Stanley County, SD. Between 1918 and 1927, W.H. Over, then Director of the University of South Dakota Museum-Vermillion (now known as the W.H. Over Museum), excavated at Stony Point Village and its associated cemetery. During three visits to the site (in 1918, 1919, and 1927), Over collected human remains belonging to 23 individuals as well as the associated funerary objects. (Also, Over uncovered and reburied the human remains of three infants.)

According to a letter from Over dated May 4, 1927, the ancestral remains housed at the University of Illinois Urbana-Champaign are from his 1927 excavations. On August 31, 1927, Over mailed to Dr. Frank C. Baker (then Director of the University of Illinois Museum of Natural History) the human remains and associated funerary objects listed in this notice (the other human remains and funerary belongings were stored at the University of South Dakota-Vermillion). These human remains belong to an elderly adult and an infant. No known individuals were identified. The five associated funerary objects are one lot of glass beads, one brass tinkling cone, one bone awl or hair pin, one faunal bone, and one lot of antler tine tips.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Illinois Urbana-Champaign has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The five objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 17, 2023. If competing requests for repatriation are received, the University of Illinois Urbana-Champaign must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Illinois Urbana-Champaign is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: June 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–12856 Filed 6–15–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036001; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and a certain cultural item that meets the definition of an unassociated funerary object, and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Stanislaus County, Tuolumne County, and the Northern Sierra foothills, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after July 17, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by California State University, Sacramento.

Description

At unknown dates, 29 cultural items were removed from multiple locations in Stanislaus County, Tuolumne County, and the Northern Sierra foothills, CA. These items were removed from Tulloch Cave, Sonora, and Etnazum Cave in Tuolumne County; unknown locations near La Grange and along Hood Creek in Stanislaus County; and unknown locations in the Sierra foothills of Northern California. Two items from Sonora were donated to the Anthropology Museum at California State University, Sacramento in the 1970s. How or when the other 27 items came to California State University, Sacramento is unknown. The 28 objects of cultural patrimony consist of seed bead necklaces, flaked stones, groundstones, thermally altered rocks, faunal remains, and floral remains. The one unassociated funerary object is a shell ornament.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, kinship, linguistic, oral, traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California State University, Sacramento has determined that:

- The one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- The 28 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after July 17, 2023. If competing requests for repatriation are received, California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: June 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–12859 Filed 6–15–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036002; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Tuolumne County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after July 17, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street, Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by California State University, Sacramento.

Description

Human remains representing, at minimum, one individual, were removed from Cave Man Cave, in Tuolumne County, CA. The documentation associated with these ancestral remains is limited. Possibly, Louis Payen collected the human remains in the 1960s, during his cave survey work in the vicinity. In 2022, the University of California, Riverside (UC Riverside) informed California State University, Sacramento that human remains from Cave Man Cave were at UC Riverside and were believed to be under the control of California State University, Sacramento. (It is not known who sent these human remains to UC Riverside or when, but they were likely sent for radiocarbon dating.) In June of 2022, these human remains were returned to California State University, Sacramento. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains in this notice and the Chicken Ranch Rancheria of Me-Wuk Indians of California and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after July 17, 2023. If competing requests for repatriation are received, California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request

and not competing requests. California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: June 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–12857 Filed 6–15–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03040000, 23XR0680A1, RX187860005004001]

Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Secretary of the Interior (Secretary) has directed the Bureau of Reclamation (Reclamation) to develop post-2026 Colorado River reservoir operational guidelines and strategies for Lake Powell and Lake Mead (referred to as ''post-2026 operations''). Several important reservoir and water management decisional documents and agreements that govern operation of Colorado River facilities and management of Colorado River water are currently scheduled to expire at the end of 2026. Through this **Federal Register** notice, Reclamation is formally initiating the process to prepare an environmental impact statement (EIS) for the development of post-2026 operations.

DATES: This **Federal Register** notice initiates the public scoping process for the EIS. Reclamation requests that the public submit comments concerning the scope of specific operational guidelines, strategies, and any other issues that should be considered on or before August 15, 2023.

Reclamation will host three virtual public meetings/webinars to provide summary information and receive oral comments:

- Monday, July 17, 2023, 1 p.m. to 2 p.m. (MDT)
- Tuesday, July 18, 2023, 10 a.m. to 11 a.m. (MDT)
- Monday, July 24, 2023, 6 p.m. to 7 p.m. (MDT)

ADDRESSES: Please send written comments pursuant to this notice to *crbpost2026@usbr.gov* or Bureau of Reclamation, Attn: Post-2026 (Mail Stop 84–55000), P.O. Box 25007, Denver, CO 80225.

The registration link for the webinar held on Monday, July 17, 2023, is *https://swca.zoom.us/webinar/register/WN_-_hvFoMcRJ-I98k4n7-GvQ,* or the dial in option (audio only) is (602) 753–0140 or (720) 928–9299; Webinar ID: 918 5524 0606.

The registration link for the webinar held on Tuesday, July 18, 2023, is *https://swca.zoom.us/webinar/register/WN_sbSwzBJhQ66Z-E65TGXX1g,* or the dial in option (audio only) is (602) 753–0140 or (720) 928–9299; Webinar ID: 963 7946 3234.

The registration link for the webinar held on Monday, July 24, 2023, is *https://swca.zoom.us/webinar/register/WN_r0ozNRpmRu-hmEpYxe0-Qg,* or the dial in option (audio only) is (602) 753–0140 or (720) 928–9299; Webinar ID: 949 1587 3150.

FOR FURTHER INFORMATION CONTACT: Amanda Erath, Colorado River Post-2026 Program Coordinator, Bureau of Reclamation, at (303) 445–2766, or by email at *crbpost2026@usbr.gov.* Please also visit the project website at *https://www.usbr.gov/ColoradoRiverBasin/Post2026Ops.html.* 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: This document provides notice that Reclamation intends to prepare an EIS for post-2026 operations and conduct public scoping. Reclamation is issuing this **Federal Register** notice pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.;* the Council on Environmental Quality's regulations for implementing NEPA, 43 CFR parts 1500 through 1508; and the Department of the Interior (Department or Interior) NEPA regulations, 43 CFR part 46.

Background

The Colorado River Basin has been in a prolonged period of drought and low-runoff conditions, and despite current projections of 2023 runoff being well above average, the period from 2000 through 2023 is currently estimated as the second driest period in more than a century and one of the driest periods in the last 1,200 years. From 2000 to 2004, Lake Powell and Lake Mead lost nearly half of their combined storage. The onset of this period of acute drought spurred the development of the 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines). Over the past 15 years since the adoption of the 2007 Interim Guidelines, as drought and low-runoff conditions continued, additional responsive actions were needed to complement the 2007 Interim Guidelines (*e.g.,* 2019 Colorado River Basin Drought Contingency Plan (DCP)). At the end of 2026, a number of reservoir and water management decisional documents and agreements that govern the operation of Colorado River facilities and management of the Colorado River are scheduled to expire. These include the 2007 Interim Guidelines, the DCP, and other important management documents within the United States, as well as Minute 323 between the United States and Mexico pursuant to the United States-Mexico Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande (1944 Water Treaty).

Since 2021, the Department has undertaken several actions to protect critical infrastructure in response to declining reservoir elevations and the deepening of drought conditions from 2020 to 2022. As the summer of 2022 ended with near record low elevations in Lake Powell and Lake Mead, the Department recognized that, absent a change in hydrologic conditions, water use patterns, or both, Colorado River reservoirs would continue to decline to critically low elevations before the 2007 Interim Guidelines expired. In order to modify guidelines for the operation of Glen Canyon and Hoover Dam for the remainder of the interim period (through 2026) to address these historic drought and low runoff conditions in the Basin, the Department initiated a NEPA process on November 17, 2022, to prepare a Supplemental Environmental Impact Statement (SEIS) for Near-term Colorado River Operations. The draft SEIS was released for public review on April 14, 2023. In light of the Lower Basin states' consensus-based system conservation proposal submitted on May 22, 2023, the Department temporarily withdrew the draft SEIS so

that it can fully analyze the effects of the proposal under NEPA. Reclamation intends to publish an updated draft SEIS for public comment with the consensus-based proposal as an action alternative and finalize the SEIS process later this year.

Recognizing the need to begin to develop long-term strategies for Colorado River operations while simultaneously addressing the current drought conditions and preparing for the potential of continuing low runoff and low reservoir conditions, the Department published a **Federal Register** notice on June 24, 2022 (87 FR 37884), related to post-2026 operations. In that **Federal Register** notice, the Department specifically requested public input on procedural approaches to developing the post-2026 operational strategies (process) and potential substantive elements of post-2026 operations. In response, the Department received substantial input from States, Tribes, water districts, non-governmental organizations, and the public. The input received has been summarized in a ''Pre-Scoping Summary Report'' (Available at *https://www.usbr.gov/ColoradoRiverBasin/documents/Post-2026_Pre-Scoping%20Comment%20Summary%20Final_Updated1.30.2023_508.pdf*) and is being considered and integrated into this NEPA process. This NOI follows that important early opportunity for public input, and formally initiates the post-2026 NEPA process.

With respect to the relationship between the ongoing SEIS process and the post-2026 process, the November 2022 **Federal Register** notice was clear that the SEIS: ''does not interfere with, supplant, or supersede that separate post-2026 guidelines development process. Rather, this SEIS will inform and complement the development of post-2026 guidelines.'' The SEIS is focused on limited sections of the 2007 Interim Guidelines to develop the operational tools necessary to address potential extreme drought conditions during the 2024 to 2026 timeframe. In contrast, the post-2026 process will address the subsequent timeframe and revisit all sections of the 2007 Interim Guidelines and other operating agreements that expire in 2026 (*e.g.,* the DCP). The appropriate scope of post-2026 operations will be determined after conclusion of the public scoping process.

The June 2022 **Federal Register** notice for pre-scoping for post-2026 operations anticipated ''that near-term response actions and development of post-2026 operations will need to proceed on parallel timelines.'' The SEIS and post-2026 processes are now underway and proceeding simultaneously as predicted. Every effort will be made to provide clear and timely information regarding the milestones for public engagement in the post-2026 process to minimize the stakeholder and public burden of tracking and engaging in both efforts.

Purpose of This Notice of Intent

To assure the continued stability of the Colorado River system into the future, Reclamation announces its intent to prepare an EIS for post-2026 operations and is now soliciting public comments on the scope of specific operational guidelines, strategies, and any other related issues that should be considered in the upcoming EIS.

Reclamation invites all interested members of the public, including the seven Colorado River Basin States, Tribes, water and power contractors, representatives of the agricultural industry, municipal water providers, environmental organizations, representatives of the recreation industry, representatives of academic and scientific communities and other organizations and agencies to provide oral and written comments. Reclamation anticipates publishing a ''scoping report'' after completion of the public scoping meetings and the close of the comment period identified in this **Federal Register** notice.

All comments received will be considered as Reclamation develops the proposed federal action, Purpose and Need, and scope of the analysis (*e.g.,* affected area, geographic scope, time horizon/term). Similar to operational guidelines currently in place, it is likely that the post-2026 operational guidelines will be interim. Despite their interim nature, it is the Department's intent that these operational guidelines and strategies are sufficiently robust and adaptive and can withstand a broad range of future conditions thereby providing greater operational and planning stability to water users and the public throughout the Colorado River Basin.

June 2022 Request for Input on Development of Post-2026 Colorado River Operational Strategies

In response to the June 2022 pre-scoping **Federal Register** notice, Reclamation heard from over 80 stakeholders and partners as well as over 2,000 members of the public. As noted above, in January 2023, Reclamation published a ''Pre-Scoping Comment Summary Report'' on its website describing and summarizing the input received and hosted a public outreach event on January 30, 2023, to communicate the findings.

The input received in response to the June 2022 **Federal Register** notice included a broad range of comments and suggestions, not all of which can be addressed in this proposed process or described in this NOI. In addition, some suggestions may be part of ongoing or future efforts. However, some widely expressed themes related to the nature of future operational guidelines and strategies are actively being considered in our approach during the early stages of planning for this NEPA process:

- Future operational guidelines and strategies must support proactive management to improve system stability and avoid continuously managing in response to crises. To achieve this, future operational guidelines and strategies must be capable of both withstanding a broad range of future hydrologic and operating conditions and minimizing system vulnerability, *i.e.,* they must be more robust and adaptive than current strategies.
- Future operational guidelines and strategies should incorporate a more holistic approach to Colorado River water management in a way that focuses on the long-term sustainability of both the Basin's population and natural environment, minimizes system vulnerability, and increases system resiliency.
- Coordinated operation of Lake Powell and Lake Mead is one of multiple ways that the system can be managed. Alternative paradigms, *e.g.,* basing reservoir operations on combined reservoir or system storage, should be explored.

Structure of the 2007 Interim Guidelines and Operating Experience

The purpose of the 2007 Interim Guidelines was determined in the early stages of the NEPA process to develop the 2007 Interim Guidelines and consists of three components. As stated in Section IV of the 2007 Interim Guidelines, the purpose is to:

- ''improve Reclamation's management of the Colorado River by considering trade-offs between the frequency and magnitude of reductions of water deliveries, and considering the effects on water storage in Lake Powell and Lake Mead, and on water supply, power production, recreation, and other environmental resources;
- provide mainstream United States users of Colorado River water, particularly those in the Lower Division states, a greater degree of predictability with respect to the amount of annual water deliveries in future years,

particularly under drought and low reservoir conditions; and

• provide additional mechanisms for the storage and delivery of water supplies in Lake Mead to increase the flexibility of meeting water use needs from Lake Mead, particularly under drought and low reservoir conditions.''

Despite the additional agreements and actions undertaken since the adoption of the 2007 Interim Guidelines and on-going processes, the four elements of the 2007 Interim Guidelines, collectively intended to meet the purpose, have remained intact. These elements are:

• *Shortage Guidelines:* Determines those conditions under which the Secretary would reduce the annual amount of water available for consumptive use from Lake Mead to the Lower Division states below 7.5 million acre-feet pursuant to the Consolidated Decree.

• *Coordinated Reservoir Operations:* Defines the coordinated operations of Lake Powell and Lake Mead to provide improved operation of these two reservoirs, particularly under low reservoir conditions. As described in Section XI.G.6. of the Record of Decision, the objective of the operation of Lake Powell and Lake Mead is ''to avoid curtailment of uses in the Upper Basin, minimize shortages in the Lower Basin and not adversely affect the yield for development available in the Upper Basin.''

• *Storage and Delivery of Conserved Water:* Allows for the storage and delivery, pursuant to applicable federal law, of conserved Colorado River System and non-System water in Lake Mead to increase the flexibility of meeting water use needs from Lake Mead, particularly under drought and low reservoir conditions.

• *Surplus Guidelines:* Determines those conditions under which the Secretary may declare the availability of surplus water for use within the Lower Division states. Modifies the substance of the Interim Surplus Guidelines existing at the time the Guidelines were adopted by extending the term from 2016 to 2026 and terminating the most permissive provision.

The interim nature of the 2007 Interim Guidelines provided the opportunity to gain valuable experience in the management of Lake Powell and Lake Mead, improving the basis of understanding for future operational decisions. First implemented in 2008, Reclamation now has over 15 years of operational experience under the 2007 Interim Guidelines. Section XI.G.7.D. of the 2007 Interim Guidelines required the documentation of this experience and an evaluation of the effectiveness of the 2007 Interim Guidelines. In fulfilment of this provision, in December 2020, Reclamation published on its website ''Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead'' (Available at *https://www.usbr.gov/ColoradoRiverBasin/#7.D.Review*) (the 2020 7.D. Review).

The 2020 7.D. Review found that while the 2007 Interim Guidelines were effective at meeting their overall purpose, the increasing severity of the drought and prolonged period of low runoff demonstrated that the 2007 Interim Guidelines were insufficiently robust to protect reservoir storage, requiring the adoption of the DCPs and other responsive adaptive actions, both within the United States and in cooperation with Mexico.

The 2020 7.D. Review also documented important considerations for enhancing future effectiveness: (1) enhanced flexibilities and transparency for water users; (2) expanded participation in conservation and Basin-wide programs; (3) increased consideration of the linkage that occurs through coordinated reservoir operations, particularly with respect to the uncertainties inherent in model projections used to set operating conditions; and (4) more robust measures to protect reservoir levels.

Following the publication of the 2020 7.D. Review, as low snowpack and runoff conditions worsened, Reclamation undertook emergency and other drought response actions in 2021 and 2022 to protect infrastructure and operations at Glen Canyon Dam. In the November 2022 **Federal Register** notice, the Department found that due to the existence of ''extraordinary circumstances'' per Section 7.D of the 2007 Interim Guidelines, modified operating provisions may be required in order to ensure Glen Canyon Dam continues to operate under its intended design and to protect Hoover Dam operations, system integrity, and public health and safety and initiated the on-going SEIS process.

Considering the past 15 years of operating experience, the findings described in the 2020 7.D. Review, the themes expressed in response to the June 2022 **Federal Register** notice, and the information included in this NOI; Interior is interested in receiving specific input on how the purpose and the elements of the 2007 Interim Guidelines should be retained, modified or eliminated to provide greater stability to water users and the public throughout the Colorado River Basin through robust and adaptive operational guidelines. This input will be used to inform our decision on the proposed federal action, Purpose and Need, and scope of the analysis (*e.g.,* affected area, geographic scope, time horizon/term).

Elements of Process Designed to Date

In the June 2022 **Federal Register** notice, Reclamation identified that it intends to design and implement a stakeholder process for this EIS that is inclusive, transparent, and encourages meaningful engagement. Using the input received during that comment period and correspondence from Basin partners, Reclamation is in the early stages of developing certain components of its engagement and outreach approaches.

With respect to developing alternatives, input received in response to the June 2022 **Federal Register** notice suggested that Reclamation expand beyond its traditional methods of engagement and requested an inclusive process that encourages collaboration and supports the exploration of a broad range of creative operational strategies. To this end, and among other potential approaches, Reclamation is working with experts to develop a web-based tool that enables users with different levels of technical skill to explore, create, and compare potential operating strategies to enhance development of alternatives. The use of this common, accessible platform is just one part of Reclamation's stated goals of improving stakeholder and partner knowledge and engagement that supports external parties in developing strategies and provides the public greater and more timely access to relevant technical information.

In anticipation of the target Fall 2023 launch of the tool, Reclamation has convened an Integrated Technical Education Workgroup that is actively working to ensure that stakeholders are better prepared and able to engage in a robust alternatives development process. While it is valuable during this comment period to communicate ideas about the concepts and structures that could be included in alternatives, it is not necessary to submit comprehensive alternatives before the more focused period of alternatives development begins this fall.

With respect to the timing and structure of outreach during the NEPA process, Reclamation intends to develop an approach that facilitates inclusion at multiple levels and enhances tribal engagement and inclusivity. This structure for partner, stakeholder and public engagement will include individualized outreach, leverage existing groups and forums, create new

groups and forums, and provide for clear and timely communication with the public.

Through the individualized partner and stakeholder outreach, Reclamation will be available for meetings upon request and will prioritize regular, meaningful, and robust consultation with Tribal Nations. Existing forums and groups will be continued and leveraged, such as the monthly Reclamation-hosted Tribal Information Exchanges. Reclamation is also exploring options for increasing tribal involvement through the potential development of new groups and forums. In addition to timely and clear communication with the public at regular NEPA milestones, Reclamation intends to set up a broad partner-stakeholder group to ensure a full understanding of each upcoming step in the NEPA process.

As discussed in the June 2022 **Federal Register** notice, the Department is also committed to identifying processes that can complement the efforts of the International Boundary and Water Commission (IBWC) to develop post-2026 agreements that would succeed current agreements contained in Minute 323 to the 1944 Water Treaty. The Department will continue to coordinate with the IBWC to ensure Interior-led domestic planning processes are implemented in a coordinated and complementary fashion to those of the IBWC with a goal of ensuring similar timelines for informed decision making.

Public Disclosure 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 review, we cannot guarantee that we will be able to do so.

Maria Camille Touton,

Commissioner, Bureau of Reclamation.

[FR Doc. 2023–12923 Filed 6–15–23; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0005; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0015]

Agency Information Collection Activities; Unitization

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 15, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2023–0005 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0015 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: BSEE must approve any lessee's proposal to enter an agreement to unitize operations under two or more leases and for modifications when warranted. We use the information to ensure that operations under the proposed unit agreement will result in preventing waste, conserving natural resources, and protecting correlative rights including the government's interests.

Title of Collection: Unitization.
OMB Control Number: 1014–0015.
Form Number: None.
Type of Review: Extension of a currently approved collection.
Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.
Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.
Total Estimated Number of Annual Responses: 79.
Estimated Completion Time per Response: Varies from 1 hour to 300 hours, depending on activity.
Total Estimated Number of Annual Burden Hours: 5,998.
Respondent's Obligation: Responses are voluntary, and some are required to obtain or retain benefits.
Frequency of Collection: Submissions are generally on occasion.
Total Estimated Annual Nonhour Burden Cost: $149,836.
An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.
The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,
Chief, Regulations and Standards Branch.
[FR Doc. 2023–12906 Filed 6–15–23; 8:45 am]
BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0011; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0021]

Agency Information Collection Activities; Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.
ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 15, 2023.
ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:
• Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2023–0011 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
• Email *nikki.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0021 in the subject line of your comments.
FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*
SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.
As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.
We are especially interested in public comment addressing the following:
(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.
Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.
Abstract: BSEE will use the information required by 30 CFR 282 to determine if lessees are complying with the regulations that implement the mining operations program for minerals other than oil, gas, and sulphur. Specifically, BSEE will use the information:
• To ensure that operations for the production of minerals other than oil, gas, and sulphur in the OCS are conducted in a manner that will result in orderly resource recovery, development, and the protection of the human, marine, and coastal environments.
• To ensure that adequate measures will be taken during operations to prevent waste, conserve the natural resources of the OCS, and to protect the environment, human life, and correlative rights.
• To determine if suspensions of activities are in the national interest, to facilitate proper development of a lease including reasonable time to develop a mine and construct its supporting facilities, and to allow for the construction or negotiation for use of transportation facilities.
• To identify and evaluate the cause(s) of a hazard(s) generating a suspension, the potential damage from a

hazard(s) and the measures available to mitigate the potential for damage.

• For technical evaluations that provide a basis for BSEE to make informed decisions to approve, disapprove, or require modification of the proposed activities..

Title of Collection: 30 CFR 282, Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulphur.

OMB Control Number: 1014–0021.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 16.

Estimated Completion Time per Response: Varies from 1 hour to 20 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 56.

Respondent's Obligation: Required to obtain or retain a benefit, or voluntary.

Frequency of Collection: Submissions are as a result of situations encountered.

Total Estimated Annual Nonhour Burden Cost: $100,000.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12908 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2022–0012; EEEE500000 234E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0011]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Platforms and Structures

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before July 17, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Nikki Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *nikki.mason@bsee.gov.* Please reference OMB Control Number 1014–0011 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kye Mason by email at *nikki.mason@bsee.gov,* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 3, 2022 (87 FR 47789). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR 250, subpart I, pertain to Platforms and Structures and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information submitted under Subpart I to determine the structural integrity of all OCS

platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and prevent pollution. More specifically, we use the information to:

- Review data concerning damage to a platform to assess the adequacy of proposed repairs.
- Review applications for platform construction (construction is divided into three phases—design, fabrication, and installation) to ensure the structural integrity of the platform.
- Review verification plans and third-party reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the platform design, fabrication, and installation.
- Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved applications.
- Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

Title of Collection: 30 CFR 250, subpart I, *Platforms and Structures.*

OMB Control Number: 1014–0011.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 362.

Estimated Completion Time per Response: Varies from 5 hours to 552 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 92,786.

Respondent's Obligation: Some responses are mandatory, and some are required to obtain or retain a benefit.

Frequency of Collection: Submissions are generally on occasion, as a result of situations encountered, and annually.

Total Estimated Annual Nonhour Burden Cost: $1,018,925.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12899 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0009; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0008]

Agency Information Collection Activities; Well Control and Production Safety Training

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 15, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2023–0009 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nikki.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0008 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Abstract: BSEE uses the information collected under subpart O regulations to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner.

In some instances, we may conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The oral interviews are used to gauge how effectively the companies are implementing their own training program.

Title of Collection: 30 CFR 250 subpart O, Well Control and Production Safety Training.

OMB Control Number: 1014–0008.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 5.

Estimated Completion Time per Response: Varies from 4 hours to 69 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 148.

Respondent's Obligation: Responses are mandatory.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12909 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0012; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0016]

Agency Information Collection Activities; Pipelines and Pipeline Rights-of-Way

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 15, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov*. In the Search box, enter BSEE–2023–0012 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nikki.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0016 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Lessees and pipeline ROW holders design the pipelines that they install, maintain, and operate. To ensure those activities are performed in a safe manner, BSEE needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. BSEE uses the information to review pipeline

designs prior to approving an application for an ROW or lease term pipeline to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. BSEE reviews proposed pipeline routes to ensure that the pipelines would not conflict with any State requirements or unduly interfere with other OCS activities. BSEE reviews proposals for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). BSEE reviews notifications of relinquishment of ROW grants and requests to decommission pipelines for regulatory compliance and to ensure that all legal obligations are met. BSEE monitors the records concerning pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule witnessing trips and inspections. Information is also necessary to determine the point at which DOI or Department of Transportation (DOT) has regulatory responsibility for a pipeline and to be informed of the identified operator if not the same as the pipeline ROW holder.

BSEE–0149—Assignment of Federal OCS Pipeline Right-of-Way Grant

BSEE uses the information to track the holder-ship of pipeline ROWs; as well as use this information to update the corporate database that is used to determine what leases are available for a Lease Sale and the ownership of all OCS leases.

The form asks the pipeline ROW holder to provide:

—Part A—Assignment
—the legal description of the pipeline ROW grant being assigned,
—what specifically the pipeline ROW holder is selling, assigning, or transferring,
—the company name and number of each assignor and assignee,
—the percentage interest conveyed, and
—the percentage interest received.
—Part B—Certification and Acceptance
—assignor(s) signature, name, title, and date, and
—assignee(s) signature, name, title, and date.

If we approve the assignment, the authorized BSEE official signs and dates the form, and the assignment becomes effective on the date specified by us.

Form BSEE–0135—Designation of Right-of-Way Operator

BSEE uses the information to identify who has the authority to act on the ROW grant holder's behalf to fulfill obligations under the OCS Lands Act; as well as BSEE may provide to the designated ROW operator written or oral instructions in securing compliance with the ROW grant in accordance with applicable laws and regulations.

The form asks the pipeline ROW holder to provide:

—Pipeline ROW Grant Number
—Regional Office
—Name and address of Operator
—ROW grant description, including ROW and Pipeline Segment Numbers
—Identified ROW pipeline operator and GOM ID number
—Signatory name, title, and date.

Title of Collection: 30 CFR 250 subpart J, Pipelines and Pipeline Rights-of-Way (ROW).

OMB Control Number: 1014–0016.

Form Number: Forms BSEE–0149—Assignment of Federal OCS Pipeline Right-of-Way Grant, and Form BSEE–0135—Designation of Right-of-Way Operator.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 2,802.

Estimated Completion Time per Response: Varies from 30 minutes to 107 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 34,206.

Respondent's Obligation: Submissions are mandatory or are required to obtain or retain a benefit.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: $1,344,916.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12907 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0007; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0018]

Agency Information Collection Activities; Oil and Gas Drilling Operations

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 15, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2023–0007 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nikki.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0018 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections

require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BSEE uses the information to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: the drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

This ICR includes three forms. The forms use and information consist of the following:

End of Operations Report, BSEE–0125

This information is used to ensure that industry has accurate and up-to-date data and information on wells and leasehold activities under their jurisdiction and to ensure compliance with approved plans and any conditions placed upon a suspension or temporary probation. It is also used to evaluate the remedial action in the event of well equipment failure or well control loss. The Form BSEE–0125 is updated and resubmitted in the event the well status changes. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on BSEE–0125.

Information on the form:

Heading—ascertain the well name, status of completion/abandonment, and operator name.

Well at Total Depth—ascertain the lease No., area name, block No., and the latitude/longitude at total depth.

Well Status Information—ascertain well status data and measured/true vertical depth of the well.

Well at Producing Zone—ascertain the location and latitude/longitude of the producing zone.

Perforated Interval(s) This Completion—ascertain well measured/true vertical depth at the top and bottom of intervals perforated for production.

Hydrocarbon Bearing Intervals—identify the top and bottom of hydrocarbon bearing intervals penetrated by the well and the type hydrocarbon (oil/gas) present.

List of Significant Markers Penetrated—to make structural correlations, in conjunction with seismic data, with other wells drilled in the area. Anticipated marker areas not penetrated (*i.e.,* not present) also provide valuable reservoir information.

Subsea Completion—Identify wells that are completed with the wellhead (tree) at the ocean floor (mud line). This data is needed to ascertain that the wellhead is protected from being damaged and that the location is marked with a buoy.

Abandonment History of Well (Casing & Obstruction)—ensure that, upon permanent plugging, the casing is cut and removed to an elevation below the ocean floor (mud line) to eliminate any hazard to navigation (fishing, trawling) unless otherwise protected and/or the location marked with a buoy.

Well Activity Report, BSEE–0133 and –0133S

The BSEE uses this information to monitor the conditions of a well and status of drilling operations. We review the information to be aware of the well conditions and current drilling activity (*i.e.,* well depth, drilling fluid weight, casing types and setting depths, completed well logs, and recent safety equipment tests and drills). The engineer uses this information to determine how accurately the lessee anticipated well conditions and if the lessee or operator is following the other approved forms that were submitted. With the information collected on BSEE–0133 available, the reviewers can analyze the proposed revisions (*e.g.,* revised grade of casing or deeper casing setting depth) and make a quick and informed decision on the request.

In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on Forms BSEE–0133 and –0133S.

BSEE–0133

General Information—Identifies the well name, lease operator, name of the contractor and rig or unit conducting drilling or remedial work, the water depth and the elevation.

Current Well Bore Information—This information is used to identify the well, surface location, and dates operations are initiated and concluded. Also identified is the bottom hole location, measured and true vertical depth of the well, drilling fluid (mud) weight, and blowout preventer test information needed to evaluate approval or modification applications to ensure safety and environmental protection.

Well Bore Historical Information—Identifies the dates drilling is initiated and completed or the well is abandoned, and final measured and true vertical depths reached. This

information is needed to evaluate modification applications to ensure safety and protection of the environment.

Casing/Liner/Tubing Record—Identifies casing/liner/tubing hole size, pipe size, weight, grade, test pressures, setting depths, and cement volumes. This information is used to evaluate modification applications and to ascertain that operations are conducted in a safe manner as approved.

Well Activity Summary—This narrative summary provides the details of daily operations needed to confirm that operations are being conducted consistent with approved plans.

Open Hole Log Date—Serves to identify whether open hole logs, formation samples and surveys have been conducted so as to trigger the submittal of Form BSEE–0133S.

Significant Well Events—Serves to identify significant events, hazards or problems encountered during well operations and to provide narrative information detailing those events which occurred. BSEE needs this information in the assessment and approval of other well operations in the area that may encounter the same or similar hazards, risks or problems. Provides narrative information concerning any significant events. Attachments may be required, if necessary.

BSEE–0133S

General Information—Identifies the well number/name, operator name, sidetrack/bypass number, and contact name/telephone/email.

Open Hole Tools, Mud Logs, and Directional Surveys—Identifies the dates and types of open hole operations, logs, tests, or surveys conducted; the service company(s) conducting the operations; and the top and bottom of those formations logged or surveyed. Serves as an inventory to ensure that BSEE receives the data from all open hole logs/tests/surveys conducted. Open hole data is utilized in the determination of oil and gas recoverable reserves and production limits. As permitted by the regulations, the data is also made available to the public.

Identify Other Open Hole Data Collection—Identifies the conduct of other specific analyses, samples and surveys and requires the narrative description of any other surveys conducted.

Title of Collection: 30 CFR 250 subpart D, Oil and Gas Drilling Operations.

OMB Control Number: 1014–0018.

Form Number: Forms BSEE–0125, *End of Operations Report,* BSEE–0133, *Well Activity Report,* and BSEE–0133S *Supplemental.*

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 63,744.

Estimated Completion Time per Response: Varies from 15 minutes to 23 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 83,993.

Respondent's Obligation: Responses are mandatory.

Frequency of Collection: Submissions are generally on occasion, daily, weekly, monthly, quarterly, annually, and varies by section.

Total Estimated Annual Nonhour Burden Cost: $16,000.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12905 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0010; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0024]

Agency Information Collection Activities; Plans and Information

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before [August 15, 2023].

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2023–0010 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nikki.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0024 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper

performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: For § 250.282—Post-Approval Requirements for the EP, DPP, and DOCD: While the information is submitted to BOEM, BSEE analyzes and evaluates the information and data collected under this section of subpart B to verify that an ongoing/completed OCS operation is/was conducted in compliance with established environmental standards placed on the activity.

For §§ 250.287–295—Deepwater Operations Plan (DWOP): BSEE analyzes and evaluates the information and data collected under this section of subpart B to ensure that planned operations are safe; will not adversely affect the marine, coastal, or human environment; and will conserve the resources of the OCS. We use the information to make an informed decision on whether to approve the proposed DWOPs, or whether modifications are necessary without the analysis and evaluation of the required information.

Title of Collection: 30 CFR 250 subpart B, Plans and Information.

OMB Control Number: 1014–0024.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 21.

Estimated Completion Time per Response: Varies from 50 hours to 2,200 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 22,458.

Respondent's Obligation: responses are mandatory or are required to obtain or retain a benefit.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: $32,391.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12904 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0008; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0005]

Agency Information Collection Activities; Relief or Reduction in Royalty Rates

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 15, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2023–0008 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nikki.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0005 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of

information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information collected under 30 CFR part 203, Relief or Reduction in Royalty Rates is used in our efforts to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impact on both the lessee and the Federal government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees, and royalty and tax revenues for the Federal government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

Title of Collection: 30 CFR part 203, Relief or Reduction in Royalty Rates.

OMB Control Number: 1014–0005.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 28.

Estimated Completion Time per Response: Varies from 1 hour to 2,000 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 724.

Respondent's Obligation: Some responses are mandatory; while others are required to obtain or retain a benefit.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: $27,950.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12910 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0006; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0022]

Agency Information Collection Activities; General

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 15, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov*. In the Search box, enter BSEE–2023–0006 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nikki.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nikki Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0022 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BSEE uses the information collected under the Subpart A regulations to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

- Review records of formal crane operator and rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees/operators perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. The BSEE also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform methods are employed by lessees for load testing of cranes.
- Review welding plans, procedures, and records to ensure that welding is conducted in a safe and workmanlike manner by trained and experienced personnel.
- Provide lessees/operators greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.
- Ensure that injection of gas promotes conservation of natural resources and prevents waste.
- Record the agent and local agent empowered to receive notices and comply with regulatory orders issued.
- Provide for orderly development of leases using information to determine the appropriateness of lessee/operator requests for suspension of operations, including production.
- Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.
- Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion of the last production. The BSEE will use this information to efficiently maintain the lessee/operator lease status.
- Allow lessees/operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify a lessee/operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). The Subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136; however, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.

We will not be making any changes to the forms this renewal cycle.

The BSEE forms use and information consists of the following:

Form BSEE–0132, Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics (GOMR)

- Be informed when there could be a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes, to advise the U.S. Coast Guard (USCG) in case of the need to rescue offshore workers in distress, to monitor damage to offshore platforms and drilling rigs, and to advise the news media and interested public entities when production is shut-in and when resumed. The Gulf of Mexico OCS Region (GOMR) uses Form BSEE–0132, Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics, for respondents to report evacuation statistics when necessary. This form requires the respondent to submit general information such as company name, contact, date, time, telephone number, as well as number of platforms and drilling rigs evacuated and not evacuated. We also require production shut-in statistics for oil (BOPD) and gas (MMSCFD).

Form BSEE–0143, Facility/Equipment Damage Report.

- Assists lessees, lease operators, and pipeline right-of-way holders when reporting damage by a hurricane, earthquake, or other natural phenomenon. They are required to submit an initial damage report to the Regional Supervisor within 48 hours after completing the initial evaluation of the damage and then, subsequent reports, monthly and immediately, whenever information changes until the damaged structure or equipment is returned to service. Information on the form includes—instructions, general information, a description of the damage, an initial damage assessment, production rate at time of shut-in (BPD and/or MMCFPD), cumulative production shut-in (BPD and/or MMCFPD), and estimated time to return to service (in days).

Form BSEE–1832, Notification of Incident(s) of Noncompliance

- Determine that respondents have corrected all Incident(s) of Noncompliance (INCs), identified during inspections. Everything on the INC form is filled out by a BSEE inspector/representative. The only thing industry does with this form is sign the document upon receipt and respond to BSEE when each INC has been corrected, no later than 14 days from the date of issuance.

Title of Collection: 30 CFR part 250, subpart A, General.

OMB Control Number: 1014–0022.

Form Number: Form BSEE–0132, *Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics (GOMR),* Form BSEE–0143, *Facility/Equipment Damage Report,* and Form BSEE–1832, *Notification of Incident(s) of Noncompliance*.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 22,294.

Estimated Completion Time per Response: Varies from 30 minutes to 106 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 102,221.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits, or voluntary.

Frequency of Collection: Submissions are generally on occasion, daily, monthly, and vary by section.

Total Estimated Annual Nonhour Burden Cost: $246,268.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12903 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2022–0013; EEEE500000 234E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 17, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Nikki Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *nikki.mason@bsee.gov.* Please reference OMB Control Number 1014–0012 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov,* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 4, 2022 (87 FR 47786). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This authority and responsibility are among those delegated to BSEE. The regulations at 30 CFR 291 concern open and nondiscriminatory access to pipelines and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the submitted information to initiate a more detailed review into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged offending party. Alternative dispute resolution may be used either before or after a complaint has been filed to informally resolve the dispute. The BSEE may request additional information upon completion of the initial review.

Title of Collection: 30 CFR part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

OMB Control Number: 1014–0012.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: Varies from 1 hour to 50 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 51.

Respondent's Obligation: Responses are voluntary but are required to obtain or retain benefits.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: $7,500.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12900 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2022–0014; EEEE500000 234E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0026]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Application for Permit To Modify (APM) and Supporting Documentation

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 17, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Nikki Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *nikki.mason@bsee.gov.* Please reference OMB Control Number 1014–0026 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nikki Mason by email at *nikki.mason@bsee.gov,* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 4, 2022 (87 FR 47791).

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR 250 stipulate the various requirements that must be submitted with an APM. The form and the numerous submittals that are included and/or attached to the form are the subject of this collection. This request also covers related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information to ensure safe well control, completion, workover, and decommissioning operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: the well control, completion, workover, and decommissioning unit (drilling/well operations) is fit for the intended purpose; equipment is maintained in a state of readiness and meets safety standards; each drilling/well operation crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether the operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

Title of Collection: 30 CFR part 250, Application for Permit to Modify (APM) and supporting documentation.

OMB Control Number: 1014–0026.

Form Number: BSEE–0124.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the

potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 11,322.

Estimated Completion Time per Response: Varies from 10 minutes to 154 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 16,431.

Respondent's Obligation: Mandatory.

Frequency of Collection: Generally, on occasion and varies by section.

Total Estimated Annual Nonhour Burden Cost: $6,387,110.

BURDEN TABLE

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (Rounded)
		Non-Hour Cost Burdens		
Subparts D, E, F, G, H, P, Q.	Submit APM plans (BSEE–0124). (This burden represents only the filling out of the form, the requirements are listed separately below).	1 hour	1,718 applications	1,718
		1,718 applications × $145 application fee = $249,110		
Subparts D, E, F, G, H, P, Q.	Submit Revised APM plans (BSEE–0124). (This burden represents only the filling out of the form, the requirements are listed separately below) [no fee charged].	1 hour	1,102 applications	1,102
Subtotal			2,820 responses	2,820 hours
			$249,110 non-hour cost burdens	
Subpart A				
125	Submit evidence of your fee for services receipt.	Exempt under 5 CFR 1320.3(h)(1)		0
197	Written confidentiality agreement	Exempt under 5 CFR 1320.5(d)(2)		0
Subpart C				
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM.	154 hours	1 request	154
Subtotal of Subpart C.			1 response	154 hour burdens
Subpart D				
460(a); 465	There are some regulatory requirements that give respondents the option of submitting information with either their APD or APM; industry advised us that when it comes to this particular subpart, they submit a Revised APD.	Burden covered under 30 CFR 250, 1014–0025		0
471(c)	Submit SCCE capabilities for Worst Case Discharge (WCD) rate and demonstrate that your SCCE capabilities will meet the criteria in § 250.470(f) under the changed well design. (Arctic).	10 hours	2 submittals	20
471(c); 470(f); 465(a)	Submit re-evaluation of your SCCE capabilities if well design changes; include any new WCD rate and demonstrate that your SCCE capabilities will comply with § 250.470(f).	5	2 submittals	10
Subtotal of Subpart D			4 responses	30 hour burdens

BURDEN TABLE—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (Rounded)
	Subpart E			
513	Obtain written approval for well-completion operations. Submit information, including but not limited to, request for completion (including changes); description of well-completion procedures; statement of expected surface pressure, type and weight of completion fluids; schematic drawing; a partial electric log; H2S presence or if unknown, service fee receipt.	1 hour	175 submittals	175
518(f)	Submit descriptions and calculations of production packer setting depth(s).	1 hour	50 submittals	50
526(a)	Submit a notification of corrective action of the diagnostic test.	15 mins	68 notifications	17
Subtotal of Subpart E.			293 responses	242 hour burdens
	Subpart F			
613(a), (b)	Request approval to begin other than normal workover, which includes description of procedures, changes in equipment, schematic, info about H2S, etc.	1 hour	802 requests	802
613(c)	If completing a new zone, submit reason for abandonment and statement of pressure data.	20 mins	195 submittals	65
613(d)	Submit work as performed 30 days after completing the well-workover operation.	20 mins	755 submittals	252
619(f)	Submit descriptions and calculations of production packer setting depth(s).	1 hour	50 submittals	50
Subtotal of Subpart F.			1,802 responses	1,169 hour burdens
	Subpart G			
701	Identify and discuss your proposed alternate procedures or equipment [the request to use alternative procedures/equipment is covered under 1014–0022].	3 hours	78 submittals	234
702	Identify and discuss the departure from requirements [the request to depart from requirements is covered under 1014–0022].	2 hours	55 submittals	110
713	Submit required information to use a MODU for well operations, including fitness & foundation requirements, contingency plan for moving off location, current monitoring (description of specific current speeds & specific measures to curtail rig operations and move off location).	1.5 hours	210 submittals	315
720(b)	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to, number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	1.5 hours	151 submittals	227
721(g)	Request approval for test procedures and criteria for a successful negative pressure test, including any changes.	1 hour	380 requests	380

BURDEN TABLE—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (Rounded)
731	Submit complete description of BOP system and components; schematic drawings; certification by ITP (additional ITP if BOP is subsea, in HTHP, or surface on floating facility); autoshear, deadman, EDS systems.	5 hours	198 submittals	990
		$31,000 × 198 submittals = $6,138,000		
733	Description of annulus monitoring plan and how you will secure the well in the event a leak is detected.	30 mins	248 submittals	124
737(d)(2)	Submit test procedures for District Manager approval for initial test when using water on surface BOP.	30 mins.	48 submittals	24
737(d)(3)	Submit test procedures for District Manager approval to stump test a subsea BOP; including how you will test each ROV function for approval.	30 mins	45 submittals	23
737(d)(4)	Submit test procedures for District Manager approval to perform an initial subsea BOP test; including how you will test each ROV function for approval.	30 mins	48 submittals	24
737(d)(12)	Submit test procedures for District Manager approval, including schematics of the actual controls and circuitry of the system used during an actual autoshear or deadman event.	1 hour	260 submittals	260
738(m)	Request approval from District Manager to utilize other well-control equipment; include report from BAVO on equipment design & suitability; other information required by District Manager.	2 hours	311 requests	622
738(n)	Indicate which pipe/variable bore rams have no current utility or well-control purposes.	45 mins	261 submittals	196
750(a)(4)	Request approval to conduct operations without downhole check valves, describe alternate procedures and equipment.	1 hour	748 requests	748
Subtotal of Subpart G.			3,041 responses	4,277 hour burdens
			$6,138,000 non-hour costs burden	
Subpart H				
801(h)	Request approval to temporarily remove safety device for non-routine operations.	30 mins	52 approvals	26
804(a)	Submit detailed information that demonstrates the SSSVs and related equipment capabilities re HPHT; include discussions of design verification analysis and validation, functional listing process, and procedures used; explain fit-for-service.	1 hour	18 submittals	18
Subtotal of Subpart H.			70 responses	44 hour burdens
Subpart P				
It needs to be noted that for Sulfur Operations, while there may be burden hours listed that are associated with some form of an APM submittal, we have not had any sulfur leases for numerous years, therefore, we are submitting minimal burden				

BURDEN TABLE—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (Rounded)
1618(a), (b), (c)	Request approval/submit requests for changes in plans, changes in major drilling equipment, proposals to deepen, sidetrack, complete, workover, or plug back a well, or engage in similar activities; include but not limited to, detailed statement of proposed work changed; present state of well; after completion, detailed report of work done and results w/in 30 days of completion; public information copies.	1 hour	1 plan	1
1619(b)	Submit duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition.	25 mins	1 submittal	1
1622(a), (b)	Obtain written approval to begin operations; include description of procedures followed; changes to existing equipment, schematic drawing; zones info re H2S, etc.	20 mins	1 approval	1
1622(c)(2)	Submit results of any well tests and a new schematic of the well if any subsurface equipment has been changed.	10 mins	1 submittal	1
Subtotal of Subpart P.			4 responses	4 hour burdens
	Subpart Q			
1704	Request approval of well abandonment operations.	20 mins	705 requests	235
1704(g)	Submit with a final well schematic, description, nature and quantities of material used; relating to casing string—description of methods used, size and amount of casing and depth.	1 hour	430 submittals	430
1712; 1704(g)	Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to, reason plugging well, with relevant information; well test and pressure data; type and weight of well control fluid; a schematic listing mud and cement properties; plus testing plans. Submit Certification by a Registered Professional Engineer of the well abandonment design and procedures; certify the design.	2.5 hours	251 certifications	628
	Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to max surface pressure and determination; description of work; well depth, perforated intervals; casing and tubing depths/details, plus locations, types, lengths, etc.	2.5 hours	438 submittals	1,095
1721; 1704(g)	Submit the applicable information required to temporarily abandon a well for approval; after temporarily plugging a well, submit well schematic, description of remaining subsea wellheads, casing stubs, mudline suspension equipment and required information of this section; submit certification by a Registered Professional Engineer of the well abandonment design and procedures; certify design.	4 hours	1,278 submittals	5,112

BURDEN TABLE—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (Rounded)
1722(a)	Request approval to install a subsea protective device.	1 hour	18 requests	18
1723(b)	Submit a request to perform work to remove casing stub, mudline equipment, and/or subsea protective covering.	1 hour	161 requests	161
1743(a)	Submit signed certification; date of verification work and vessel; area surveyed; method used; results of survey including debris or statement that no objects were recover; a post-trawling plot or map showing area.	2 hours	6 certifications	12
Subtotal of Subpart Q.			3,287 responses	7,691 hour burdens
Total Burden			11,322 Responses	16,431 Burden Hours
			$6,387,110 non-hour cost burdens	

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–12898 Filed 6–15–23; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 532–534, and 536 (Fifth Review)]

Circular Welded Pipe and Tube From Brazil, India, Mexico, South Korea, Taiwan, Thailand, and Turkey; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation countervailing duty order on circular welded pipe and tube from Turkey and revocation of the antidumping duty orders on circular welded pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 7, 2023.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari ((202) 205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On April 10, 2023, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (88 FR 23687, April 18, 2023); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in these reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of these reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to these reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in these reviews, provided that

the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to these reviews. A party granted access to BPI following publication of the Commission's notice of institution of these reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these reviews will be placed in the nonpublic record on October 6, 2023, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection with the reviews beginning at 9:30 a.m. on October 26, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before 5:15 p.m. on October 18, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the reviews, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3:00 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on October 25, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on October 25, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is 5:15 p.m. on October 17, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is 5:15 p.m. November 6, 2023. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before 5:15 p.m. on November 6, 2023. On December 1, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before 5:15 p.m. on December 5, 2023, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 13, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12971 Filed 6–15–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–689 and 731–TA–1618 (Preliminary)]

Non-Refillable Steel Cylinders From India

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of non-refillable steel cylinders (''NRSC'') from India, provided for in subheading 7311.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of India.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 33571 (May 24, 2023); 88 FR 33580 (May 24, 2023).

investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 27, 2023, Worthington Industries, Columbus, Ohio, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of NRSC from India and LTFV imports of NRSC from India. Accordingly, effective April 27, 2023, the Commission instituted countervailing duty investigation No. 701–TA–689 and antidumping duty investigation No. 731–TA–1618 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 3, 2023 (88 FR 27920). The Commission conducted its conference on May 18, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on June 12, 2023. The views of the Commission are contained in USITC Publication 5437 (June 2023), entitled *Non-Refillable Steel Cylinders from India: Investigation Nos. 701–TA–689 and 731–TA–1618 (Preliminary).*

By order of the Commission.

Issued: June 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12889 Filed 6–15–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–686–688 and 731–TA–1612–1617 (Preliminary)]

Brass Rod From Brazil, India, Israel, Mexico, South Africa, and South Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of brass rod from Brazil, India, Israel, Mexico, South Africa, and South Korea, provided for in subheadings 7407.21.15, 7407.21.30, 7407.21.70, and 7407.21.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of India, Israel, and South Korea.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 27, 2023, the American Brass Rod Fair Trade Coalition, Washington, District of Columbia; Mueller Brass Co., Port Huron, Michigan; and Wieland Chase LLC, Montpelier, Ohio filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of brass rod from India, Israel, and South Korea and LTFV imports of brass rod from Brazil, India, Israel, Mexico, South Africa, and South Korea. Accordingly, effective April 27, 2023, the Commission instituted countervailing duty investigation Nos. 701–TA–686–688 and antidumping duty investigation Nos. 731–TA–1612–1617 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 3, 2023 (88 FR 27921). The Commission conducted its conference on May 18, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on June 12, 2023. The views of the Commission are contained in USITC Publication 5436 (June 2023), entitled *Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Investigation Nos. 701–TA–686–688 and 731–TA–1612–1617 (Preliminary).*

By order of the Commission.

Issued: June 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12886 Filed 6–15–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–030]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 22, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–575 and 731–TA–1360–1361 (Review) (Tool Chests and Cabinets from China and Vietnam). The Commission currently is scheduled to complete and file its determination and views on June 30, 2023.
5. *Outstanding action jackets:* none.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 33566 and 88 FR 33575 (May 24, 2023).

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 14, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–13045 Filed 6–14–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1345]

Certain Automated Retractable Vehicle Steps and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation in its Entirety Based on a Consent Order Stipulation; Issuance of a Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 21) of the presiding administrative law judge (''ALJ'') granting a motion for termination of the investigation as to respondent Rough Country LLC (''Rough Country'') based on a consent order stipulation. The Commission has entered a consent order against Rough Country, the last remaining respondent in the above-referenced investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 6, 2022. 87 FR 74661 (Dec. 6, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automated retractable vehicle steps and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,272,667; U.S. Patent No. 9,527,449; U.S. Patent No. 9,511,717; and U.S. Patent No. 11,198,395. *Id.* The Commission's notice of investigation named as respondents Anhui Aggeus Auto-Tech Co., Ltd. (''Aggeus'') of Wuhu, China; Rough Country of Dyersburg, TN; Southern Truck LLC a/k/a/Top Gun Customz (''Southern Truck'') of Swanton, OH; Meyer Distributing, Inc. (''Meyer'') of Jasper, IN; and Earl Owen Company, Inc. (''Earl Owen'') of Carrollton, TX. *Id.* at 74662. The complainant is Lund Motion Products, Inc. of Brea, CA (''Lund''). *Id.* The Office of Unfair Import Investigations is participating in the investigation. *Id.*

Respondents Meyer, Earl Owen, and Southern Truck have been terminated from the investigation based on settlement. *See* Order No. 5 (Dec. 20, 2022), *unreviewed by* Comm'n Notice (Jan. 18, 2023); Order No. 7 (Dec. 27, 2022), *unreviewed by* Comm'n Notice (Jan. 26, 2023); Order No. 9 (Jan. 4, 2023), *unreviewed by* Comm'n Notice (Feb. 2, 2023).

On February 23, 2023, the ALJ granted Lund's unopposed motion to amend the complaint and notice of investigation to add Wuhu Wow-good, Auto-Tech Co. Ltd. (''Wow-good'') and Anhui Wollin International Co., Ltd. (''Wollin'') as named respondents. *See* Order No. 14 (Feb. 23, 2023), *unreviewed by* Comm'n Notice (Mar. 23, 2023).

On May 22, 2023, the Commission determined not to review an ID (Order No. 19) granting a motion to terminate the investigation in part with respect to respondents Aggeus, Wollin, and Wow-good based on the entry of a consent order. The Commission entered a consent order against Aggeus, Wollin, and Wow-good.

On May 12, 2023, the ALJ issued the subject ID (Order No. 21) granting a motion to terminate the investigation with respect to respondent Rough Country based on the entry of a consent order. The ALJ found that the consent order stipulation and proposed consent order conform with Commission Rule 210.21(c)(3) and (4) (19 CFR 210.21(c)(3) and (4)). The ID also found that termination of the investigation with respect to respondent Rough Country would not be contrary to the public interest. No petitions for review were filed.

The Commission has determined not to review the subject ID and to issue a consent order against respondent Rough Country. The investigation is terminated in its entirety.

The Commission vote for this determination took place on June 12, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By the order of the Commission.

Issued: June 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12885 Filed 6–15–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MLCOMMONS Association

Notice is hereby given that, on May 25, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), MLCommons Association (''MLCommons'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SiWave Semiconductor Corporation, Vancouver, CANADA; Michael John Choudhury (individual member), Aspley, AUSTRALIA; Rio Yokota (individual member), Meguro-ku, JAPAN; Pinar Muyan-Ozcelik (individual member), Sacramento, CA; RamTank, Inc., San Francisco, CA; CoreWeave, Inc., Roseland, NJ; Nathan

Khazam (individual member), Los Altos, CA; and Chip-hop Ltd., Huangpu District, PEOPLE'S REPUBLIC OF CHINA have been added as parties to this venture.

Also, Institute of Automation, Chinese Academy of Sciences, Haidan District, PEOPLE'S REPUBLIC OF CHINA; Formativ, Paris, FRANCE; Serenade Labs Inc., San Francisco, CA; OctoML, Inc., Seattle, WA; and Crosstalk LLC, Kansas City, MO have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notification was filed with the Department on March 15, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 12, 2023 (88 FR 30783).

Suzanne Morris,

Deputy Director Civil Enforcement Operations Antitrust Division.

[FR Doc. 2023–12962 Filed 6–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on May 22, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between February 13, 2023 and May 14, 2023 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on February 21, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 6, 2023 (88 FR 37100).

Suzanne Morris,

Deputy Director Civil Enforcement Operations Antitrust Division.

[FR Doc. 2023–12961 Filed 6–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1086]

Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Manufacture of Controlled Substances and Listed Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed updates to special surveillance list.

SUMMARY: The Controlled Substances Act provides for civil penalties for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with reckless disregard for the illegal uses to which such laboratory supply will be put. The term *laboratory supply* is defined as a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. The Drug Enforcement Administration is hereby publishing a notice of proposed updates to the Special Surveillance List.

DATES: Comments must be submitted electronically or postmarked on or before July 17, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–1086'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov and follow the online instructions at that site for submitting comments.* Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

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

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this proposal is available at *http://www.regulations.gov* for easy reference.

Background

The Controlled Substances Act (CSA), as amended by the Comprehensive Methamphetamine Control Act of 1996 (MCA), provides for the publication of a Special Surveillance List by the Attorney General.[1] The Special Surveillance List identifies laboratory supplies which are used in the manufacture of controlled substances and listed chemicals. The CSA defines ''laboratory supply'' as ''a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals.'' [2] The CSA provides for a civil penalty of not more than $250,000 for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with ''reckless disregard'' for the illegal uses to which such a laboratory supply will be put.[3] The CSA further states that, for purposes of 21 U.S.C. 842(a)(11), ''there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer.'' [4]

The publication of the Special Surveillance List serves two purposes. First, it informs individuals and firms of the potential use of the items on the list in the manufacture of controlled substances and listed chemicals. Second, it reminds individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of the CSA, with reckless disregard for the illegal uses to which such a laboratory supply will be put.[5] The publication of an updated Special Surveillance List will provide an increased level of public awareness and law enforcement control to prevent the diversion of laboratory supplies used for the manufacture of listed chemicals and controlled substances.

The first Special Surveillance List was published in 1999 and has not been updated since.[6] Although the CSA does not require notice and comment for changes to the Special Surveillance List, DEA is providing notice of proposed changes and an opportunity for the public to comment because the list has not been updated in over 23 years.

In developing the proposed updates to the Special Surveillance List, DEA consulted with federal, state, local, and foreign law enforcement officials, forensic laboratory authorities, intelligence groups, drug profiling programs, and international organizations. DEA examined clandestine laboratory seizure reports and drug profiling reports for information regarding (1) illicit drug production methods; (2) chemicals actually used in the clandestine production of controlled substances and listed chemicals; and (3) the role and importance of chemicals used in the synthesis of controlled substances and listed chemicals. In addition, DEA considered the legitimate uses and market for these chemicals. The proposed updates to the Special Surveillance List includes chemicals used in the production of synthetic drugs such as fentanyl, amphetamine, methamphetamine, PCP, LSD, and other controlled substances and listed chemicals.

DEA is proposing to update the Special Surveillance List by adding the following laboratory supplies to the existing Special Surveillance List:

Chemicals, including their salts whenever the existence of such salts is possible:

(2-nitroprop-1-en-1-yl)benzene (1-phenyl-2-nitropropene; P2NP)
1-(4-bromophenyl)propan-1-one
1-(4-chlorophenyl)propan-1-one
1-(4-methylphenyl)propan-1-one
1-benzylpiperidin-4-one (*N*-benzyl-4-piperidone)
1-chloro-*N*-methyl-1-phenylpropan-2-amine (chloroephedrine; chloropseudoephedrine)
1-phenylbutan-1-one
1-phenylpentan-1-one
1-phenylpropan-1-one
2-bromo-1-(4-chlorophenyl)propan-1-one
2-bromo-1-(4-methoxyphenyl)propan-1-one
2-bromo-1-(4-methylphenyl)propan-1-one
2-bromo-1-phenylpentan-1-one
2-bromo-1-phenylpropan-1-one
3-methyl-3-phenyloxirane-2-carboxylic acid (BMK glycidic acid; P2P glycidic acid) and its esters (*e.g.* methyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK methyl glycidate); ethyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK ethyl glycidate))
phenethyl bromide ((2-bromoethyl)benzene)
3-oxo-2-phenylbutanoic acid and its esters (*e.g., alpha*-phenylacetoacetic acid; ethyl 3-oxo-2-phenylbutanoate (EAPA))
5-(2-nitroprop-1-en-1-yl)benzodioxole (3,4-methylenedioxyphenyl-2-nitropropene; 3,4-MDP2NP)
azobisisobutyronitrile
butane-1,4-diol (1,4-butanediol)
ethyl 3-oxo-4-phenylbutanoate
ethyl-3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylate (3,4-MDP-2-P ethyl glycidate)
methyl 2-(1,3-benzodioxol-5-yl)-3-oxobutanoate (MAMDPA; MDMAPA)
propionyl chloride
sodium borohydride
sodium triacetoxyborohydride
tert-butyl 4-((4-fluorophenyl)amino)piperidine-1-carboxylate (*para*-fluoro 1-boc-4-AP)
thioglycolic acid and its esters (*e.g.,* methyl thioglycolate)

[1] 21 U.S.C. 842(a).

[2] Id.

[3] 21 U.S.C. 842(c)(2)(C). This civil monetary penalty has been adjusted for inflation. For penalties assessed after January 30, 2023, with respect to violations occurring after November 2, 2015, the maximum penalty is $470,640. 88 FR 5776, 5780.

[4] 21 U.S.C. 842(a).

[5] 21 U.S.C. 842(a)(11).

[6] 64 FR 25910 (May 13, 1999).

In addition to the chemicals listed above, DEA is proposing to update the listing of tableting machines under equipment to explicitly include punches and dies. DEA proposes to update the listing of tableting machines to read as follows:

Equipment:
tableting machines, including punches and dies

The Special Surveillance List continues to include all listed chemicals as specified in 21 CFR 1310.02(a) or (b). DEA is proposing to remove two individually listed chemicals from the Special Surveillance List (hypophosphorus acid and red phosphorus) given that those chemicals have since been added to List I and are, therefore, automatically included as laboratory supplies. The phrase ''all listed chemicals'' includes all chemical mixtures and all over-the-counter (OTC) pharmaceutical products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls. The following is the proposed update to Special Surveillance List for laboratory supplies used in the manufacture of controlled substances and listed chemicals, including the additions listed above:

Special Surveillance List Published Pursuant to 21 U.S.C. 842(a)

Chemicals, including their salts whenever the existence of such salts is possible:
All listed chemicals as specified in 21 CFR 1310.02(a) or (b). This includes all chemical mixtures and all over-the-counter (OTC) products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.
(2-nitroprop-1-en-1-yl)benzene (1-phenyl-2-nitropropene; P2NP)
1-(4-bromophenyl)propan-1-one
1-(4-chlorophenyl)propan-1-one
1-(4-methylphenyl)propan-1-one
1,1′-carbonyldiimidazole
1,1-dichloro-1-fluoroethane (*e.g.,* Freon 141B)
1-benzylpiperidin-4-one (*N*-benzyl-4-piperidone)
1-chloro-*N*-methyl-1-phenylpropan-2-amine (chloroephedrine; chloropseudoephedrine)
1-phenylbutan-1-one
1-phenylpentan-1-one
1-phenylpropan-1-one
2,5-dimethoxyphenethylamine
2-bromo-1-(4-chlorophenyl)propan-1-one
2-bromo-1-(4-methoxyphenyl)propan-1-one
2-bromo-1-(4-methylphenyl)propan-1-one
2-bromo-1-phenylpentan-1-one
2-bromo-1-phenylpropan-1-one
3-methyl-3-phenyloxirane-2-carboxylic acid (BMK glycidic acid; P2P glycidic acid) and its esters (*e.g.,* methyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK methyl glycidate); ethyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK ethyl glycidate))
3-oxo-2-phenylbutanoic acid and its esters (*e.g.,* alpha-phenylacetoacetic acid; ethyl 3-oxo-2-phenylbutanoate (EAPA))
5-(2-nitroprop-1-en-1-yl)benzodioxole (3,4-methylenedioxyphenyl-2-nitropropene; 3,4-MDP2NP)
ammonia gas
ammonium formate
azobisisobutyronitrile
bromobenzene
butane-1,4-diol (1,4-butanediol)
cyclohexanone
diethylamine and its salts
ethyl 3-oxo-4-phenylbutanoate
ethyl-3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylate (3,4-MDP-2-P ethyl glycidate)
formamide
formic acid
lithium aluminum hydride
lithium metal
magnesium metal (turnings)
mercuric chloride
methyl 2-(1,3-benzodioxol-5-yl)-3-oxobutanoate (MAMDPA; MDMAPA)
N-methylformamide
organomagnesium halides (Grignard reagents) (*e.g.,* ethylmagnesium bromide and phenylmagnesium bromide)
ortho-toluidine
phenethyl bromide ((2-bromoethyl)benzene)
phenylethanolamine and its salts
phosphorus pentachloride
potassium dichromate
propionyl chloride
pyridine and its salts
sodium borohydride
sodium dichromate
sodium metal
sodium triacetoxyborohydride
tert-butyl 4-((4-fluorophenyl)amino)piperidine-1-carboxylate (*para*-fluoro 1-boc-4–AP)
thioglycolic acid and its esters (*e.g.,* methyl thioglycolate)
thionyl chloride
trichloromonofluoromethane (*e.g.,* Freon-11, Carrene-2)
trichlorotrifluoroethane (*e.g.,* Freon 113)
Equipment:
hydrogenators
tableting machines, including punches and dies
encapsulating machines
22 liter heating mantels

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA pursuant to 28 CFR 0.100.These proposed update to the Special Surveillance List will be finalized upon the publication of a notice that updates the Special Surveillance List. The Special Surveillance List may be updated as needed to reflect changes in the chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals by publication of a notice in the **Federal Register**. DEA will disseminate the updated Special Surveillance List as widely as possible upon any final notice updating the current Special Surveillance List. In addition, the Special Surveillance List will be available on the DEA Diversion Control homepage at *https://www.deadiversion.usdoj.gov/*upon publication of a notice that updates the Special Surveillance List.

Regulatory Analyses

The proposed updates to the Special Surveillance List would apply to all individuals and firms which distribute the listed chemicals and laboratory supplies (chemicals, products, materials, or equipment) on the list. This notice to update the Special Surveillance List does not impose any recordkeeping or reporting requirements for any of the laboratory supplies. Thus, the surveillance list will have a negligible impact on affected parties.

As noted above, the notice of proposed updates to the Special Surveillance List serves two purposes. First, it informs individuals and firms of the potential use of the items on the list in the manufacture of controlled substances and listed chemicals. Second, it reminds individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person any time after the two-week period following receipt of written notification by the Attorney General that the person has used, attempted to use, or distributed the laboratory supply further for the unlawful production of controlled substances or listed chemicals.

These proposed updates will provide an increased level of law enforcement

control to prevent the diversion of laboratory supplies used for the manufacture of listed chemicals and controlled substances. It will not, however, impose any new regulatory burden on the public. Nevertheless, since no updates have been made since May 13, 1999, when DEA originally published its final rule regarding the Special Surveillance List,[7] DEA is providing the opportunity for comment. This notice of proposed updates fulfills the requirement imposed by Section 205 of the MCA that the Attorney General shall publish a Special Surveillance List which contains chemicals, products, materials, or equipment used in the manufacture of listed chemicals and controlled substances.

* * * * *

Signing Authority

This document of the Drug Enforcement Administration was signed on June 12, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–12893 Filed 6–15–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0020]

Agency Information Collection Activities; Firearms Transaction Record/Registro de Transacción de Armas de Fuego; Correction

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: Notice; correction.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), published a document in the **Federal Register** of May 26, 2023, concerning request for comments on the Firearms Transaction Record, ATF Form 4473 (5300.9).

FOR FURTHER INFORMATION CONTACT: Jason Gluck, telephone: 202–648–7190.

SUPPLEMENTARY INFORMATION:

Correction: The publication is a duplicate and the correct 30-day notice was published on May 17, 2023.

DATES: Comments are encouraged and will be accepted for 30 days until June 16, 2023. Interested and affected parties should respond to the 30-day notice published on May 17, 2023.

Dated: June 12, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–12935 Filed 6–15–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate Updates for Non-Range Occupations

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce updates to the Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates DOL has determined must be offered, advertised in recruitment, and paid by employers to H–2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. In this notice, DOL announces the AEWRs based on wage data reported by DOL's Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) survey. The AEWRs established in this notice are applicable to H–2A job opportunities classified: in Standard Occupational Classification (SOC) codes other than the six SOC codes comprising the field and livestock workers (combined) group, and in the field and livestock workers (combined) occupational group that are located in States or regions, or equivalent districts or territories, for which the United States Department of Agriculture's Farm Labor Report (better known as the Farm Labor Survey, or FLS) does not report a wage.

DATES: These rates are effective July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H–2A labor certification from DOL. DOL issues such labor certification when it determines that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

DOL's H–2A regulations at 20 CFR 655.122(l) provide that employers must pay their H–2A workers in non-range occupations[1] and workers in corresponding employment at least the highest of: (i) the AEWR; (ii) a prevailing wage rate if the Office of Foreign Labor Certification (OFLC) Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity; (iii) the agreed-upon collective bargaining wage rate; (iv) the Federal minimum wage rate; or (v) the State minimum wage rate, whichever is highest, for every hour or portion thereof worked during

[7] *Id.*

[1] Range occupations (*i.e.,* herding and production of livestock on the range) are subject to 20 CFR 655.200 through 655.235, which include a wage obligation provision at 20 CFR 655.210(g) and a minimum monthly AEWR at 20 CFR 655.211.

a pay period. Further, when the AEWR is updated during a work contract, the employer must pay at least that updated AEWR upon the effective date of the new rate, if the updated AEWR is higher than the highest of the previous AEWR, a prevailing rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the State minimum wage rate. *See* 20 CFR 655.120(b)(3). Similarly, when the AEWR is updated during a work contract and is lower than the wage rate that is guaranteed on the job order, the employer must continue to pay at least the wage rate guaranteed on the job order. *See* 20 CFR 655.120(b)(4).

On February 28, 2023, DOL published a final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States,* 88 FR 12760 (Feb. 28, 2023), to establish a new methodology for setting hourly AEWRs, effective March 30, 2023. Pursuant to this new rule, while most AEWRs will continue to be based, as they have been since 1987, on the United States Department of Agriculture's (USDA) Farm Labor Survey (FLS), these new OEWS-based AEWRs will apply to H–2A job opportunities classified: (1) in SOC codes other than the six SOC codes comprising the field and livestock workers (combined) group, and (2) in the field and livestock workers (combined) occupational group that are located in States or regions, or equivalent districts or territories, for which the United States Department of Agriculture's Farm Labor Report (better known as the FLS) does not report a wage.

The new final rule requires the OFLC Administrator to publish a **Federal Register** notice at least once in each calendar year to establish each AEWR. *See* 20 CFR 655.120(b)(2). The OFLC Administrator provides this notice by publishing two separate announcements in the **Federal Register**, one to update the AEWRs based on the wage data reported by the USDA's FLS, effective on or about January 1, and a second to update the AEWRs based on data reported by the BLS OEWS survey, effective on or about July 1. *See* 88 FR at 12775.

OEWS-Based AEWR Updates

In accordance with 20 CFR 655.120(b)(1)(ii), AEWRs for agricultural employment not represented by the six SOC codes comprising the field and livestock worker (combined) group [2] for which temporary H–2A certification is being sought is determined using the statewide annual average hourly gross wage for the SOC code for the State, or equivalent district or territory, as reported by the OEWS survey. In the event the OEWS survey does not report an average hourly gross wage for the SOC code for the State, or equivalent district or territory, the AEWR is determined using the national average hourly gross wage for the SOC as reported by the OEWS survey.

Using the most recently published OEWS survey,[3] the OFLC Administrator is publishing the statewide hourly AEWRs applicable to H–2A job opportunities classified using an SOC code not included in the field and livestock workers (combined) group.[4] The hourly AEWRs determined under 20 CFR 655.120(b)(1)(ii) are available for each SOC code and geographic area at the following URL: *https://flag.dol.gov/.* At the URL, DOL provides a searchable spreadsheet and other resources that enable interested parties to search by State and SOC code for the OEWS-based AEWR applicable to an H–2A job opportunity.

In addition, where the FLS survey does not report an annual average gross wage for the field and livestock workers (combined) group in a State or region, or equivalent district or territory, the AEWRs applicable to the field and livestock workers (combined) group is established using the statewide annual average hourly gross wage for the field and livestock workers (combined) group in the State, or equivalent district or territory, as reported by the OEWS survey. *See* 20 CFR 655.120(b)(1)(i)(B). In the event the OEWS survey does not report a statewide average hourly gross wage for the field and livestock workers (combined) group for the State, or equivalent district or territory, the AEWR is determined using the national average hourly gross wage for field and livestock workers (combined) group as reported by the OEWS survey. *See* 20 CFR 655.120(b)(1)(i)(C).

Using the most recently published OEWS survey, the OFLC Administrator is publishing the hourly AEWRs applicable to H–2A job opportunities classified in the field and livestock workers (combined) group, in States or regions, or equivalent districts or territories, where an annual average hourly gross wage is not reported by the FLS. These hourly AEWRs are available at *https://flag.dol.gov/* and in the table below:

TABLE—ADVERSE EFFECT WAGE RATES FOR FIELD AND LIVESTOCK WORKERS (COMBINED)

State/District/Territory	AEWRs
Alaska	$18.02
District of Columbia	20.72
Guam	10.12
Puerto Rico	9.70
U.S. Virgin Islands	13.95

Authority: 20 CFR 655.120(b)(2); 20 CFR 655.103(b).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–12896 Filed 6–15–23; 8:45 am]

BILLING CODE 4510–FP–P

[2] The FLS survey's field and livestock workers (combined) category reports aggregate wage data for the following six SOC titles and codes: Farmworkers and Laborers, Crop, Nursery and Greenhouse Workers (45–2092); Farmworkers, Farm, Ranch, and Aquacultural Animals (45–2093); Agricultural Equipment Operators (45–2091); Packers and Packagers, Hand (53–7064); Graders and Sorters, Agricultural Products (45–2041); and All Other Agricultural Workers (45–2099).

[3] *See* Bureau of Labor Statistics, Occupational Employment and Employment and Wage Statistics (OEWS) Report, OEWS Databases (Apr. 25, 2023), *available at https://www.bls.gov/oes/data.htm.* Note that the 2023 OEWS report is based on data from May 2022 OEWS estimates.

[4] *See* 20 CFR 655.120(b)(1)(iii) (''For purposes of paragraphs (b)(1)(i) and (ii) of this section, the term State and statewide include the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.'')

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Notice of Meeting: National Intelligence University Board of Visitors; Correction

AGENCY: National Intelligence University (NIU), Office of the Director of National Intelligence (ODNI).

ACTION: Notice of Federal Advisory Committee meeting; correction.

SUMMARY: This document corrects the **DATES** and **SUPPLEMENTARY INFORMATION** sections for the meeting notice published in the **Federal Register** of May 30, 2023, regarding notice of Federal Advisory Committee meeting on June 8, 2023.

DATES: The meeting was held Thursday June 8, 2023, 9 a.m. to 4 p.m., Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia ''Patty'' Larsen, Designated Federal Officer, (301) 243–2118 (Voice), *excom@odni.gov* (email). Mailing address is National Intelligence University, Roberdeau Hall, Washington, DC 20511. Website: *https://ni-u.edu/wp/about-niu/leadership-2/board-of-visitors/.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2023–11367, beginning on page 34548 in the **Federal Register** of May 30, 2023, make the following corrections:

1. On page 34548, in the second column, the **DATES** section is corrected to read as follows:

DATES: Thursday June 8, 2023, 9 a.m. to 4 p.m., Bethesda, MD.

2. On page 34548, in the second column, in the **SUPPLEMENTARY INFORMATION** section, correct the second sentence in the first paragraph to read as follows:

The meeting includes the discussion of personnel regarding presidential candidates and the Director of National Intelligence, or her designee, in consultation with the ODNI Office of General Counsel, has determined the meeting will be closed to the public under the exemptions set forth in 5 U.S.C. 552b(c)(6) and 552b(c)(9)(B).

3. On page 34548, in the third column, in the **SUPPLEMENTARY INFORMATION** section, correct the ''Purpose of the Meeting'' paragraph to read as follows:

I. Purpose of the Meeting: The Board will discuss critical issues and advise the Director of National Intelligence on the selection of the next President of the National Intelligence University.

4. On page 34548, in the third column, in the **SUPPLEMENTARY INFORMATION** section, correct the ''Agenda'' paragraph to read as follows:

II. Agenda: Call to Order and Presidential Candidates (Personnel).

Robert A. Newton,

Committee Management Officer and Deputy Chief Operating Officer.

[FR Doc. 2023–12984 Filed 6–15–23; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[EA–20–123; NRC–2023–0103]

In the Matter of APINDE Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; modification.

SUMMARY: On May 11, 2023, the NRC staff issued an Order revoking APINDE Inc's NRC license, effective 30 days from the date of the Order, due to a determination that the license was issued based on inaccurate information and in consideration that APINDE Inc. does not have a qualified Radiation Safety Officer (RSO). The license has been suspended since August 22, 2019, when the NRC staff, through an investigation by the NRC's Office of Investigations, first identified sufficient cause that the license had been issued based on inaccurate information and that APINDE Inc's RSO was not qualified. In a September 10, 2019, letter, the APINDE Inc. President/CEO acknowledged errors in the license application and stated that corrective actions would be taken. Beyond this written response, APINDE Inc. did not take any steps to restore the requisite reasonable assurance that operations could be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected.

DATES: The Order was issued on May 11, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0103 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0103. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marjorie McLaughlin, Region I, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 610–337–5240; email: *Marjorie.Mclaughlin@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: June 8, 2023.

For the Nuclear Regulatory Commission.

Raymond K. Lorson,

Regional Administrator, NRC Region I.

Nuclear Regulatory Commission

In the Matter of: APINDE Inc., Huntington, West Virginia, Docket No. 03039133, License No. 47–35507–01, EA–20–123

Order Revoking License

I

APINDE Inc. (APINDE or Licensee) is the holder of Materials License No. 47–35507–01, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 30 of *Title 10 of the Code of Federal Regulations* (10 CFR). The license authorizes possession and use of iridium-192 in sealed sources for use in industrial radiography operations and depleted uranium for use as shielding. The Licensee is located in Huntington, West Virginia, but the license also authorizes the company to perform work at temporary jobsites in all areas within NRC jurisdiction. The license, originally issued on January 9, 2019, has an expiration date of January 31, 2034.

II

In early 2019, the NRC Office of Investigations (OI) initiated an investigation, in part, to evaluate whether APINDE representatives had forged various documents in the license application related to the training and qualifications of the individual designated as the Radiation Safety Officer (RSO). Upon partial completion of the investigation, it was determined that the NRC had issued a license to APINDE based on inaccurate information from the applicant regarding the qualifications of the RSO, and that APINDE lacked a qualified RSO. Namely, in the initial license application dated October 10, 2018 (ML18297A261; nonpublic because it contains security-related information),[1] and in a related correspondence dated November 26, 2018 (ML18347A473; nonpublic because it contains security-related information), APINDE submitted an inaccurate training certificate and inaccurate information regarding the

[1] Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly-available using the accession number in ADAMS.

recent radiography experience for the individual proposed to be named on the license as the RSO. Additionally, in a subsequent license amendment request dated June 12, 2019 (ML19178A216; nonpublic because it contains security-related information), APINDE requested to name a new RSO on the license but submitted an inaccurate training certificate for this individual as well.

The NRC staff determined that there was sufficient cause to suspend APINDE's license to prevent the company from obtaining/using licensed material due to the license having been issued based on inaccurate information and APINDE maintaining a radiography license without a qualified RSO. Consequently, on August 22, 2019, the NRC issued an Order Suspending APINDE's NRC license (ML19234A068) based on the lack of reasonable assurance that APINDE's operations could be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected. In response to the suspension, APINDE submitted a written response (ML19263C669), signed by APINDE's President/Chief Executive Officer (CEO), acknowledging the errors in the application and stating that APINDE would take corrective actions. Beyond this written response, APINDE did not take any steps to restore the requisite reasonable assurance that operations could be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected.

OI continued the investigation. After reviewing the investigation, the NRC staff concluded that APINDE provided inaccurate statements to the NRC in the initial APINDE license application about the recent radiography experience for the individual proposed to be the RSO and had provided an inaccurate training certificate for required RSO training. Additionally, in a subsequent license amendment request, APINDE requested NRC approval to name a new RSO on the license, but submitted an inaccurate training certificate for this individual as well. On March 19, 2019, the NRC conducted an inspection and verified APINDE did not possess any licensed material at their facility or at any other location. On December 31, 2022, the State of West Virginia annulled APINDE's corporate status.

III

Given that the license was issued to APINDE based on inaccurate information and that APINDE still lacks a qualified RSO, the NRC staff is revoking APINDE's NRC license, effective 30 days from the date of this Order. Unless good cause is otherwise given within 30 days of the date of revocation, the staff will terminate the license.

IV

Accordingly, pursuant to Sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 170.41, 171.23, and 10 CFR part 30, *it is hereby ordered that*:

A. License No. 47–35507–01 is revoked, effective 30 days from the date of this Order.

B. After the license is revoked, the former Licensee may not resume previously-licensed operations until:

a. the former Licensee has applied for and been issued a new license under 10 CFR part 30; and

b. any debts to NRC, including the fee for the new license, have been paid in full.

C. License No. 47–35507–01 will be terminated by the Commission unless good cause for not terminating the license is provided within 30 days of license revocation.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause. A request for modification of the above conditions shall be submitted to the Director, Office of Enforcement, with a copy to the Regional Administrator, NRC Region I, in writing and under oath or affirmation and must be received within 30 days from the date of this Order.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its issuance. The answer shall be in writing and under oath or affirmation, and shall specifically admit or deny each allegation or charge made in this Order. The answer shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this Order should not have been issued.

Any answer shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; the Assistant General Counsel for Security and Enforcement at the same address; the Regional Administrator, NRC Region I, 475 Allendale Rd., Suite 102, King of Prussia, PA 19406–1415, and to the Licensee if the answer is by a person other than the Licensee.

In addition, the Licensee and any other persons adversely affected by this Order may request a hearing on this Order within 30 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, and include a statement of good cause for the extension. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the Licensee or a person whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

A request for hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49,139) and codified in pertinent part at 10 CFR part 2, subpart C. The E-Filing process requires participants in adjudicatory proceedings to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket. Information about applying for a digital ID certificate also is available on NRC's public website at *https://www.nrc.gov/*

site-help/e-submittals/apply-certificates.html.

Once a requestor has obtained a digital ID certificate and downloaded the EIE viewer, and a docket has been created, the requestor can then submit a request for a hearing through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at *https://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through the EIE.

To be timely, electronic filings must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance though the ''Contact Us'' link located on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Electronic Filing Help Desk, which is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an email to the NRC Electronic Filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, ATTN: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

VI

In the absence of a request for hearing, or written approval of an extension of time in which to request a hearing, License No. 47–35507–01 shall be revoked and all other provisions in Part III of this Order shall be final within 30 days of the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions in Part V shall be final when the extension expires if a hearing request has not been received.

VII

Pursuant to 10 CFR 15.29, the Commission may not consider an application for a new license unless all of the applicant's delinquent debts to the NRC have been paid in full.

Failure to meet the requirements of this Order may subject the Licensee and its agents to civil penalties and criminal sanctions.

For the Nuclear Regulatory Commission.

/RA/

David L. Pelton,

Director, Office of Enforcement.

Dated at Rockville, Maryland, This 11th day of May, 2023.

[FR Doc. 2023–12988 Filed 6–15–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 19, 26, July 3, 10, 17, 24, 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.*

MATTERS TO BE CONSIDERED:

Week of June 19, 2023

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 Auditorium, 11545 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.

Week of July 24, 2023—Tentative

There are no meetings scheduled for the week of July 24, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 14, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–13066 Filed 6–14–23; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 and 50–457; NRC–2023–0105]

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77, which authorize Constellation Energy Generation, LLC, (Constellation, licensee) to operate Braidwood Station (Braidwood), Units 1 and 2. The proposed amendments would change Technical Specification (TS) Surveillance Requirement (SR) 3.7.9.2 to allow an ultimate heat sink (UHS) temperature of less than or equal to 102.8 degrees Fahrenheit (°F) from the date of issuance of the amendments through September 30, 2023.

DATES: The environmental assessment (EA) and finding of no significant impact (FONSI) referenced in this document are available on June 16, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0105 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0105. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6606; email: *Joel.Wiebe@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–72 and NPF–77, which authorize Constellation Energy Generation, LLC, to operate Braidwood Station, Units 1 and 2, located in Will County, Illinois. Constellation submitted its license amendment request in accordance with section 50.90 of title 10 of the *Code of Federal Regulation* (10 CFR), by letter dated March 24, 2023. If approved, the license amendments would revise TS SR 3.7.9.2 to allow a temporary increase in the allowable UHS average temperature of less than or equal to (≤) 102.8 °F (39.3 degrees Celsius (°C)) from the date of issuance of the amendments through September 30, 2023. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment (EA). Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the proposed amendments and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise the Braidwood TS to allow a temporary increase in the allowable average temperature of water withdrawn from the UHS and supplied to the plant for cooling from ≤102 °F (38.9 °C) to ≤102.8 °F (39.3 °C) from the date of issuance of the amendments through September 30, 2023. Specifically, the proposed action would revise TS SR 3.7.9.2, which currently states, ''Verify average water temperature of UHS is ≤102.8 °F until September 30, 2022. After September 30, 2022, verify average water temperature of UHS is ≤102 °F'' to state ''Verify average water temperature of UHS is ≤102.8 °F until September 30, 2023. After September 30, 2023, verify average water temperature of UHS is ≤102 °F.'' Under the current TS, if the average UHS temperature as measured at the discharge of the operating essential service water system pumps is greater than 102 °F (38.9 °C), TS 3.7.9, Required Actions A.1 and A.2, would be entered concurrently and would require the licensee to place Braidwood in hot standby (Mode 3) within 12 hours and cold shutdown (Mode 5) within 36 hours. The proposed action would allow Braidwood to continue to operate during times when the UHS indicated average water temperature exceeds 102 °F (38.9 °C) but is less than or equal to 102.8 °F (39.3 °C) from the date of issuance of the amendments through September 30, 2023. The current TS's UHS average water temperature limit of 102 °F (38.9 °C) would remain applicable to all other time periods beyond September 30, 2023. The proposed action is nearly identical to previously approved license amendments that allowed for the average water temperature of the UHS to be ≤102.8 °F for specified periods until September 30, 2020, September 30, 2021, and September 30, 2022. The NRC issued EAs for the 2020, 2021, and 2022, UHS amendments in the **Federal Register** on September 10, 2020 (85 FR 55863), July 7, 2021 (86 FR 35831), and July 20, 2022 (87 FR 43301), respectively. The NRC issued the amendments on September 24, 2020, July 13, 2021, and August 10, 2022, respectively. The only difference

between the previously approved amendments to SR 3.7.9.2 and the proposed action is that the proposed action would replace the year with ''2023.'' It should also be noted that during the past 3 years, the temperature of the UHS has not exceeded 102 °F, so no cumulative effects of the previously authorized amendments need be considered. The proposed action is in accordance with the licensee's application dated March 24, 2023.

Need for the Proposed Action

The licensee has requested the proposed amendments in connection with historical meteorological and atmospheric conditions that have resulted in the TS UHS temperature being challenged. These conditions included elevated air temperatures, high humidity, and low wind speed. Specifically, from July 4, 2020, through July 9, 2020, northern Illinois experienced high air temperatures and drought conditions, which caused sustained elevated UHS temperatures. In response to these conditions in 2020, the licensee submitted license amendment requests contained in the licensee's letter dated July 15, 2020, as supplemented by letter dated August 14, 2020. The NRC subsequently granted the licensee's request in September 2020. A similar request for subsequent years was granted by NRC letters dated July 13, 2021, and August 10, 2022. Constellation projects that have similar conditions are likely this year. The proposed action would provide the licensee with operational flexibility until September 30, 2023, during which period continued high UHS temperatures are likely, so that the plant shutdown criteria specified in the TS are not triggered.

Plant Site and Environs

Braidwood is in Will County, Illinois, approximately 50 miles (mi) or 80 kilometers (km) southwest of the Chicago Metropolitan Area and 20 mi (32 km) south-southwest of Joliet, IL. The Kankakee River is approximately 5 mi (8 km) east of the eastern site boundary. An onsite 2,540-acre (ac) or 1,030-hectare (ha) cooling pond provides condenser cooling. Cooling water is withdrawn from the pond through the lake screen house, which is located at the north end of the pond. Heated water returns to the cooling pond through a discharge canal west of the lake screen house intake that is separated from the intake by a dike. The pond typically holds 22,300 acre-feet (27.5 million cubic meters) of water at any given time. The cooling pond includes both ''essential'' and ''non-essential'' areas. The essential cooling pond is the portion of the cooling pond that serves as the UHS for emergency core cooling, and it consists of a 99 ac (40-ha) excavated area of the pond directly in front of the lake screen house. The essential cooling pond's principal functions are to dissipate residual heat after reactor shutdown and to dissipate heat after an accident. It is capable of supplying Braidwood's cooling system with water for 30 days of station operation without additional makeup water. For clarity, use of the term ''UHS'' in this EA refers to the 99-ac (40-ha) essential cooling pond, and use of the term ''cooling pond'' or ''pond'' describes the entire 2,540-ac (1,030-ha) area, which includes both the essential and non-essential areas.

The cooling pond is part of the Mazonia-Braidwood State Fish and Wildlife Area, which encompasses the majority of the non-UHS area of the cooling pond as well as Illinois Department of Natural Resources (IDNR) owned lands adjacent to the Braidwood site to the south and southwest of the cooling pond. The licensee and the IDNR have jointly managed the cooling pond as part of the Mazonia-Braidwood State Fish and Wildlife Area since 1991 pursuant to a long-term lease agreement. Under the terms of the agreement, the public has access to the pond for fishing, waterfowl hunting, fossil collecting, and other recreational activities.

The cooling pond is a wastewater treatment works as defined by section 301.415 of title 35 of the Illinois Administrative Code (35 IAC 301.415). Under this definition, the cooling pond is not considered waters of the State under the Illinois Administrative Code (35 IAC 301.440) or waters of the United States under the Federal Clean Water Act (40 CFR 230.3(s)), and so the cooling pond is not subject to State water quality standards. The cooling pond can be characterized as a managed ecosystem where IDNR fish stocking and other human activities primarily influence the species composition and population dynamics.

Since the beginning of the lease agreement between the licensee and IDNR, the IDNR has stocked the cooling pond with a variety of game fish, including largemouth bass (Micropterus salmoides), smallmouth bass (M. dolomieu), blue catfish (Ictalurus furcatus), striped bass (Morone saxatilis), crappie (Pomoxis spp.), walleye (Sander vitreum), and tiger muskellunge (Esox masquinongy x lucius). IDNR performs annual surveys to determine which fish to stock based on fishermen preferences, fish abundance, different species' tolerance to warm waters, predator and prey dynamics, and other factors. Because of the warm water temperatures experienced in the summer months, introductions of warm-water species, such as largemouth bass and blue catfish, have been more successful than introductions of cool-water species, such as walleye and tiger muskellunge. Since annual surveys began in 1980, IDNR has collected 47 species in the cooling pond. In recent years, bluegill (Lepomis macrochirus), channel catfish (Ictalurus punctatus), threadfin shad (Dorosoma petenense), and common carp (Cyprinus carpio) have been among the most abundant species in the cooling pond. Gizzard shad (Dorosoma cepedianum), one of the most frequently affected species during periods of elevated pond temperatures, have decreased in abundance dramatically in recent years, while bluegills, which can tolerate high temperatures with relatively high survival rates, have noticeably increased in relative abundance. IDNR-stocked warm water game species, such as largemouth bass and blue catfish, continue to persist in small numbers, while cooler water stocked species, such as walleye and tiger muskellunge, no longer appear in IDNR survey collections. No Federally listed species or designated critical habitats protected under the Endangered Species Act (ESA) occur within or near the cooling pond.

The Kankakee River serves as the source of makeup water for the cooling pond. The river also receives continuous blowdown from the cooling pond. Water is withdrawn from a small river screen house located on the Kankakee River, and liquid effluents from Braidwood are discharged into the cooling pond blowdown line, which subsequently discharges into the Kankakee River.

The plant site and environs are described in greater detail in Chapter 3 of the NRC's November 2015 Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Braidwood Station, Units 1 and 2, Final Report (NUREG 1437, Supplement 55) (herein referred to as the ''Braidwood FSEIS'' (Final Supplemental Environment Impact Statement)). Figure 3–5 on page 3–7 of the Braidwood FSEIS depicts the Braidwood plant layout, and Figure 3–4 on page 3–6 depicts the cooling pond, including the portion of the pond that constitutes the essential cooling pond (or UHS) and the blowdown line to the Kankakee River.

Environmental Impacts of the Proposed Action

Regarding radiological impacts, the proposed action would not result in any changes in the types of radioactive effluents that may be released from the plant offsite. No significant increase in the amount of any radioactive effluent released offsite and no significant increase in occupational or public radiation exposure is expected from the proposed action. Separate from this EA, the NRC staff is evaluating the licensee's safety analyses of the potential radiological consequences of an accident that may result from the proposed action. The results of the NRC staff's safety analysis will be documented in a safety evaluation (SE). If the NRC staff concludes in the SE that all pertinent regulatory requirements related to radiological doses are met by the proposed UHS temperature limit increase, then the proposed action would result in no significant radiological impact to the environment. The NRC staff's SE will be issued with the license amendments, if approved by the NRC. If the NRC staff concludes that all pertinent regulatory requirements are not met by the proposed UHS temperature limit increase, the requested amendment would not be issued.

Regarding potential nonradiological impacts, temporarily raising the maximum allowable UHS temperature from ≤102 °F (38.9 °C) to ≤102.8 °F (39.3 °C) could cause increased cooling pond water temperatures until September 30, 2023. Because the proposed action would not affect Braidwood's licensed thermal power level, the temperature rise across the condensers as cooling water travels through the cooling system would remain constant. Thus, if water in the UHS were to rise by 0.8 °F (0.4 °C) to 102.8 °F (39.3 °C), heated water returning to the cooling pond through the discharge canal, which lies west of the river screen house, would also experience a corresponding 0.8 °F (0.4 °C) increase. That additional heat load would dissipate across some thermal gradient as discharged water travels down the discharge canal and through the 99-ac (40-ha) UHS.

Fish kills are likely to occur when cooling pond temperatures rise above 95 °F (35 °C), the temperature at which most fish in the cooling pond are thermally stressed. For example, section 3.7.4 of the Braidwood FSEIS describes six fish kill events for the period of 2001 through 2015. The fish kill events, which occurred in July 2001, August 2001, June 2005, August 2007, June 2009, and July 2012, primarily affected threadfin shad and gizzard shad, although bass, catfish, carp, and other game fish were also affected. Reported peak temperatures in the cooling pond during these events ranged from 98.4 °F (36.9 °C) to over 100 °F (37.8 °C), and each event resulted in the death of between 700 to as many as 10,000 fish. During the July 2012 event, cooling pond temperatures exceeded 100 °F (37.8 °C), which resulted in the death of approximately 3,000 gizzard shad and 100 bass, catfish, and carp. This event coincided with the NRC's granting of Enforcement Discretion to allow Braidwood to continue to operate above the TS limit of ≤100 °F (37.8 °C). The IDNR attributed this event, as well as four of the other fish kill events, to high cooling pond temperatures resulting from Braidwood operation. Appendix B, section 4.1, of the Braidwood renewed facility operating licenses, requires Constellation to report to the NRC the occurrence of unusual or important environmental events, including fish kills, causally related to plant operation. Since the issuance of the Braidwood FSEIS in November 2015, the licensee has not reported any additional fish kill events to the NRC. Although not causally related to plant operation, fish kills have occurred since this time, the most recent of which occurred in August 2018 and July 2020.

In section 4.7.1.3 of the Braidwood FSEIS, the NRC staff concluded that thermal impacts associated with continued operation of Braidwood during the license renewal term would result in SMALL to MODERATE impacts to aquatic resources in the cooling pond. MODERATE impacts would primarily be experienced by gizzard shad and other non-stocked and low-heat tolerant species. As part of its conclusion, the NRC staff also noted that because the cooling pond is a highly managed system, any cascading effects that result from the loss of gizzard shad (such as reduction in prey for stocked species, which in turn could affect those stocked species' populations) could be mitigated through IDNR's annual stocking and continual management of the pond. At that time, the UHS TS limit was ≤100 °F (37.8 °C).

In 2016, the NRC granted license amendments that increased the allowable UHS average water temperature TS limit from ≤100 °F (37.8 °C) to ≤102.0 °F (38.9 °C). In the EA associated with these amendments, the NRC staff concluded that increasing the TS limit to ≤102.0 °F (38.9 °C) would have no significant environmental impacts, and the NRC issued a FONSI with the EA.

In 2020, 2021, and 2022, the NRC granted license amendments that temporarily increased the allowable UHS average water temperature TS limit from ≤102.0 °F (38.9 °C) to ≤102.8 °F (39.3 °C) until September 30, 2020, September 30, 2021, and September 30, 2022, respectively. In the EAs associated with these amendments, the NRC staff concluded that temporarily increasing the TS limit to ≤102.8 °F (39.3 °C) would have no significant environmental impacts, and the NRC issued a FONSI with the EA.

The NRC staff finds that the proposed action would not result in significant impacts to aquatic resources in the cooling pond for the same reasons that the NRC staff made this conclusion regarding the 2020 and 2021 amendments. The staff's justification for this conclusion is as follows.

The proposed increase in the allowable UHS average water temperature limit by 0.8 °F (0.4 °C) would not increase the likelihood of a fish kill event attributable to high cooling pond temperatures because the current TS limit for the UHS of 102.0 °F (38.9 °C) already allows cooling pond temperatures above those at which most fish species are thermally stressed (95 °F (35 °C)). In effect, if the UHS temperature rises to the current TS limit, fish within or near the discharge canal, within the flow path between the discharge canal and UHS, or within the UHS itself would have already experienced thermal stress and possibly died. Thus, an incremental increase in the allowable UHS water temperature by 0.8 °F (0.4 °C), and the corresponding temperature increases within and near the discharge canal, and within the flow path between the discharge canal and UHS, would not significantly affect the number of fish kill events experienced in the cooling pond. Additionally, the proposed action would only increase the allowable UHS average water temperature until September 30, 2023. Thus, any impacts to the aquatic community of the cooling pond, if experienced, would be temporary in nature, and fish populations would likely recover relatively quickly.

While the proposed action would not affect the likelihood of a fish kill event occurring during periods when the average UHS water temperature approaches the TS limit, the proposed action could increase the number of fish killed per high temperature event. For fish with thermal tolerances at or near 95 °F (35 °C), there would likely be no significant difference in the number of affected fish per high temperature event because, as already stated, these fish would have already experienced

thermal stress and possibly died, and the additional temperature increase would not measurably affect the mortality rate of these individuals. For fish with thermal tolerances above 95 °F (35 °C), such as bluegill, increased mortality is possible, as described in this EA.

The available scientific literature provides conflicting information as to whether incremental temperature increases would cause a subsequent increase in mortality rates of bluegill or other high-temperature-tolerant fish when temperatures exceed 100 °F (37.8 °C). For instance, in laboratory studies, Banner and Van Arman (1973) demonstrated 85 percent survival of juvenile bluegill after 24 hours of exposure to 98.6 °F (37.0 °C) water for stock acclimated to 91.2 °F (32.9 °C). At 100.0 °F (37.8 °C), survival decreased to 25 percent, and at 100.4 °F (38.0 °C) and 102.0 °F (38.9 °C), no individuals survived. Even at 1 hour of exposure to 102.0 °F (38.9 °C) water, average survival was relatively low at between 40 to 67.5 percent per replicate. However, in another laboratory study, Cairns (1956 in Banner and Van Arman 1973) demonstrated that if juvenile bluegill were acclimated to higher temperatures at a 3.6 °F (2.0 °C) increase per day, individuals could tolerate water temperatures up to 102.6 °F (39.2 °C) with 80 percent survival after 24 hours of exposure.

Although these studies provide inconsistent thermal tolerance limits, information from past fish kill events indicates that Cairns' results better describe the cooling pond's bluegill population because the licensee has not reported bluegill as one of the species that has been affected by past high temperature events. Thus, bluegills are likely acclimating to temperature rises at a rate that allows those individuals to remain in high temperature areas until temperatures decrease or that allows individuals time to seek refuge in cooler areas of the pond. Alternately, if Banner and Van Arman's results were more predictive, 75 percent or more of bluegill individuals in high temperature areas of the cooling pond could be expected to die at temperatures approaching or exceeding 100 °F (37.8 °C) for 24 hours, and shorter exposure time would likely result in the death of some reduced percentage of bluegill individuals.

Under the proposed action, fish exposure to temperatures approaching the proposed UHS TS average water temperature limit of 102.8 °F (39.3 °C) and those exposed to the associated discharge, which would be 0.8 °F (0.4 °C) higher than allowed under the current TS limit, for at least one hour would result in observable deaths. However, as stated previously, the licensee has not reported bluegill as one of the species that has been affected during past fish kills. Consequently, the NRC staff assumes that bluegill and other high-temperature-tolerant species in the cooling pond would experience effects similar to those observed in Cairn's study. Based on Cairn's results, the proposed action's incremental and short-term increase of 0.8 °F (0.4 °C) could result in the death of some additional high-temperature-tolerant individuals, especially in cases where cooling pond temperatures rise dramatically over a short period of time (more than 3.6 °F (2.0 °C) in a 24-hour period).

Nonetheless, the discharge canal, the flow path between the discharge canal and the UHS, and the UHS itself constitute a small area as compared to the cooling pond. Thus, while the incremental increase would likely increase the area over which cooling pond temperatures would rise above currently allowed temperatures, most of the cooling pond would remain at tolerable temperatures, and fish would be able to seek refuge in those cooler areas. Therefore, only fish within or near the discharge canal, within the flow path between the discharge canal and UHS, or within the UHS itself at the time of elevated temperatures would likely be affected, and fish would experience such effects to lessening degrees over the thermal gradient that extends from the discharge canal. This would not result in a significant difference in the number of fish killed per high temperature event resulting from the proposed action as compared to current operations, for those species with thermal tolerances at or near 95 °F (35 °C), and would result in an insignificant increase in the number of individuals affected for species with thermal tolerances above 95 °F (35 °C), such as bluegill.

Fish populations affected by fish kills generally recover quickly and, thus, fish kills do not appear to significantly influence the fish community structure. This is demonstrated by the fact that the species that are most often affected by high temperature events (threadfin shad and gizzard shad) are also among the most abundant species in the cooling pond. Managed species would continue to be assessed and stocked by the IDNR on an annual basis in accordance with the lease agreement between Constellation and IDNR. Continued stocking would mitigate any effects resulting from the proposed action. Also, as stated previously, although the plants have been authorized to operate up to 102.8 °F temporarily, at no time in the past 3 years did the UHS temperature exceed 102 °F. Based on the foregoing analysis, the NRC staff concludes that the proposed action would not result in significant impacts to aquatic resources in the cooling pond. Some terrestrial species, such as birds or other wildlife, rely on fish or other aquatic resources from the cooling pond as a source of food. The NRC staff does not expect any significant impacts to birds or other wildlife because, if a fish kill occurs, the number of dead fish would be a small proportion of the total population of fish in the cooling pond. Furthermore, during fish kills, birds and other wildlife could consume many of the floating, dead fish. Additionally, and as described previously, the NRC staff does not expect that the proposed action would result in a significant difference in the number or intensity of fish kill events or otherwise result in significant impacts to aquatic resources in the cooling pond.

With respect to water resources and ecological resources along and within the Kankakee River, the Illinois Environmental Protection Agency (IEPA) imposes regulatory controls on Braidwood's thermal effluent through title 35, Environmental Protection, section 302, 'Water Quality Standards,'' of the Illinois Administrative Code (35 IAC 302) and through the National Pollutant Discharge Elimination System (NPDES) permitting process pursuant to the Clean Water Act. Section 302 of the Illinois Administrative Code stipulates that ''[t]he maximum temperature rise shall not exceed 2.8 °C (5 °F) above natural receiving water body temperatures,'' (35 IAC 302.211(d)) and that ''[w]ater temperature at representative locations in the main river shall at no time exceed 33.7 °C (93 °F) from April through November and 17.7 °C (63 °F) in other months'' (35 IAC 302.211(e)). Additional stipulations pertaining to the mixing zone further protect water resources and biota from thermal effluents. The Braidwood NPDES permit contains special conditions that mirror these temperature requirements and that stipulate more detailed temperature requirements at the edge of the mixing zone. Under the proposed action, Braidwood thermal effluent would continue to be limited by the Illinois Administrative Code and the Braidwood NPDES permit to ensure that Braidwood operations do not create adverse effects on water resources or ecological resources along or within the Kankakee River.

Under the proposed action, Constellation would remain subject to

the federal and State regulatory controls described in this notice. The NRC staff finds that Constellation's continued compliance with, and the State's continued enforcement of, the Illinois Administrative Code and the Braidwood NPDES permit would ensure that Kankakee River water and ecological resources are protected. Further, the proposed action would not alter the types or amounts of effluents being discharged to the river as blowdown. Therefore, the NRC staff does not expect any significant impacts to water resources or ecological resources within and along the Kankakee River as a result of temporarily increasing the allowable UHS average water temperature TS limit.

With respect to Federally listed species, the NRC staff consulted with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the ESA during its license renewal environmental review for Braidwood. During that consultation, the NRC staff found that sheepnose (Plethobasus cyphyus) and snuffbox (Epioblasma triquetra) mussels had the potential to occur in the areas that would be directly or indirectly affected by license renewal (*i.e.,* the action area). In September 2015, Exelon transmitted the results of a mussel survey to the NRC and FWS. The survey documented the absence of Federally listed mussels near the Braidwood discharge site in the Kankakee River. Based on this survey and other information described in the Braidwood FSEIS, the NRC concluded that the license renewal may affect, but is not likely to adversely affect the sheepnose mussel, and the NRC determined that license renewal would have no effect on the snuffbox mussel. The FWS concurred with the NRC's ''not likely to adversely affect'' determination in a letter dated October 20, 2015. The results of the consultation are further summarized in the Record of Decision for Braidwood license renewal.

As previously described, impacts of the proposed action would be confined to the cooling pond and would not affect water resources or ecological resources along and within the Kankakee River. The NRC's previous ESA, section 7, consultation confirmed that no Federally listed aquatic species occur within or near the cooling pond. The NRC has not identified any information indicating the presence of Federally listed species in the area since that consultation concluded, and the FWS has not listed any new aquatic species that may occur in the area since that time. The proposed action would not result in any disturbance or other impacts to terrestrial habitats and, thus, no Federally listed terrestrial species would be affected. Accordingly, the NRC staff concludes that the proposed action would have no effect on Federally listed species or designated critical habitat. Consultation with the FWS regarding the proposed action is not necessary because the NRC staff has determined that the requested action will have no effect on listed species or critical habitat.

The NRC staff has identified no foreseeable land use, visual resource, noise, or waste management impacts given that the proposed action would not result in any physical changes to Braidwood facilities or equipment or changes to any land uses on or off site. The NRC staff has identified no air quality impacts given that the proposed action would not result in air emissions beyond what would be experienced during current operations. Additionally, there would be no socioeconomic, environmental justice, or historic and cultural resource impacts associated with the proposed action since no physical changes would occur beyond the site boundaries and any impacts would be limited to the cooling pond.

Based on the foregoing analysis, the NRC staff concludes that the proposed action would have no significant environmental impacts.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.,* the ''no action'' alternative). Denial of the proposed action would result in no changes to the current TS. Thus, under the proposed action, the licensee would continue to be required to place Braidwood in hot standby (Mode 3) if average UHS water temperatures exceed 102 °F (38.9 °C) for the temporary period from the date of issuance of the amendments through September 2023. The no-action alternative would result in no change in environmental conditions or impacts at Braidwood beyond those considered in the Braidwood FSEIS.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

In accordance with the Commission's regulations, the Illinois State official was notified of the proposed issuance of the amendment on April 25, 2023. The State official had no comments.

III. Finding of No Significant Impact

The NRC is considering issuing amendments for Renewed Facility Operating License Nos. NPF–72 and NPF–77, issued to Constellation for operation of Braidwood that would revise the TS for the plant to temporarily increase the allowable average temperature of the UHS from the date of issuance of the amendments to September 30, 2023.

On the basis of the EA included in section II and incorporated by reference in this finding, the NRC concludes that the proposed action would not have significant effects on the quality of the human environment. The NRC's evaluation considered information provided in the licensee's application as well as the NRC's independent review of other relevant environmental documents. Section IV lists the environmental documents related to the proposed action and includes information on the availability of these documents. Based on its finding, the NRC has decided not to prepare an environmental impact statement for the proposed action.

This FONSI and other related environmental documents are available for public inspection and are accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *PDR.Resource@nrc.gov.*

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
License Amendment Request	
Constellation Energy Generation, LLC. License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, ''Ultimate Heat Sink,'' dated March 23, 2023.	ML23083B941.
Other Referenced Documents	
Cairns J. 1956. Effects of heat on fish. *Industrial Wastes,* 1:180–183	n/a (1).
Banner A, Van Arman JA. 1973. Thermal effects on eggs, larvae and juveniles of bluegill sunfish. Washington, DC: U.S. Environmental Protection Agency. EPA–R3–73–041.	n/a (1).
Ecological Specialists, Inc. Final Report: Five Year Post-Construction Monitoring of the Unionid Community Near the Braidwood Station Kankakee River Discharge, dated September 29, 2015.	ML15274A093 (Package).
Exelon Generation Company, LLC. Byron and Braidwood Stations, Units 1 and 2, License Renewal Application, Braidwood Station Applicant's Environmental Report, Responses to Requests for Additional Information, Environmental RAIs AQ–11 to AQ–15, dated April 30, 2014.	ML14339A044.
U.S. Fish and Wildlife Service. Concurrence Letter Concluding Informal Consultation with the NRC for Braidwood License Renewal, dated October 20, 2015.	ML15299A013.
Exelon Generation Company, LLC. License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, ''Ultimate Heat Sink,'' dated May 27, 2021.	ML21147A543.
Exelon Generation Company, LLC. License Amendment to Braidwood Station, Units 1 and 2, Technical Specification 3.7.9, ''Ultimate Heat Sink,'' dated July 15, 2020.	ML20197A434.
Exelon Generation Company, LLC. Supplement to License Amendment to Braidwood Station, Unit 1 and 2, Technical Specification 3.7.9, ''Ultimate Heat Sink,'' dated August 14, 2020.	ML20227A375.
U.S. Nuclear Regulatory Commission. Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Braidwood Station, Units 1 and Final Report (NUREG–1437, Supplement 55), dated November 30, 2015.	ML15314A814.
U.S. Nuclear Regulatory Commission. Exelon Generation Company, LLC; Docket No. STN 50–456; Braidwood Station, Unit 1 Renewed Facility Operating License, issued on January 27, 2016.	ML053040362.
U.S. Nuclear Regulatory Commission. Exelon Generation Company, LLC; Docket No. STN 50–457; Braidwood Station, Unit 2 Renewed Facility Operating License, issued on January 27, 2016.	ML053040366.
U.S. Nuclear Regulatory Commission. Record of Decision; U.S. Nuclear Regulatory Commission; Docket Nos. 50–456 and 560–457; License Renewal Application for Braidwood Station, Units 1 and 2, dated January 27, 2016.	ML15322A317.
U.S. Nuclear Regulatory Commission. Environmental Assessment and Finding of No Significant Impact Related to Ultimate Heat Sink Modification, dated July 18, 2016.	ML16181A007.
U.S. Nuclear Regulatory Commission. Braidwood Station, Units 1 and 2—Issuance of Amendments Re: Ultimate Heat Sink Temperature Increase, dated July 26, 2016.	ML16133A438.
Braidwood Station, Units 1 and 2—Issuance of Amendments Re: Ultimate Heat Sink Temperature Increase, dated August 10, 2022.	ML22173A214.
U.S. Nuclear Regulatory Commission. Environmental Assessment and Finding of No Significant Impact Related to Temporary Revision of Technical Specifications for the Ultimate Heat Sink, dated September 3, 2020.	ML20231A469.
U.S. Nuclear Regulatory Commission. Braidwood Station, Units 1 and 2—Issuance of Amendments Re: Temporary Revision of Technical Specifications for the Ultimate Heat Sink, dated September 24, 2020.	ML20245E419.
U.S. Nuclear Regulatory Commission. Environmental Assessment and Finding of No Significant Impact Related to Temporary Revision of Technical Specifications for the Ultimate Heat Sink, dated June 30, 2021.	ML21165A041.
U.S. Nuclear Regulatory Commission. Braidwood Station, Units 1 and 2—Issuance of Amendments Re: Temporary Revision of Technical Specifications for the Ultimate Heat Sink, dated July 13, 2021.	ML21154A046.

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Dated: June 12, 2023.

For the Nuclear Regulatory Commission.

Joel S. Wiebe,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97706; File No. SR–LCH SA–2023–004]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to Triparty Collateral Mechanism

June 12, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by LCH SA. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend its (i) CDS Clearing Rule Book (''Rule Book'') and (ii) CDS Clearing Procedures (''Procedures'') to incorporate new terms and to make conforming, clarifying and clean-up changes to offer the triparty

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

collateral solution to CDSClear clearing members (the ''Proposed Rule Change'').

The text of the Proposed Rule Change has been annexed as Exhibit 5 to file number SR–LCH SA–2023–004.[3]

The implementation of the Proposed Rule Change will be contingent on LCH SA's receipt of all necessary regulatory approvals, including the approval by the Commission of the Proposed Rule Change described herein.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Proposed Rule change is being adopted to extend to CDSClear service the triparty collateral solution already offered to the clearing members of LCH SA Non US Business.

LCH SA, as a clearing agency, should have procedures in place to deal with the default of a clearing member. In order to minimize the contagion risk of such a default, LCH SA calculates margin requirements in respect of each clearing member and requires all of them to transfer collateral to meet their respective margin requirements.

In addition to the current currencies and securities that are eligible as Collateral to be posted on a bilateral basis, LCH SA is proposing to offer the triparty collateral solution to the clearing members of the CDSClear service (the ''Clearing Members''),[4] Clearing Members have expressed interest in using this solution in respect of the CDSClear service as well so as to enable them to harmonize their operational process across all clearing services of LCH SA and benefit from flexibility in their collateral management framework as well as the ability to transfer securities as collateral in a more efficient and automated way than on a bilateral basis. Pursuant to this triparty collateral solution, LCH SA and a Clearing Member may appoint Euroclear Bank and/or Euroclear France as a triparty agent and authorize such triparty agent to enter settlement instructions on their behalf into the securities settlement system to affect movements of securities between a giver account and a taker account opened with the relevant triparty agent on a full title transfer basis for the purposes of transferring Collateral to LCH SA or releasing such Collateral. The triparty collateral solution is an additional way of transferring Collateral to LCH SA by a Clearing Member which is under no obligation to use this solution. LCH SA is not changing collateral eligibility or concentration limits, but rather, is merely providing for a different process for posting acceptable collateral.

The Rule Book and Section 3 of the Procedures are proposed to be amended to offer this triparty collateral solution.

1. Rule Book

LCH SA is proposing to modify Section 1.1.1 (*Terms defined in the CDS Clearing Rule Book*) to incorporate the defined term of ''Triparty Documentation'' to refer to the documentation entered into between LCH SA, the relevant triparty agent and a Clearing Member having exercised its option to transfer Eligible Collateral on a full title transfer basis to LCH SA through a triparty arrangement pursuant to Section 3 of the Procedures.

As a clarification regarding the collateral eligible to Triparty, it is a subset of the LCH SA list of eligible collateral, restricted to bonds that can settle in the Euroclear CSDs (*i.e.,* does not include U.S. Treasuries, UK Gilts, Non-Euro Non-Cash debts and Equities), are interoperable between Euroclear Bank and Euroclear France, and are eligible to 3G pool. A new indent (xxiv) is proposed to be added to Article 2.2.1.1 in order to provide for a new membership requirement pursuant to which the Applicant shall accept to comply with the performance of its obligations pursuant to a Triparty Documentation. As a consequence, the following indents would be renumbered.

Article 2.2.2.1 is also proposed to be amended to add the obligation to comply with the performance of the obligations pursuant to a Triparty Documentation in a new indent (vii) as a continuing obligation for a Clearing Member. Consequently, the following indents would need to be renumbered.

Since the Triparty Documentation will provide for the haircut that will apply to the relevant Eligible Collateral, a reference to the Triparty Documentation is proposed to be added in Article 4.2.6.4 which currently provides, among others, that LCH SA may apply haircuts to Eligible Collateral as set out on the website.[5]

The failure of a Clearing Member to perform its obligations in accordance with, or a breach of, any Triparty Documentation is proposed to be added to the list of Events provided for in Article 4.3.1.1, as an Event that might constitute an Event of Default in respect of a Clearing Member, as this is currently the case in respect of the CDS Clearing Documentation and the Pledge Agreement.

The Rule Book would be also amended to make the following conforming changes that are not related to the implementation of the triparty collateral solution for the CDSClear service. The definition of ''Pledged Eligible Collateral'' in Section 1.1.1 (*Terms defined in the CDS Clearing Rule Book*) is proposed to be amended by removing a reference to a Clearing Notice since the list of Eligible Currencies and Eligible Collateral is set out in Section 3 of the Procedures in accordance with Article 4.2.6.1 and the proposed amended Section 3 of the Procedures would provide where the list of Eligible Collateral (including Pledged Eligible Collateral) could be found.

Article 2.2.2.1 would be amended to correct a cross-reference in indent (iv).

Finally, Article 4.2.6.1 is proposed to be amended by making a reference to Section 3 of the Procedures in respect of the conditions that will govern the notification of any change in Eligible Currencies and Eligible Collateral.

2. Procedures

LCH SA also proposes to modify Section 3 of the Procedures to incorporate terms for implementing this triparty collateral solution.

Section 3.10 (*Eligible Collateral transferred with full title*) is proposed to be amended to include securities transferred pursuant to a triparty arrangement by adding a new paragraph 3.10.2 (*Eligible Collateral provided*

[3] All capitalized terms not defined herein have the same definition as in the Rule Book or Procedures, as applicable.

[4] LCH SA already offers a tri-party collateral solution to members of its non-U.S. business lines. Indeed, when this triparty solution was launched for the LCH SA RepoClear and EquityClear & CommodityClear services, the CDSClear roadmap was busy with other initiatives such that it was decided to postpone the inclusion of CDSClear in the scope of services for which Clearing Members could use the triparty solution.

[5] As noted below, haircuts and concentration limits in respect of Eligible Collateral will be published on LCH SA's website, and the Triparty Documentation may impose additional eligibility criteria and concentration limits in respect of Eligible Collateral transferred with full title pursuant to a triparty arrangement.

pursuant to a triparty arrangement) and a new introductory paragraph.

Consequently, the current Section 3.10 will be moved under a paragraph 3.10.1 entitled ''*Eligible Collateral provided on a bilateral basis*'' and any reference to Eligible Collateral provided with full title transfer in this new paragraph 3.10.1 will be clarified by adding that such Eligible Collateral is provided on a bilateral basis. Any cross-reference to Section 3.10 in Section 3 of the Procedures is proposed to be replaced by a cross-reference to paragraph 3.10.1 where necessary.

As a result of the new paragraph 3.10.2, a cross-reference to this new paragraph, indent (d) in each section referring to the return of any type of Collateral in indent (f) of Section 3.7 (*Euro denominated Cash Collateral*), indent (f) of Section 3.8 (*Non-Euro denominated Cash Collateral*), indent (c) of Section 3.9 (*Eligible Collateral*), indent (b) of paragraph 3.10.1 (*Eligible Collateral provided on a bilateral basis*) and indent (a) of Section 3.15 (*Eligible Collateral transfer pursuant to the Pledge Agreement*).

New sub-paragraph 3.10.2, as further described in the next paragraph, will mainly replicate sub-paragraph 3.10.1 subject to the necessary amendments to be made to refer to the triparty arrangements. Such amendments would, include the requirement for a Clearing Member to enter into the triparty documentation as set out in a new sub-paragraph (a) and the reference to triparty accounts to be used by LCH SA. However, there will be some differences in the timelines applicable to the Clearing Member for the purposes of transferring, or requesting return of, securities subject to the triparty arrangements, as described below, and mainly due to the use of a triparty agent for managing their Collateral posted with LCH SA. In new paragraph 3.10.2 (*Eligible Collateral provided pursuant to a triparty arrangement*), it is proposed to add a new sub-paragraph (a) (*General information*) pursuant to which the Clearing Member, a triparty agent which is either Euroclear Bank or Euroclear France and LCH SA may enter into the relevant triparty documentation available upon request to the CDSClear Business Development & Relationship Management team. Under the Triparty Documentation, the relevant triparty agent will be authorized by LCH SA and the Clearing Member to enter settlement instructions on their behalf into the relevant securities settlement system to transfer with full title securities as Eligible Collateral between LCH SA and the Clearing Member. Pursuant to the following sub-paragraph (b) (*Securities accounts*), LCH SA will hold such Collateral in a security account in each Euroclear Bank and Euroclear France for the Clearing member's house activity and in a security account in each Euroclear Bank and Euroclear France for the Clearing member's client activity (excluding any FCM Clients since the provision of securities pursuant to this triparty collateral solution will not be permitted for FCM Clients pursuant to new sub-paragraph (c) of new paragraph 3.1.0.2, indent (ii)). LCH SA may invest Eligible Collateral provided to LCH SA with full title pursuant to a triparty arrangement in accordance with Paragraph 3.11(b). Pursuant to a new sub-paragraph (c) included in new paragraph 3.10.2, the provisions on the transfer of Eligible Collateral pursuant to a triparty arrangement will be described; the purpose of such transfer is either for transferring additional Collateral or substituting such Collateral for any alternative Collateral recorded in its Collateral Accounts. The Clearing Member will need to notify LCH SA of its request to transfer such Eligible Collateral pursuant to a triparty arrangement by no later than 16:00 CET on a Business Day (''Day minus one'') in order for the Clearing Member's request to be processed on the next following Business Day (''Day'') and to enable the transfer to occur on Day in respect of the relevant Collateral Account. It is also specified that the Clearing Member shall notify to LCH SA which CCM Client Collateral Account shall record Eligible Collateral provided pursuant to a triparty arrangement, otherwise such request will not be accepted by LCH SA. The relevant instructions must be submitted, via Euroclear Bank or Euroclear France, as applicable, on Day minus one. Depending on the time when LCH SA receives the confirmation of settlement from Euroclear Bank or Euroclear France on Day, such Eligible Collateral provided pursuant to a triparty arrangement will form part of the relevant Margin Balance. The following paragraph (d) will deal with the applicable conditions for returning such Eligible Collateral. Such return will be subject to the notification of the Clearing Member's request to LCH SA by the Clearing Member by no later than 12:00 CET on a Business Day (''Day'') in order for the Clearing Member's request to be processed on Day and to allow LCH SA to give instructions to make the transfer to occur on Day during the Additional Specific Collateral Slot. Any request received by LCH SA pursuant to this process shall be deemed firm and irrevocable. On Day, following the First Intraday Slot and, in any event, by 12:00 CET at the latest, LCH SA will re-calculate the value of the Eligible Collateral to be returned (the ''Eligible Triparty Collateral Value''). If LCH SA holds sufficient Collateral (other than that which is to be returned) to cover the relevant Margin Requirement, it will return the Eligible Collateral. If LCH SA does not hold sufficient Collateral (other than that which is to be returned) to cover the relevant Margin Requirement, LCH SA will debit an amount of Euro-denominated Cash Collateral equal to the Eligible Triparty Collateral Value from the relevant TARGET2 Account(s) of the Clearing Member (or the relevant cash accounts of its TARGET2 Payment Agent) during the Additional Specific Collateral Slot. Provided an amount of Euro-denominated Cash Collateral equal to the Eligible Triparty Collateral Value is received by LCH SA, LCH SA will process the return of the Eligible Collateral to the Clearing Member, otherwise the Clearing Member's return request will be deemed void and no return will be processed. LCH SA's inability to debit Euro-denominated Cash Collateral equal to the Eligible Triparty Collateral Value intra-day through TARGET2 shall not constitute a Payment Failure in respect of the Clearing Member. When these conditions applicable to the Collateral's return are satisfied, the relevant instructions will be submitted via Euroclear Bank or Euroclear France, as applicable, on Day between 13:00 and 15:00 CET, in advance of the relevant Central Securities Depository/International Central Securities Depository cut-off time (except in exceptional circumstances, as determined in an objective and commercially reasonable manner). Last paragraph of new paragraph 3.10.2 will provide for exceptional time limits for notification of transfer and return requests in case of atypical market conditions.

Section 3.9 (*Eligible Collateral*) which applies to any type of securities transferred on a full title transfer basis (including both securities transferred on a bilateral basis or pursuant to a triparty arrangement) or pursuant to the pledge agreement will be amended to clarify where the information on eligible securities, applicable haircuts and concentration limits can be found: on the website and in respect of securities transferred in accordance with the triparty collateral solution, in the Triparty Documentation as well. In addition, the amendment process in respect of such eligible securities will be clarified in Section 3 of the Procedures by adding a reference to a notification

by way of a Clearing Notice (that is proposed to be removed from the Rule Book as previously described). Additional eligibility criteria and concentration limits in respect of securities provided pursuant to a triparty arrangement will be subject to the prior consent of the relevant triparty agent as provided for in a new paragraph 3.10.2 (a) of Section 3 of the Procedures. As a result, the reference to a Clearing Notice mentioned in Section 3.13 applicable to Eligible Collateral pursuant to the Pledge Agreement will be removed as there will be no Clearing Notice which describes such Eligible Collateral, all relevant information will be found on the website.

Section 3.9 will be also amended to clarify that Eligible Collateral transferred with full title may be provided on a bilateral basis or pursuant to a triparty arrangement, where necessary. Indent (c) (*Events affecting the eligibility of Eligible Collateral*) is proposed to be amended to exclude securities transferred pursuant to the triparty collateral solution from the current management process applicable to Collateral Events. Such Collateral Events will be managed by the relevant triparty agent in accordance with the Triparty Documentation. Consequently, the scope of Section 3.12 is reduced to Eligible Collateral transferred with full title on a bilateral basis.

Other amendments will be made to Section 3 of the Procedures in order to correct some cross-references or typographical errors.

With the exception of the above proposed CDS Clearing Rules changes, no other change are required.

2. Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of section 17A of the Securities Exchange Act of 1934 [6] (the ''Act'') and the regulations thereunder, including the standards under Rule 17Ad–22.[7] Section 17(A)(b)(3)(F) [8] of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

By offering an optional mechanism to LCH SA CDSClear Clearing Members allowing them to cover their margins with eligible securities through the use of a triparty agent, the Proposed Rule Change will broaden the solutions for Clearing Members to deposit collateral to LCH SA and enable further optimization of their collateral management framework, reducing the overall cost of clearing which in turn may lead Clearing Members to clear more products more systematically, and thus contributing to the prompt and accurate clearance process and settlement of securities transactions and derivative agreements, contracts, and transactions and to assure the safeguarding of securities which is consistent with the requirements of section 17(A)(b)(3)(F).[9] Further, given that the risks affecting the security are the same independently of how the security is lodged, what applies for the bilateral arrangement will also apply for the tri-party collateral mechanism, the Proposed Rule Change will not have any impact on the the safeguarding of securities and funds which are in the custody or control of the clearing agency or on the existing risk methodology applied by LCH SA.

The triparty collateral mechanism is also offering an optional solution that would reduce the number of manual actions necessary in the processing of non-cash collateral deposit/release for both the clearing agency and the Clearing Members. Indeed, there is only a single instruction required from the Clearing Member (*i.e.* the triparty ticket amount) to allocate a basket of securities in the system with an automatic process for the settlement of margin calls and handling of coupons. This contributes to reduce the operational risk associated with the settlement of margin call and is thus consistent with the provisions of Rule 17Ad–22(e)(17) [10] requiring a covered clearing agency to manage operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

LCH SA also believes that the Proposed Rule Change is consistent with the requirements of a well-founded, clear, transparent, and enforceable legal framework of Exchange Act Rule 17Ad–22(e)(1).[11] As described above, the Proposed Rule Change will be adding (i) a new membership requirement regarding the compliance of the Clearing Member with the triparty documentation; and (ii) the failure of a Clearing Member to perform its obligations in accordance with, or a breach of, any Triparty Documentation to the list of Events that might constitute an Event of Default in respect of a Clearing Member which constitutes a relevant and appropriate legal framework consistent with the requirements of Exchange Act Rule 17Ad–22(e)(1).[12]

For the reasons stated above, LCH SA believes that the Proposed Rule Change with respect to the triparty collateral mechanism is consistent with the requirements of prompt and accurate clearance and settlement of securities transactions in section 17(A)(b)(3)(F) [13] of the Act, the requirements of operational risk management in Rule 17Ad–22(e)(17) [14] and of a well-founded legal framework in Rule 17Ad–22(e)(1).[15]

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[16] LCH SA does not believe that the proposed rule change would impose burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Proposed Rule Change would not affect the ability of Clearing Members or other market participants generally to engage in cleared transactions or to access clearing services. Specifically, in order for its clearing services to be aligned, the Proposed Rule Change will extend to CDSClear service the existing triparty collateral mechanism which is an additional Collateral transferring solution already offered to clearing members of LCH SA Non U.S. Business lines.

The Proposed Rule Change would be offered equally to all CDSClear clearing members. However, it is specified that on the expected launch date, the Triparty collateral mechanism would not be available in respect of the client activity of the CDSClear clearing members, in accordance with the amended list of eligible securities published on LCH SA's website.

Therefore, LCH SA does not believe that the proposed rule change would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 240.17Ad–22.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q-1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(17).

[11] 17 CFR 240.17Ad–22(e)(1).

[12] 17 CFR 240.17Ad–22(e)(1).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(17).

[15] 17 CFR 240.17Ad–22(e)(1).

[16] 15 U.S.C. 78q–1(b)(3)(I).

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LCH SA–2023–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LCH SA–2023–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rulebooks/proposed-rule-changes.* Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–LCH SA–2023–004 and should be submitted on or before July 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12871 Filed 6–15–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–516, OMB Control No. 3235–0574]

Proposed Collection; Comment Request; Extension: Rule 3a–8

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 (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

17 CFR 270.3a–8 (rule 3a–8 of the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'')), serves as a nonexclusive safe harbor from investment company status for certain research and development companies (''R&D companies'').

The rule requires that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents.[1] An R&D company seeking to rely on the safe harbor must retain these records only as long as such records must be maintained in accordance with state law.

Rule 3a–8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that relies on the safe harbor under rule 3a–8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a–8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. The purposes of the information collection requirements in rule 3a–8 are to ensure that: (i) the board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act, and (ii) adequate records are available for Commission review, if necessary. Rule 3a–8 would not require the reporting of any information or the filing of any documents with the Commission.

Commission staff estimates that there is no annual recordkeeping burden associated with the rule's requirements. Nevertheless, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

Commission staff estimates that approximately 537,619 R&D companies may take advantage of rule 3a–8.[2] Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),[3] the

[17] 17 CFR 200.30–3(a)(12).

[1] Rule 3a–8(a)(6) (17 CFR 270.3a–8(6)).

[2] *See* National Science Foundation, National Center for Science and Engineering Statistics, Business Enterprise Research and Development, 2020 Data Tables, Table 10, *available at: https://ncses.nsf.gov/pubs/nsf23314.*

[3] In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and

Commission believes that all the R&D companies that existed prior to the adoption of rule 3a–8 adopted their board resolutions and established written investment guidelines in 2003 when the rule was adopted. We expect that R&D companies formed subsequent to the adoption of rule 3a–8 would adopt the board resolution and investment guidelines simultaneously with their formation documents in the ordinary course of business.[4] Therefore, we estimate that rule 3a–8 does not impose additional burdens.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by August 15, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: June 13, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12989 Filed 6–15–23; 8:45 am]

BILLING CODE 8011–01–P

recorded in the ordinary course of business and would not create additional time burdens.

[4] In order for these companies to raise sufficient capital to fund their product development stage, Commission staff believes that they will need to present potential investors with investment guidelines. Investors generally want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–485, OMB Control No. 3235–0547]

Submission for OMB Review; Comment Request: Extension: "Investor Form"

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 to approve the collection of information discussed below.

Each year the Commission receives several thousand contacts from investors who have complaints or questions on a wide range of investment-related issues. To make it easier for the public to contact the agency electronically, the Commission's Office of Investor Education and Advocacy (''OIEA'') created an electronic form (the Investor Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also provide the investor with automated information about their issue. The Investor Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken. Use of the Investor Form is voluntary. Absent the forms, the public still has several ways to contact the agency, including telephone, facsimile, letters, and email. Investors can access the Investor Form through the consolidated Investor Complaint and Question web page.

The dual purpose of the Investor Form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of Commission staff that record, process, and respond to investor contacts. Investors who submit complaints, ask questions, or provide tips do so voluntarily. Although the Investor Form provides a structured format for incoming investor correspondence, the Commission does not require that investors use any particular form or format when contacting the agency. Investors who choose not to use the Investor Form will receive the same level of service as those who do.

OIEA receives approximately 30,000 contacts each year through the Investor Form. Investors who choose not to use the Investor Form receive the same level of service as those who do. The Commission uses the information that investors supply on the Investor Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends.

The staff of the Commission estimates that the total reporting burden for using the Investor Form is 7,500 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 30,000 respondents × 15 minutes = 7,500 burden hours.

Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov*. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by July 17, 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 12, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12850 Filed 6–15–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–196, OMB Control No. 3235–0202]

Submission for OMB Review; Comment Request; Extension: Rule 15c2–11

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c2–11 (17 CFR 240.15c2–11) (''Rule''), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c2–11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange (*i.e.,* over the counter (''OTC'') securities). The Rule is designed to prevent broker-dealers from publishing or submitting quotations for OTC securities that may facilitate a fraudulent or manipulative scheme. Subject to certain exceptions, the Rule prohibits broker-dealers from publishing any quotation for a security or, directly or indirectly, submitting any quotation for publication, in a quotation medium unless they have reviewed specified information concerning the issuer.

Based on the current structure of the market, the Commission staff believes that the recordkeeping and review requirements under Rule 15c2–11 [1] apply to 86 broker-dealers, one qualified interdealer quotation system (''Q–IDQS''), and one registered national securities association.[2] Based on information provided by the Financial Industry Regulatory Authority, Inc. (''FINRA''), the Commission staff understands that in the 2022 calendar year, 377 Form 211 applications were filed to initiate the publication or submission of quotations of OTC securities:[3] 60 of these Forms 211 concerned OTC securities of prospectus issuers, Regulation A (''Reg. A'') issuers, and reporting issuers; 258 concerned OTC securities of ''exempt foreign private issuers''; and 59 concerned OTC securities of ''catch-all issuers.'' The collection of information that is submitted to FINRA for review and approval is currently not available to the public from FINRA.

The Commission staff's estimates of the ongoing annual hour burdens associated with the information collection requirements prescribed in the Rule are summarized in the chart below.

Information collection	Total annual burden industrywide (hours)
Recordkeeping associated with the initial publication or submission of a quotation in a quotation medium	26,231
Recordkeeping when relying on an exception under paragraph (f), that paragraph (b) information is current and publicly available	64,339
Recordkeeping obligations under unsolicited quotation exception under paragraph (f)(2)	537,954
Recordkeeping obligations regarding the frequency of a priced bid or offer quotation under paragraph (f)(3)(i)(A)	95,166
Recordkeeping obligations regarding determining shell status under the proviso in paragraph (f)(3)(i)(B)	64,339
Recordkeeping obligations regarding trading suspensions under the provision in paragraph (f)(3)(i)(B)	3
Recordkeeping obligations for the exceptions under paragraph (f)(5)—Asset Test	393
Recordkeeping obligations for the exceptions under paragraph (f)(5)—ADTV Test	99,053
Recordkeeping obligations of broker-dealers relying on a Q–IDQS complying with information review requirement pursuant to paragraph (a)(1)(ii)	28
Recordkeeping obligations related to the creation of reasonable written policies and procedures under paragraph (a)(3)	20
Recordkeeping obligations of broker-dealers relying on publicly available determinations by Q–IDQSs or registered national securities associations pursuant to paragraph (d)(2)(ii)	93,003
Total Hour Burden for all Respondents	980,529

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendation for the proposed information collection should be sent by July 17, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 12, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12851 Filed 6–15–23; 8:45 am]

BILLING CODE 8011–01–P

[1] In 2021, Commission staff issued a no-action letter, stating that the staff of the Division of Trading and Markets would not recommend enforcement action under certain conditions for quotations of certain fixed-income securities on the over-the-counter markets to allow for an orderly and good faith transition into compliance with Rule 15c2–11, as amended in 2020. In 2022, this letter was withdrawn by the issuance of a new (but consistent) no-action letter, which provides a temporary staff position that expires on January 4, 2025. Because it is widely understood that broker-dealers and other respondents are relying on this no-action position so that they do not need to comply with the requirements of Rule 15c2–11 for fixed income securities, the estimates contained herein are made with regard to equity securities only. Burden estimates that account for fixed income securities are, therefore, subject to change.

[2] In calendar year 2022, 86 broker-dealers published quotations on OTC Markets Group's systems. The Commission staff believes that this number reasonably estimates the number of broker-dealers that would engage in activities that would subject them to Rule 15c2–11. Based on the current structure of the market for quoted OTC securities, the Commission staff believes that only one Q–IDQS would engage in activities that would subject it to Rule 15c2–11. There currently is one registered national securities association. 86 broker-dealers + 1 Q–IDQS + 1 registered national securities association = 88 respondents.

[3] A broker-dealer that initiates or resumes a quotation in an OTC equity security is subject to FINRA Rule 6432, which requires the broker-dealer to demonstrate compliance with, among other things, Rule 15c2–11 by filing Form 211. Given the alignment of this FINRA requirement and Rule 15c2–11, the Commission staff believes that the number of Forms 211 filed with FINRA in 2022 provides a reasonable baseline from which to estimate the burdens associated with the information review requirement under Rule 15c2–11.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97699; File No. SR–NYSECHX–2023–11]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37 To Specify the Exchange's Source of Data Feeds From MEMX LLC

June 12, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2023, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to specify the Exchange's source of data feeds from MEMX LLC (''MEMX'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37(d), which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37(d) to specify that, with respect to MEMX, the Exchange will receive a MEMX direct feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance, and will use the SIP Data Feed as its secondary source for data from MEMX.

The Exchange proposes to make this change operative in the third quarter of 2023, and, in any event, before September 30, 2023. The Exchange proposes to announce the implementation date of this change by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5),[4] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to update the table in Rule 7.37(d) to include the MEMX direct feed will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will enhance competition because providing the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance would enhance transparency and enable investors to better assess the quality of the Exchange's execution and routing services. The Exchange also believes the proposal would enhance competition because it would potentially enhance the performance of its order handling and execution of orders in equity securities by receiving market data directly from MEMX. Finally, the proposed rule change would not impact competition between market participants because it will affect all market participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

of the Act [7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSECHX–2023–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2023–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2023–11 and should be submitted on or before July 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12872 Filed 6–15–23; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17949 and #17950; GUAM Disaster Number GU–00009]

Presidential Declaration Amendment of a Major Disaster for the Territory of Guam

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Territory of Guam (FEMA–4715–DR), dated 05/28/2023.

Incident: Typhoon Mawar.

Incident Period: 05/22/2023 through 05/29/2023.

DATES: Issued on 06/09/2023.

Physical Loan Application Deadline Date: 07/27/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/28/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Territory of Guam, dated 05/28/2023, is hereby amended to establish the incident period for this disaster as beginning 05/22/2023 through 05/29/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–12918 Filed 6–15–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17964 and #17965; GUAM Disaster Number GU–00010]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Territory of Guam

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for public assistance only for the Territory of Guam (FEMA–4715–DR), dated 06/09/2023.

Incident: Typhoon Mawar.

Incident Period: 05/22/2023 through 05/29/2023.

DATES: Issued on 06/09/2023.

Physical Loan Application Deadline Date: 08/08/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 03/11/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/09/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Guam.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17964 8 and for economic injury is 17965 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–12919 Filed 6–15–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12100]

Designation of Abdallah Makki Muslih al-Rufay'i and Abu Bakr ibn Muhammad ibn 'Ali al-Mainuki as Specially Designated Global Terrorists

Acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224, as amended (''E.O. 13224'' or ''Order''), I hereby determine that the persons known as: Abdallah Makki Muslih al-Rufay'i (also known as 'Abdallah Makki Muslih Mahdi al-Rafi'i, Abu Khadijah, and Abu Musab) and Abu Bakr ibn Muhammad ibn 'Ali al-Mainuki (also known as Abu-Bilal al-Minuki, Abubakar Mainok, and Abor Mainok) are leaders of ISIS, a group whose property and interests in property are currently blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: June 6, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–12870 Filed 6–15–23; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36703]

Dover and Delaware River Railroad, LLC—Lease Containing Interchange Commitment and Trackage Rights Exemption—Norfolk Southern Railway Company and New Jersey Transit Corporation

Dover and Delaware River Railroad, LLC (DDRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to amend an existing lease between DDRR and Norfolk Southern Railway Company (NSR) and an existing trackage rights agreement among NSR, DDRR, and the New Jersey Transit Corporation (NJT), that together will allow DDRR to continue operating over 107.9 miles of rail line in the State of New Jersey.[1] Under the amended agreements, a 0.75-mile segment of line that is subject to the current trackage rights agreement will become subject to the amended lease agreement instead. The amended lease will also revise other commercial terms.

Under the amended lease agreement with NSR, DDRR will continue leasing: (1) the Washington Secondary, between milepost WD 58.0 at Hackettstown, N.J. and milepost WD 80.3 at Phillipsburg, N.J.; (2) the Old Road Industrial Track, between milepost 66.5 TG at Washington, N.J. and milepost 67.6 TG at Washington, N.J.; (3) the Pompton Industrial Track, between milepost PQ 21.4 at Mountain View, N.J., and milepost 22.2 at Wayne, N.J.; and (4) the Totowa Spur, between milepost TO 18.0 at Totowa, N.J., and milepost 21.0 at Wayne. In addition, a segment of rail line between WD 57.25 and WD 58.0 will be added to the lease. These lines are referred to as the Amended Lease Lines.

Under the amended trackage rights agreement with NSR and NJT, DDRR will continue operating over: (1) the Morristown Line, between milepost 7.8 at Newark Broad Street in Newark, N.J., and milepost 48.1 at Netcong, N.J.; (2) the Morristown Line, between milepost 48.1 at Netcong, and milepost 57.25 at Hackettstown; (3) the Gladstone Branch, between milepost 20.1 at Summit, N.J., and milepost 25.7 at Berkeley Heights, N.J.; and (4) the Montclair Line, between milepost 9.0 at Newark Roseville Avenue in Newark, and milepost 33.9 at Denville, N.J. The segment of rail line between milepost WD 57.25 and WD 58.0 will no longer be part of the trackage rights agreement. These lines are referred to as the Amended Trackage Lines.

This transaction is related to a concurrently filed verified notice of exemption in *New Jersey Transit Corp.—Acquisition Exemption—Norfolk Southern Railway in the Counties of Morris & Warren, N.J.,* Docket No. FD 36676, in which NJT will acquire from NSR the portion of the Morristown Line[2] between milepost 48.1 and milepost 57.25.[3]

DDRR certifies that its projected annual revenues from this transaction will not result in the creation of a Class I or Class II rail carrier and will not exceed $5 million. As is required under 49 CFR 1150.33(h)(1), DDRR discloses in its verified notice that the amended lease agreement with NSR for the Amended Leased Lines contains an interchange commitment that will affect interchange with carriers other than NSR on the Amended Leased Lines. DDRR states that the interchange commitment in the amended lease has not been changed from the one in the current lease. DDRR has provided additional information regarding the interchange commitment as required under 49 CFR 1150.33(h).

According to the verified notice, DDRR and NSR have entered into the amended lease agreement for the Amended Leased Lines and DDRR, NSR, and NJT are amending the current trackage rights agreement to cover DDRR's operation of the Amended Trackage Lines, but the amended agreements will not become effective until the effective date of the verified notice. The earliest this transaction may be consummated is July 1, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of

[1] *See Dover & Del. River R.R.—Lease with Interchange Commitment & Trackage Rights Exemption—Norfolk S. Ry. & N.J. Transit Corp.,* FD 36258 et al. (STB served Feb. 15, 2019) (authorizing DDRR to operate over these lines).

[2] This line is referred to as part of the Washington Secondary by NJT in the related proceeding.

[3] Concurrent with its verified notice in Docket No. FD 36676, NJT also filed a motion to dismiss its notice of exemption on the grounds that its proposed transaction does not require authorization from the Board.

the exemption. Petitions for stay must be filed no later than June 23, 2023.

All pleadings, referring to Docket No. FD 36703, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on DDRR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004.

According to DDRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 12, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2023–12960 Filed 6–15–23; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0005]

Request for Comments Regarding the Work of the North American Competitiveness Committee

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice and request for comments.

SUMMARY: Since entry into force of the United States-Mexico-Canada Agreement (USMCA), the United States, Canada, and Mexico (the Parties) have focused the work of the North American Competitiveness Committee (Committee) on expanding trilateral cooperation on North American workforce development issues and establishing mechanisms for cooperation during emergency situations that affect North American trade flows, including by establishing a joint understanding of critical infrastructure priorities in North America. USTR is seeking public comments and recommendations for these and potential additional workstreams for the Committee relevant to enhancing North American competitiveness.

DATES: The deadline for the submission of written comments is July 17, 2023.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submissions in parts III and IV below.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Randall Oliver, Director for Canada, Office of Western Hemisphere Affairs, at *Randall.T.Oliver@ustr.eop.gov* or (202) 395–9449 in advance of the deadline and before transmitting a comment.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Committee, which was established under Chapter 26 of the USMCA, is to:

- develop and implement cooperative activities in support of a strong economic environment that incentivizes production in North America;
- facilitate regional trade and investment;
- enhance a predictable and transparent regulatory environment;
- encourage the swift movement of goods and the provision of services throughout the region; and
- respond to market developments and emerging technologies.

The Parties agreed that the Committee should not detract from or unnecessarily duplicate work that is taking place under other USMCA committees or in other venues such as bilateral cooperation mechanisms, including the U.S.-Mexico High-Level Economic Dialogue and the Roadmap for a Renewed U.S.-Canada Partnership. The Parties also agreed that projects for the Committee must be based on targeted and specific proposals to maximize effectiveness and impact.

To coordinate U.S. government policy for the Committee, USTR has established a Trade Policy Staff Committee (TPSC) Subcommittee on North American Competitiveness (TPSC Subcommittee) comprised of officials from across the U.S. government.

II. Public Comments

USTR invites interested parties to submit comments to assist USTR and the TPSC Subcommittee in recommending additional workstreams for the Committee relevant to enhancing North American competitiveness. Comments should be responsive to the Committee activities described in the USMCA at Article 26.1, namely:

- effective approaches and information-sharing activities to support a competitive environment in North America that facilitates trade and investment between the Parties, and promotes economic integration and development within the free trade area;
- ways to further assist traders of a Party to identify and take advantage of trade opportunities under the USMCA;
- recommendations aimed at enhancing the participation of SMEs, and enterprises owned by under-represented groups including women, indigenous peoples, youth, and minorities;
- projects and policies to develop a modern physical and digital trade- and investment-related infrastructure, and improve the movement of goods and provision of services within the free trade area;
- action to combat market-distorting practices by non-Parties that are affecting the North American region; and
- cooperative activities for trade and investment between the Parties with respect to innovation and technology, including best practices in their application.

In addition, USTR invites interested parties to submit comments to assist USTR and the TPSC Subcommittee in the ongoing implementation of current work under the Committee related to North American workforce development and cooperation among the Parties during emergency situations that affect North American trade flows, including the establishment of a joint understanding of critical infrastructure priorities in North America described in Decision #5 of the Free Trade Commission of the USMCA.

Comments could address, among other topics:

- recommendations aimed at developing procedures for coordination and consultation in response to specific emergency situations;
- effective approaches and mechanisms to timely consult with industries and other non-governmental stakeholders, including workers, most directly impacted by the disruption of North American trade flows in an emergency situation;
- existing projects and policies to engage with state, local, tribal, or territorial governments to address disruptions to trade in emergency situations; and
- examples of activities related to re-establishing the flow of trade after emergency situations.

USTR requests small businesses (generally defined by the Small Business Administration as firms with fewer than 500 employees) or organizations representing small business members that submit comments to self-identify as such, so that we may be aware of issues of particular interest to small businesses.

III. Procedures for Written Submissions

To be assured of consideration, submit your written comments by the July 17, 2023 11:59 p.m. EDT deadline. All submission must be in English. USTR strongly encourages submissions via *Regulations.gov,* using Docket Number USTR–2023–0005.

To make a submission via *Regulations.gov*, enter Docket Number USTR–2023–0005 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.'

Regulations.gov allows users to make submissions by filling in a 'type comment' field or by attaching a document using the 'upload file' field. USTR prefers that you provide submissions in an attached document and note 'see attached' in the 'comment' field on the online submission form. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received your submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*.

For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page. USTR may not consider submissions that you do not make in accordance with these instructions.

If you are unable to provide submissions as requested, please contact Randall Oliver, Director for Canada, Office of Western Hemisphere Affairs, in advance of the deadline at *Randall.T.Oliver@ustr.eop.gov* or (202) 395–9449, to arrange for an alternative method of transmission. USTR will not accept hand-delivered submissions. General information concerning USTR is available at *www.ustr.gov.*

IV. Business Confidential Information (BCI) Submissions

If you ask USTR to treat information you submit as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' at the top of that page. Filers of submissions containing BCI also must submit a public version of their submission that will be placed in the docket for public inspection. The file name of the public version should begin with the character 'P.'

V. Public Viewing of Review Submissions

USTR will post written submissions in the docket for public inspection, except properly designated BCI. You can view submissions at *Regulations.gov* by entering Docket Number USTR–2023–0005 in the search field on the home page.

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2023–12843 Filed 6–15–23; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1263]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification and Operations: Airplanes With Seating Capacity of 20 or More Passenger Seats or Maximum Payload of 6,000 Pounds or More

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection involves the certification and operation of aircraft with seating capacity of 20 or more passengers, or maximum payload of 6,000 pounds or more, and includes the operator application requirements, maintenance requirements, and various operational requirements.

DATES: Written comments should be submitted by August 15, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: John Attebury, 800 Independence Ave. SW, Washington, DC 20591].

FOR FURTHER INFORMATION CONTACT: John H. Attebury by email at: *John.H.Attebury@faa.gov;* phone: 281–929–7078.

SUPPLEMENTARY INFORMATION: *Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0085.

Title: Certification and Operations: Airplanes With Seating Capacity of 20 or More Passenger Seats or Maximum Payload of 6,000 Pounds or More-14 CFR 125.

Form Numbers: None.

Type of Review: Renewal.

Background: The reporting and recordkeeping requirements under this collection are necessary for the FAA to issue, reissue, and amend part 125 applicants' operating certificates and operation specifications. A letter of application and related documents that set forth an applicant's ability to conduct operations in compliance with the provisions of 14 CFR part 125 are submitted to the appropriate Flight Standards District Office (FSDO). Inspectors in FAA FSDOs review the submitted information to determine certificate eligibility. If the letter of application, related documents, and inspection show that the applicant satisfactorily meets acceptable safety standards, an operating certificate and operations specifications will be issued. If the information were not collected, the FAA could not discharge its responsibility to promote the safety of large airplane operators during such operations.

Respondents: 54 part 125 operators (38 certificated operators, 15 operators issued a Letter of Deviation Authority (LODA), and one new applicant per year).

Frequency: On occasion.

Estimated Average Burden per Response: 13 minutes.

Estimated Total Annual Burden: 36,015 hours total; 667 hours per respondent.

Issued in Washington, DC.

Emanuel Cruz,

Senior Technical Advisor, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2023–12902 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property and Long-Term Lease Approval at Pittsburgh International Airport in Pittsburgh, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a request for a change in designation of on-airport property purchased with Federal funding from aeronautical to non-aeronautical use.

SUMMARY: The FAA is requesting public comment on the Allegheny County Airport Authority's proposal to change 48.262 acres of airport property at Pittsburgh International Airport in Pittsburgh, Pennsylvania from aeronautical to non-aeronautical use. This acreage was purchased with federal financial assistance through the Airport Development Aid Program under Grant Agreement 8–42–0081–03.

DATES: Comments must be received on or before July 12, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the following address: Julia Arnone, PMP, Project Manager, Planning, Allegheny County Airport Authority, Pittsburgh International Airport, Landside Terminal, 4th Floor Mezz., P.O. Box 12370, Pittsburgh, PA 15231–0370, *JArnone@Flypittsburgh.com*, and at the FAA Harrisburg Airports District Office: Charles Sacavage, Project Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, *Charles.L.Sacavage@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Charles Sacavage, Project Manager, Harrisburg Airports District Office, location listed above. Telephone: 717–730–2830. The request for change in designation of on-airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: In accordance with 49 U.S.C. 47107(h), this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The following is a brief overview of the request:

The Allegheny County Airport Authority (ACAA) requests parcels 173, 174, 175, 181, 185, 186, 191, 192, 206, 218, 226, 229, and 234 (as shown on the Exhibit A) totaling 48.262 acres, be released for long-term lease for construction, operation, and maintenance of warehouse and distribution facilities. Historic parcels 173, 181, 185, 186, 191, 192, 206, 218, 226, 229, and 234 were acquired in 1970 with FAA project 8–42–0081–03, and historic parcels 174 and 175 were acquired in 1969 as part of the Declaration of Taking. The property, situated 3,940' from the end of PIT runway 10L/28R, and north of Industrial Drive, is vacant, not used, and not developed. ACAA will lease this property to grow airport revenues and grow the economy. The purpose of this request is to permanently change the designation of the property given there is no potential for future aviation use, as demonstrated by the Airport Layout Plan. Subsequent to the implementation of the proposed redesignation, rents received by the airport from this property must be used in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Any person may inspect the request by appointment at the FAA office address listed above.

Interested persons are invited to comment. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, June 9, 2023.

Ricky Harner,

Manager, Harrisburg Airports District Office.

[FR Doc. 2023–12941 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between City of Palatka and the Federal Aviation Administration for the Palatka Municipal—Lt. Kay Larkin Field, Palatka, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release 14.6 acres at the Palatka Municipal—Lt. Kay Larkin Field, Palatka, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the City of Palatka, dated February 24, 1947. The release of property will allow the City of Palatka to use the property for other than aeronautical purposes. The property is located off of Reid Street at the Palatka Municipal—Lt. Kay Larkin Field in Putnam County. The parcel is currently designated as surplus property. The property will be released of its federal obligations for the purpose of selling the property at fair market value for construction of municipal development. The fair market value of this parcel has been determined to be $169,000. Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Palatka Municipal—Lt. Kay Larkin Field and the FAA Airports District Office.

DATES: Comments are due on or before *July 17, 2023.*

ADDRESSES: Documents are available for review at the Palatka Municipal—Lt. Kay Larkin Field, 4015 Reid Street, Highway 100, Palatka, FL, 32177–2529 and the FAA Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819–9058. Written comments on the Sponsor's request must be delivered or mailed to: Stephen Wilson, Program Manager, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819–9058.

FOR FURTHER INFORMATION CONTACT: Stephen Wilson (407) 487–7229, Program Manager, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Bartholomew Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2023–12876 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0042]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 30, 2023, the Association of American Railroads (AAR), on behalf of the six Class I railroads (BNSF Railway, Canadian Pacific Kansas City, Canadian National Railway, CSX Transportation, Amtrak,[1] and Norfolk Southern Railway) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2023–0042.

Specifically, AAR requests, on behalf of the Class 1 railroads, relief required to participate in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. AAR seeks to shield reporting employees and the Class 1 railroads from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroads from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 15, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–12932 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–06–P

[1] Note, Amtrak has a similar request pending in Docket No. FRA–2023–0040 pertaining to the Metrolink service.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0031]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters dated May 18, 2023, and May 30, 2023, North Shore Railroad Company (NSHR) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215 (Railroad Freight Car Safety Standards). FRA assigned the petition Docket Number FRA–2013–0031.

Specifically, NSHR requested an extension of a special approval pursuant to 49 CFR 215.203, *Restricted cars,* for one caboose, NSHR 61312, that is more than 50 years from the date of original construction. NSHR also requests relief from § 215.303, *Stenciling of restricted cars,* to preserve the caboose's historic appearance for operation in excursion, ''VIP,'' and shipper service. In support of its request, NSHR states that the caboose will be operated at a maximum speed of 50 miles per hour and that in the ten years the caboose has operated under the special approval, NSHR has ''found no adverse effects on the safety of operations.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 15, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–12930 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–24812]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters received on April 19, 2023, and May 4, 2023, BNSF Railway (BNSF) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). The relevant Docket Number is FRA–2006–24812.

Specifically, BNSF requests a waiver extension from 49 CFR 232.213, *Extended haul trains,* to continue operating extended haul trains for distances of up to 1,702 miles, beyond the limit of 1,500 miles stated in the regulation. In support of its request, BNSF states that it maintains a 24-hour hotline to ''support FRA in identification of active trains operating under this waiver and answer any operational questions.'' BNSF further states that ''operations under this waiver have reduced risk exposure for personal injuries involving walking and driving vehicles during inspections on every train under this waiver.'' BNSF explains the relief has also ''improved upon crew rest and eliminated 1,000s of hours of idle time[,] resulting in noise reduction and reduced pollutant[s].''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 15, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–12929 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0040]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 19, 2023, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2023–0040.

Specifically, Amtrak requests relief required to participate in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. Amtrak seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding (IMOU).[1]

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 15, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–12931 Filed 6–15–23; 8:45 am]

BILLING CODE P

[1] The petition notes that Amtrak, Metrolink, the Brotherhood of Locomotive Engineers and Trainmen, the Sheet Metal and Rail Transportation Union—Transportation Division, American Train Dispatchers Association, and Transportation Communications Union, have developed, and are in the process of signing, an IMOU. The program would involve Amtrak employees involved in equipment operations for Metrolink.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0043]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 23, 2023, Cedar Rapids and Iowa City Railway (CIC), jointly with SMART–TD, BMWED, and International Association of Machinists Harmony Lodge No. 381, and CIC Yard Managers and Clerks (unaffiliated) (Petitioners), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2023–0043.

Specifically, Petitioners request relief required to participate in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. Petitioners seek to shield reporting employees and CIC from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 15, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–12933 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2023–0013]

Bus Compartment Redesign and Bus of the Future Initiatives; Meeting

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The Federal Transit Administration (FTA) will hold a virtual listening session concerning FTA's Bus Compartment Redesign and Bus of the Future initiatives. This meeting will be a forum for stakeholders to give feedback on key issues, including operator safety, passenger safety, accessibility, bus component safety, reduction of bus customization, and emerging technologies related to transit vehicles. This online meeting is open to the public.

DATES: The webinar will be held on June 22, 2023, from 9:00 a.m. to 12:00 p.m., Eastern Daylight Time (EDT). Comments must be submitted by July 24, 2023. Late comments will be considered to the extent practicable.

ADDRESSES: The session will be held virtually. Interested parties should register in advance at *https://usdot.zoomgov.com/webinar/register/WN_ZPYvheyuQMizlgL2Vs7kvg.*

Members of the public may submit written comments on the questions provided by FTA on its website prior to the meeting, which also will be provided during the meeting, no later than July 24, 2023, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments to Docket Number FTA–2023–0013.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., E.T. Monday through Friday, except Federal holidays.

Each submission must include the Agency name and Docket Number FTA 2023–0013. Note that DOT posts all comments received without change to *https://www.regulations.gov,* including any personal information included in a comment.

Docket: For access to the docket, visit *https://www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., EDT, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year.

Privacy Act: Anyone may view the electronic docket. The docket may include the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** (73 FR 3316) or visit *https://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Maria Roell, Transportation Program Analyst, Office of Research, Demonstration, and Innovation (TRI) via email: *maria.roell@dot.gov,* or phone (202) 366–9214. Individuals with disabilities requesting reasonable accommodations or special assistance to participate in the virtual meeting should contact Maria Roell no later than June 21, 2023.

SUPPLEMENTARY INFORMATION:

I. Background

In October 2020, the FTA awarded two Bus Operator Compartment (BCP)

Program grants totaling $1,600,000 to the International Transportation Learning Center (ITLC) and the New Orleans Regional Transit Authority (NORTA) to redesign a transit bus compartment to improve safety for operators. As the initial piece of this program comes to a close, FTA is interested in hearing from stakeholders on the outcomes of that research and both the short-term and long-term strategies for designing buses of the future.

II. Meeting Participation

This meeting is open to the public. However, FTA particularly invites participation from:

- Labor Unions;
- Disability Community;
- Academia and Researchers;
- Transit Vehicle Manufacturers and Component Manufacturers;
- Standard Development Organizations;
- Professional Associations; and
- Recipients of FTA Funding

Read-ahead materials, including questions for consideration, are available at *https://www.transit.dot.gov/research-innovation/redesign-transit-bus-operator-compartment-improve-safety-operational-efficiency.* Although FTA will engage with virtual attendees during the meeting, FTA recommends that stakeholders submit comments to the docket for consideration. The meeting will be live-captioned and recorded and made available after the webinar on the web page noted above.

This listening session will help FTA gather broad stakeholder input on key issues, including operator safety, passenger safety, accessibility, bus component safety, reduction of bus customization, and emerging technologies related to transit vehicles.

III. Docket Information

FTA requests that anyone who cannot participate in this online listening session submit written comments to the docket as soon as practicable. In addition, FTA will place any written materials it receives during the meeting in the docket.

Authority: 49 U.S.C. 5312.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–12976 Filed 6–15–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing updates to the identifying information of one or more vessels currently included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). All property and interests in property subject to U.S. jurisdiction of these vessels remain 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 Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On June 8, 2023, OFAC published revised information for the following vessels on OFAC's SDN List, which remain blocked under the relevant sanctions authorities listed below.

Vessels

1. ARK III (f.k.a. ''ABADEH''; f.k.a. ''ARK''; f.k.a. ''CRYSTAL''; f.k.a. ''SUNDIAL'') Crude/Oil Products Tanker 99,030DWT 56,068GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9187655 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 ''Blocking Property of the Government of Iran and Iranian Financial Institutions,'' of February 5, 2012, 77 FR 6659, 3 CFR, 2012 Comp., p. 215 (E.O. 13599), as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

2. NAROON (f.k.a. ''BELEMA LIGHT CRUDE''; f.k.a. ''MAHARLIKA''; f.k.a. ''NOOR'') Crude Oil Tanker 298,732DWT 156,809GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9079066 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

3. CASPIA Chemical/Products Tanker Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9125126 (vessel) [IRAN] [NPWMD] [IFSR] (Linked To: ISLAMIC REPUBLIC OF IRAN SHIPPING LINES).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the ISLAMIC REPUBLIC OF IRAN SHIPPING LINES has an interest.

4. DANIEL (f.k.a. ''DEMOS'') Crude Oil Tanker Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569683 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

5. HAWK (f.k.a. ''DOVE''; f.k.a. ''HONAR''; f.k.a. ''HORSE''; f.k.a. ''JANUS''; f.k.a. ''VICTORY'') Crude Oil Tanker 317,367DWT 163,660GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9362061 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

6. NASHA (f.k.a. ''NATIVE LAND''; f.k.a. ''NESA''; f.k.a. ''OCEANIC''; f.k.a. ''TRUTH'') Crude Oil Tanker 298,732DWT 156,809GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9079107 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

7. SEVIN (f.k.a. ''BAIKAL''; f.k.a. ''BLOSSOM''; f.k.a. ''SANA''; f.k.a. ''SIMA''; f.k.a. ''SUCCESS'') Crude Oil Tanker 164,154DWT 85,462GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357353 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

8. SEA CLIFF (f.k.a. ''SMOOTH''; a.k.a. ''YARD NO. 1225 SHANGHAI WAIGAOQIAO'') Crude Oil Tanker 318,000DWT 165,000GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569657 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

9. SEA STAR III (f.k.a. ''CARNATION''; f.k.a. ''SAFE''; a.k.a. ''SEASTAR III''; f.k.a. ''SUNSHINE''; a.k.a. ''YARD NO. 1220 SHANGHAI WAIGAOQIAO'') Crude Oil Tanker 318,000DWT 165,000GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569205 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

10. SERENA (f.k.a. ''SALALEH''; f.k.a. ''SONGBIRD''; a.k.a. ''YARD NO. 1224 SHANGHAI WAIGAOQIAO'') Crude Oil Tanker 318,000DWT 165,000GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569645 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

11. SILVIA I (f.k.a. ''MAGNOLIA''; f.k.a. ''SABRINA''; f.k.a. ''SARVESTAN'') Crude Oil Tanker 159,711DWT 81,479GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9172052 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

12. SANAN (f.k.a. ''CAMELLIA''; f.k.a. ''SAVEH''; f.k.a. ''SOL''; f.k.a. ''SWALLOW'') Crude Oil Tanker 159,758DWT 81,479GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9171462 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

13. SONIA I (f.k.a. ''AZALEA''; f.k.a. ''SINA''; f.k.a. ''SUNEAST'') Crude Oil Tanker 164,154DWT 85,462GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357365 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

14. STARK I (f.k.a. ''CLOVE''; f.k.a. ''SEMNAN''; f.k.a. ''SPARROW'') Crude Oil Tanker 159,681DWT 81,479GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9171450 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

15. STARLA (f.k.a. ''ATLANTIS'') Crude Oil Tanker Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569621 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018, pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

Dated: June 8, 2023

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–12901 Filed 6–15–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Department of the Treasury.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or ''Department''), Treasury proposes to proposes to modify a current Treasury system of records titled, ''Department of the Treasury—.018 E-Rulemaking System of Records'' under the Privacy Act of 1974 for the online collection through the Federal Docket Management System and/or *Regulations.gov* of public comments to notices of proposed rulemaking, proposed orders, and other policy or regulatory actions that are published in the **Federal Register** or rules or rule amendments, petitions, and other input collected from the public that may not be associated with statutory or regulatory notice and comment requirements.

DATES: Submit comments on or before July 17, 2023. The new routine uses will be applicable on July 17, 2023 unless Treasury receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal electronically at *http://www.regulations.gov.* Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records. All comments received, including attachments and other supporting documents, are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions and questions regarding privacy issues, please contact: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records (202–622–5710), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

I. E-Rulemaking

In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'') proposes to modify the system of records titled, ''Department of the Treasury—.018 E-Rulemaking System of Records.''

Treasury collects comments on rulemakings and other regulatory actions, which it timely publishes on a website to provide transparency in the informal rulemaking process under the Administrative Procedure Act (''APA''), 5 U.S.C. 553. The Treasury also may solicit comments or other input from the public that may not be associated with statutory or regulatory notice and comment requirements.

During an informal rulemaking or other statutory or regulatory notice and comment process, Department personnel may manually remove a comment from posting if the commenter withdraws his or her comments before the comment period has closed or because the comment contains obscenities or other material deemed inappropriate for publication by the Treasury. However, comments that are removed from posting will be retained by the Department for consideration, if appropriate under the APA.

Below is the description of the modified Treasury—.018 E-Rulemaking System of Records.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB, pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

II. The Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, a ''system of records'' is defined as any group of records under the control of a Federal Government agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act establishes the means by which

Government agencies must collect, maintain, and use personally identifiable information associated with an individual in a government system of records.

Each Government agency is required to publish in the **Federal Register** a notice of a modified system of records in which the agency identifies and describes the system of records, the reasons why the agency uses the personally identifying information therein, the routine uses for which the agency will disclose such information outside the agency, and how individuals may exercise their rights under the Privacy Act to determine if the system contains information about them.

Dated: June 12, 2023.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury—.018 E-Rulemaking.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations at which the system is maintained by all Treasury bureaus and offices and their associated field offices are:

A. DEPARTMENT OF THE TREASURY, 1500 PENNSYLVANIA AVENUE NW, WASHINGTON, DC 20220.

(1) Departmental Offices (DO): 1500 Pennsylvania Ave. NW, Washington, DC 20220.

a. The Office of Inspector General (OIG): 875 15th Street NW, Washington, DC 20005.

b. Special Inspector General for Pandemic Recovery (SIGPR): 1500 Pennsylvania Avenue NW, Washington, DC 20220.

c. Special Inspector General for the Troubled Asset Relief Program (SIGTARP):1801 L Street NW, Washington, DC 20220.

d. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW, Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW, Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW, Washington, DC 20219.

(4) Fiscal Service: Liberty Center Building, 401 14th St. SW, Washington, DC 20227.

(5) Internal Revenue Service: 1111 Constitution Ave. NW, Washington, DC 20224.

(6) United States Mint: 801 Ninth St. NW, Washington, DC 20220.

(7) Bureau of Engraving and Printing (BEP): 14th & C Streets SW, Washington, DC 20228.

(8) Financial Crimes Enforcement Network: Vienna, VA 22183.

B. GENERAL SERVICES ADMINISTRATION, 1800 F ST NW, WASHINGTON, DC 20006.

SYSTEM MANAGER(S):

A. DEPARTMENT OF THE TREASURY, 1500 PENNSYLVANIA AVENUE NW, WASHINGTON, DC 20220.

(1) Departmental Offices (DO): 1500 Pennsylvania Ave. NW, Washington, DC 20220.

a. The Office of Inspector General (OIG): 875 15th Street NW, Washington, DC 20005.

b. Special Inspector General for Pandemic Recovery (SIGPR): 1500 Pennsylvania Avenue NW, Washington, DC 20220.

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(8) Financial Crimes Enforcement Network: Vienna, VA 22183.

B. GENERAL SERVICES ADMINISTRATION, 1800 F ST NW, WASHINGTON, DC 20006.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101*;* Administrative Procedure Act, Public Law 79–404, 60 Stat. 237; 5 U.S.C. 553 *et seq.,* and rules and regulations promulgated thereunder.

PURPOSE(S) OF THE SYSTEM:

To collect and maintain in an electronic system feedback from the public and industry groups regarding proposed rules and other Treasury regulatory actions in accordance with the Administrative Procedure Act (''APA'') or other statutory or regulatory provisions, as well as input on Treasury actions that may not be associated with notice and comment requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals providing comments or other input to the Treasury in response to proposed rules, industry filings or other Treasury request for comments associated with Treasury rules, notices, policies or procedures, whether the individuals provide comments or input directly or through their representatives. Any individuals who may be discussed or identified in the comments or input provided by others to the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming comments or other input to the Treasury in response to proposed rules, or other Treasury request for comments associated with Treasury rules, policies or procedures, provided to the Treasury electronically, by facsimile or postal mail or delivery service. Comments or input submitted to Treasury may include the full name of the submitter, an email address and the name of the organization, if an organization is submitting the comments. The commenter may optionally provide job title, mailing address and phone numbers. The comments or input provided may contain other personal information, although the comment submission instructions advise commenters not to include additional personal or confidential information.

This system excludes comments or input for which the Treasury has received and either has approved or not yet decided a Freedom of Information Act or Privacy Act Request.

RECORDS SOURCE CATEGORIES:

Individuals and organizations providing comments or other input to the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act of 1974, 5 U.S.C. 552a(b), records and/or information or portions thereof maintained as part of this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To the United States Department of Justice (''DOJ''), for the purpose of representing or providing legal advice to the Department in a proceeding before a court, adjudicative body, or other administrative body before which the

Department is authorized to appear, when such proceeding involves:

(a) The Department or any component thereof;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ or the Department has agreed to represent the employee; or

(d) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

(2) To appropriate Federal, State, local, and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(3) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(4) To a contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(5) To a congressional office from the records of an individual in response to an inquiry from that congressional office made pursuant to a written Privacy Act waiver at the request of the individual to whom the records pertain;

(6) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) To the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(8) To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(9) To other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is needed for the conduct of government business, and

(10) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or Departmental Offices suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or Departmental Offices has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or Departmental Offices (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or Departmental Offices' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(11) To another Federal agency or Federal entity when the Department of the Treasury and/or Departmental Offices determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(12) To General Services Administration for purposes of operating the E-Rulemaking system.

(13) To another Federal, State, local, foreign, or self-regulatory organization or agency responsible for implementing, issuing, or carrying out a rule, regulation, policy or guidance, when such information may be relevant to that agency's carrying out of its responsibilities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an individual's name, social security number, email address, electronic identification number and/or access/security badge number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention and disposal period depends on the nature of the comments or input provided to the Treasury. For example, comments that pertain to a Treasury proposed rule becomes part of the Treasury's central files and are kept permanently. Other input to the Treasury may be kept between one and 10 years, depending on the subject matter.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances.

Entrance to data centers and support organization offices is restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of similar sensitivity. Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in a locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

The GSA information technology system that hosts regulations.gov and

FDMS is in a facility protected by physical walls, security guards, and requiring identification badges. Rooms housing the information technology system infrastructure are locked, as are the individual server racks. All security controls are reviewed on a periodic basis by external assessors. The controls themselves include measures for access control, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance.

Records in FDMS are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intrusion detection, encryption, identification and authentication of users. Partner agencies manage their own access to FDMS through their designated partner agency account managers. Each designated partner agency account manager has access to FDMS. This level of access enables them to establish, manage, and terminate user accounts limited to their own agency.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing, in accordance with Treasury's Privacy Act regulations (located at 31 CFR 1.26), to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *http://www.treasury.gov/FOIA/Pages/index.aspx* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

No specific form is required, but a request must be written and:

- Be signed and either notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;
- State that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Include information that will enable the processing office to determine the fee category of the user;
- Be addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);
- Reasonably describe the records;
- Give the address where the determination letter is to be sent;
- State whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and
- Include a firm agreement from the requester to pay fees for search, duplication, or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at 5 U.S.C. 552(a)(4)(A)(iii).

You may also submit your request online at *https://rdgw.treasury.gov/foia/pages/gofoia.aspx* and call 1–202–622–0930 with questions.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on January 9, 2020 (85 FR 1198) as the Department of the Treasury—.018 E-Rulemaking System of Records.

[FR Doc. 2023–12985 Filed 6–15–23; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

Vol. 88 Friday,

No. 116 June 16, 2023

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3170

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Codification of Onshore Orders 1, 2, 6, and 7

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[BLM_HQ_FRN_MO4500171611]

RIN 1004–AE90

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Codification of Onshore Orders 1, 2, 6, and 7

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule codifies Onshore Order 1—Approval of Operations; Onshore Order 2—Drilling Operations on Federal and Indian Oil and Gas Leases; Onshore Order 6—Hydrogen Sulfide Operations; and Onshore Order 7—Disposal of Produced Water. This rule places the existing regulations, which were promulgated over the years through various notice and comment rulemakings but not codified in the Code of Federal Regulations (CFR), into the CFR in their entirety without making any substantive changes.

DATES: This final rule is effective on June 16, 2023.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 16, 2023.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240; Attention: RIN 1004–AE86.

FOR FURTHER INFORMATION CONTACT: Matthew Warren, Acting Chief, Division of Fluid Minerals, 505–216–8832, *mwarren@blm.gov;* or Faith Bremner, Regulatory Analyst, Division of Regulatory Affairs, *fbremner@blm.gov.* Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Warren. 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:

I. Background

The Bureau of Land Management's (BLM) regulations at 43 CFR part 3160 authorize the agency to issue onshore oil and gas orders to ''implement and supplement'' the oil and gas operations regulations in part 3160. *See* 43 CFR 3164.1. The Onshore Orders apply nationwide to all Federal onshore and Indian (except the Osage Nation) oil and gas leases and are documents of general applicability and legal effect. All the Onshore Orders were published in the **Federal Register** and adopted through prior notice-and-comment rulemaking, but were never codified in the CFR.

Beginning in 1983, the BLM issued and revised a total of seven Onshore Orders. The four Orders that are the subject of this final rule were published and revised as follows:

Onshore Order 1—Approval of Operations, published October 21, 1983 (48 FR 48916); revised March 7, 2007 (72 FR 10308), and January 10, 2017 (82 FR 2906). This Onshore Order supplements regulations at 43 CFR 3162.3, Conduct of operations, and § 3162.5, Environment and safety.

Onshore Order 2—Drilling Operations on Federal and Indian Oil and Gas Leases, published November 18, 1988 (53 FR 46798); revised September 27, 1989 (54 FR 39528); and January 27, 1992 (57 FR 3023). This Onshore Order supplements regulations at: 43 CFR 3162.3–1, Drilling applications and plans; 3162.3–4, Well abandonment; 3162.4–1, Well records and reports; 3162.4–2, Samples, tests, and surveys; 3162.5–1, Environmental obligations; 3162.5–2, Control of wells; 3162.5–3, Safety precautions.

Onshore Order 6—Hydrogen Sulfide Operations, published November 23, 1990 (55 FR 48958); revised January 17, 1992 (57 FR 2039 and 57 FR 2136); and February 12, 1992 (57 FR 5211). This Onshore Order supplements regulations at: 43 CFR 3162.1, General requirements; 3162.5–1, Environmental obligations; 3162.5–2, Control of wells; and 3162.5–3, Safety precautions.

Onshore Order 7—Disposal of Produced Water, published September 8, 1993 (58 FR 47354); revised November 2, 1993 (58 FR 58505). This Onshore Order supplements the regulations at 43 CFR 3162.5–1, Environmental obligations.

Several years ago, the Office of the Federal Register (OFR) informed the BLM that it would no longer allow the BLM to revise the existing Onshore Orders unless the agency codified the Orders in the CFR. The OFR cited as its justification the Federal Register Act (44 U.S.C. 1510), which requires documents of general applicability and legal effect to be codified in the CFR.

As a result, when the BLM made major revisions to three of the Onshore Orders in 2016, it codified the Orders in the CFR after publishing proposed and final rules for each. Those three Onshore Orders were: Onshore Order 3—Site Security; Onshore Order 4—Measurement of Oil; and Onshore Order 5—Measurement of Gas.[1]

This final rule codifies the remaining four Onshore Orders without making any substantive changes to their content. The only changes made to the four Onshore Orders pertain to formatting, such as adding new section and paragraph designations, so that the Orders conform to the OFR's Document Drafting Handbook requirements. This final codification rule also includes a new section at 43 CFR 3176.11 to reflect the incorporation by reference (IBR) requirements of the Office of the Federal Register consistent with 5 U.S.C. 552(a) and 1 CFR part 51. The IBR section does not alter the substance of the Onshore Orders themselves.

All of the materials that the BLM is incorporating by reference are available for inspection at all BLM offices with jurisdiction over oil and gas activities. Contact the BLM at: Office of Energy, Minerals, and Realty Management, 1849 C Street Northwest, Washington, DC 20240; telephone 202–208–3801; email Ben Gruber at *begruber@blm.gov;* website *www.blm.gov/programs/energy-and-minerals/oil-and-gas.*

The American National Standards Institute (ANSI) materials should be available for inspection at ANSI, 25 West 43rd St, 4th floor, New York., NY 10036; telephone: 212–642–4980; email: *info@ansi.org;* website: *www.ansi.org.* If the ANSI material is not available from document resellers, contact the BLM to obtain a copy.

The American Petroleum Institute (API) materials are available for inspection and purchase at API, 200 Massachusetts Avenue NW, Suite 1100, Washington, DC 20001; telephone: 202–682–8000; email: *apipubs@api.org;* website: *www.api.org.* API also offers free, read-only access to some of the material at *http://publications.api.org.*

The material published by the Association for Materials Protection and Performance (AMPP), formerly known as NACE International, is available from AMPP, 15835 Park Ten Place, Houston, TX 77084; telephone: 1–800–797–6223; website: *www.ampp.org.*

[1] On November 17, 2016, the BLM published in the **Federal Register** three final rules: (1) ''Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security'' (81 FR 81365), codified at 43 CFR part 3170, subparts 3170 and 3173; (2) ''Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil'' (81 FR 81462), codified at 43 CFR part 3170, subpart 3174; and (3) ''Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas'' (81 FR 81516), codified at 43 CFR part 3170, subpart 3175.

The following describes the ANSI, API, and AMPP standards that the BLM is incorporating by reference into this rule.

- ANSI Standard Z88.2–1992 for Respiratory Protection, Approved August 6, 1992 (''ANSI Z88.2–1992''). This standard sets forth accepted practices for respirator users. It provides information and guidance on the proper selection, use, and care of respirators, and contains requirements for establishing and regulating respirator programs.
- API Recommended Practice 49—Recommended Practice for Drilling and Well Servicing Operations Involving Hydrogen Sulfide; Third Edition, May 2001; Reaffirmed, January 2013 (''API RP 49''). These recommendations apply to oil and gas well drilling and servicing operations that involve hydrogen sulfide, including well drilling, completion, servicing, workover, downhole maintenance, and plug and abandonment procedures conducted with hydrogen sulfide present in the fluids being handled.
- ANSI/NACE MR0175–2021/ISO 15156–1:2020; Petroleum and natural gas industries—Materials for use in H_2S-containing environments in oil and gas production; Part 1: General principles for selection of cracking-resistant materials; Fourth Edition, Approved September 21, 2022 (''NACE MR 0175–2021''). This standard provides requirements and recommendations for the selection and qualification of metallic minerals for service in equipment used in oil and gas production and in natural-gas sweetening plants in H_2S-containing environments.

The BLM may consider making substantive changes to the four Onshore Orders in the future but would do so through notice and comment rulemakings. This final rule to codify the remaining Onshore Orders is a proactive measure to facilitate future amendments. Because these four Onshore Orders were duly promulgated through prior notice-and-comment rulemakings, and this final rule does not change them, it is appropriate that the BLM codify the orders in the CFR as a final rule without any further public comment.

II. Discussion of Final Rule

This final rule codifies existing Onshore Orders 1, 2, 6, and 7 in their entirety. Oil and gas operators have been following these regulations for many years. They are not new. Only the section and paragraph designations have been changed to conform with CFR style requirements. Technical diagrams and figures that are a part of the four existing Onshore Orders are included in this final rule as appendices.

The four Onshore Orders will now be located in 43 CFR part 3170—Onshore Oil and Gas Production. The Onshore Order 1 regulations will appear under subpart 3171—Approval of Operations; Onshore Order 2 under subpart 3172—Drilling Operations on Federal and Indian Oil and Gas Leases; Onshore Order 6 under subpart 3176—Hydrogen Sulfide Operations; and Onshore Order 7 under subpart 3177—Disposal of Produced Water.

Subpart 3171 describes the procedure for filing Applications for Permit to Drill and required approvals of subsequent well operations and other lease operations. Subpart 3172 provides the requirements and standards for drilling and abandonment operations. Subpart 3176 provides the requirements and standards for conducting oil and gas operations in an environment known or expected to contain hydrogen sulfide gas (H_2S). Subpart 3177 provides the methods and approvals necessary to dispose of produced water associated with oil and gas operations.

Subparts 3172, 3176, and 3177 identify violations, corrective actions, normal abatement periods, and enforcement actions that may result if violations of the associated requirements are not abated in a timely manner.

This rule removes the table located in 43 CFR 3164.1 that lists the four Onshore Orders that are being codified in this regulation. Since the Onshore Orders will now be contained in title 43 of the CFR, this table is no longer valid.

III. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule, and the Office of Management and Budget has not reviewed this final rule under Executive Order 12866.

The BLM has determined that this final rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The final rule merely codifies into the CFR regulations that are already in effect.

This final rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients.

Finally, this final rule will not raise novel legal or policy issues. As explained earlier, this final rule simply places into the CFR regulations that have been in effect for many years, some dating back to 1983.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As a result, a Regulatory Flexibility Analysis is not required. The Small Business Administration defines small entities as individual, limited partnerships, or small companies considered to be at arm's length from the control of any parent companies if they meet the following size requirements as established for each North American Industry Classification System (NAICS) code:

- Crude Petroleum Extraction (NAICS code 211120): 1,250 or fewer employees
- Natural Gas Extraction (NAICS code 211130): 1,250 or fewer employees

The Small Business Administration (SBA) would consider many, if not most, of the operators with whom the BLM works in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The final rule will not affect a large number of small entities because these entities are already subject to, and should be complying with, the regulations. This rule merely codifies regulations that have been in effect for many years.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Accordingly, a Small Entity Compliance Guide is not required.

Executive Order 13132, Federalism

This final rule 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. In accordance with Executive Order 13132, the BLM therefore finds that the final rule does not have federalism implications, and a federalism assessment is not required.

The Paperwork Reduction Act of 1995

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law, a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). OMB has generally approved the information collection requirements contained in this final rule; including the required forms 3160–3, *Application for Permit to Drill or Re-enter,* 3160–4, *Well Completion or Recompletion Report and Log,* and 3160–5, *Sundry Notices and Reports on Wells,* under OMB control number 1004–0137.

The information collection requirements contained in final 43 CFR parts 3171, 3172, 3176, and 3177 are consistent with those also currently contained in the BLM's regulations at 43 CFR parts 3160 and 3170 and the existing Onshore Order Nos. 1, 2, 6, and 7. This final rule does not change any of these approved information collection requirements nor the public burdens associated with those information collection requirements; therefore, no information collection request has been submitted to OMB in association with this final rule.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this final rule will not cause a taking of private property. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule qualifies as an administrative, housekeeping action that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205 and 46.210(i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215. Therefore, neither an environmental assessment nor an environmental impact statement is required in connection with the rule (40 CFR 1501.3).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in State, local, private sector, or tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian Tribes. Consequently, the BLM did not use the consultation process set forth in section 5 of the Executive order.

Information Quality Act

In developing this final rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule will not have a significant adverse effect on the supply, distribution, or use of energy. It merely codifies regulations that have been in effect for many years.

Delegation of Signing Authority

The action taken herein is pursuant to an existing delegation of authority.

List of Subjects in 43 CFR Part 3170

Administrative practice and procedure, Disposal of produced water, Drilling operations, Flaring, Government contracts, Hydrogen sulfide operations, Incorporation by reference, Indians-lands, Immediate assessments, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Public lands—mineral resources, Reporting and record keeping requirements, Royalty-free use, Venting.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management is amending 43 CFR part 3170 as follows:

PART 3170—ONSHORE OIL AND GAS PRODUCTION

■ 1. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 2. Add subparts 3171 and 3172 to read as follows:

Subpart 3171—Approval of Operations

Sec.

§ 3171.1 Authority.

(a) The Secretaries of the Interior and Agriculture have authority under various Federal and Indian mineral leasing laws, as defined in 30 U.S.C. 1702, to manage oil and gas operations. The Secretary of the Interior has delegated this authority to the Bureau of Land Management (BLM), which has issued onshore oil and gas operating regulations codified at 43 CFR part 3160. For leases on Indian lands, the delegation to the BLM appears at 25 CFR parts 211, 212, 213, 225, and 227.

(b) The Secretary of Agriculture has authority under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203) (Reform Act) to regulate surface disturbing activities conducted pursuant to a Federal oil and gas lease on National Forest Service (NFS) lands. This authority has been delegated to the Forest Service (FS). Its regulatory authority is at 36 CFR chapter II, including, but not limited to, part 228, subpart E, part 251, subpart B, and part 261. The FS is responsible only for approving and regulating surface disturbing activities on NFS lands and appeals related to FS decisions or approvals.

§ 3171.2 Purpose.

The purpose of this subpart is to state the application requirements for the approval of all proposed oil and gas and service wells, certain subsequent well operations, and abandonment.

§ 3171.3 Scope.

This subpart applies to all onshore leases of Federal and Indian oil and gas (other than those of the Osage Tribe). It also applies to Indian Mineral Development Act agreements. For proposed operations on a committed State or fee tract in a federally supervised unit or communitized tract, the operator must furnish a copy of the approved State permit to the authorized officer of the BLM which will be accepted for record purposes.

§ 3171.4 Definitions.

As used in this subpart, the following definitions apply:

Best Management Practices (BMP) means practices that provide for state-of-the-art mitigation of specific impacts that result from surface operations. Best Management Practices are voluntary unless they have been analyzed as a mitigation measure in the environmental review for a Master Development Plan, Application for Permit to Drill (APD), Right-of-Way, or other related facility and included as a Condition of Approval.

Blooie line means a discharge line used in conjunction with a rotating head in drilling operations when air or gas is used as the circulating medium.

Casual use means activities involving practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. This term does not apply to private surface. Casual use includes surveying activities.

Complete APD means that the information in the APD package is accurate and addresses all of the requirements of this subpart. The onsite inspection verifies important information that is part of the APD package and is a critical step in determining if the package is complete. Therefore, the onsite inspection must be conducted, and any deficiencies identified at the onsite corrected, before the APD package can be considered to be complete. While cultural, biological, or other inventories and environmental assessments (EA) or environmental impact statements (EIS) may be required to approve the APD, they are not required before an APD package is considered to be complete.

(1) The APD package must contain:

(i) A completed Form 3160–3 (Application for Permit to Drill or Reenter) (see 43 CFR 3162.3–1(d));

(ii) A well plat certified by a registered surveyor with a surveyor's original stamp (see § 3171.6(b));

(iii) A drilling plan (see 43 CFR 3162.3–1(d) and 3171.7);

(iv) A Surface Use Plan of Operations (see 43 CFR 3162.3–1(d) and 3171.8);

(v) Evidence of bond coverage (see 43 CFR 3162.3–1(d) and 3171.9);

(vi) Operator certification with original signature (see § 3171.10); and

(vii) Other information that may be required by order or notice (see 43 CFR 3162.3–1(d)(4)).

(2) The BLM and the surface managing agency, as appropriate, will review the APD package and determine that the drilling plan, the Surface Use Plan of Operations, and other information that the BLM may require (43 CFR 3162.3–1(d)(4)), including the well location plat and geospatial databases, completely describe the proposed action.

Condition of Approval (COA) means a site-specific requirement included in an approved APD or Sundry Notice that may limit or amend the specific actions proposed by the operator. Conditions of Approval minimize, mitigate, or prevent impacts to public lands or other resources. Best Management Practices may be incorporated as a Condition of Approval.

Days means all calendar days including holidays.

Emergency repairs means actions necessary to correct an unforeseen problem that could cause or threaten immediate substantial adverse impact on public health and safety or the environment.

Geospatial database means a set of georeferenced computer data that contains both spatial and attribute data. The spatial data defines the geometry of the object and the attribute data defines all other characteristics.

Indian lands means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to a Federal restriction against alienation.

Indian oil and gas means any oil and gas interest of an Indian tribe or on allotted lands where the interest is held in trust by the United States or is subject to Federal restrictions against alienation. It does not include minerals subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539), but does include oil and gas on lands administered by the United States under section 14(g) of Public Law 92–203, as amended.

Master Development Plan means information common to multiple planned wells, including drilling plans, Surface Use Plans of Operations, and plans for future production.

National Forest System lands means those Federal lands administered by the U.S. Forest Service, such as the National Forests and the National Grasslands.

Onsite inspection means an inspection of the proposed drill pad, access road, flowline route, and any associated Right-of-Way or Special Use Authorization needed for support facilities, conducted before the approval of the APD or Surface Use Plan of Operations and construction activities.

Private surface owner means a non-Federal or non-State owner of the surface estate and includes any Indian owner of surface estate not held in trust by the United States.

Reclamation means returning disturbed land as near to its predisturbed condition as is reasonably practical.

Split estate means lands where the surface is owned by an entity or person other than the owner of the Federal or Indian oil and gas.

Surface managing agency means any Federal or State agency having

jurisdiction over the surface overlying Federal or Indian oil and gas.

Variance means an approved alternative to a provision or standard of an order or Notice to Lessee.

§ 3171.5 Application for Permit to Drill (APD).

An Application for Permit to Drill or Reenter, on Form 3160–3, is required for each proposed well, and for reentry of existing wells (including disposal and service wells), to develop an onshore lease for Federal or Indian oil and gas.

(a) *Where to file.* On or after March 13, 2017, the operator must file an APD and associated documents using the BLM's electronic commerce application for oil and gas permitting and reporting. The operator may contact the local BLM Field Office for information on how to gain access to the electronic commerce application. Prior to March 13, 2017, an operator may file an APD and associated documents in the BLM Field Office having jurisdiction over the application.

(b) *Early notification.* The operator may wish to contact the BLM and any applicable surface managing agency, as well as all private surface owners, to request an initial planning conference as soon as the operator has identified a potential area of development. Early notification is voluntary and would precede the Notice of Staking option or filing of an APD. It allows the involved surface managing agency or private surface owner to apprise the prospective operator of any unusual conditions on the lease area. Early notification also provides both the surface managing agency or private surface owner and the prospective operator with the earliest possible identification of seasonal restrictions and determination of potential areas of conflict. The prospective operator should have a map of the proposed project available for surface managing agency review to determine if a cultural or biological inventory or other information may be required. Inventories are not the responsibility of the operator.

(c) *Notice of Staking option.* (1) Before filing an APD or Master Development Plan, the operator may file a Notice of Staking with the BLM. The purpose of the Notice of Staking is to provide the operator with an opportunity to gather information to better address site-specific resource concerns while preparing the APD package. This may expedite approval of the APD. On or after March 13, 2017, if an operator chooses to file a Notice of Staking (NOS), the operator must file the NOS using the BLM's electronic commerce application for oil and gas permitting and reporting. Attachment I, Sample Format for Notice of Staking, provides the information required for the Notice of Staking option. Prior to March 13, 2017, an operator may file a Notice of Staking in the BLM Field Office having jurisdiction.

(2) For Federal lands managed by other surface managing agencies, the BLM will provide a copy of the Notice of Staking to the appropriate surface managing agency office. In Alaska, when a subsistence stipulation is part of the lease, the operator must also send a copy of the Notice of Staking to the appropriate Borough and/or Native Regional or Village Corporation.

(3) Within 10 days of receiving the Notice of Staking, the BLM or the FS will review it for required information and schedule a date for the onsite inspection. The onsite inspection will be conducted as soon as weather and other conditions permit. The operator must stake the proposed drill pad and ancillary facilities, and flag new or reconstructed access routes, before the onsite inspection. The staking must include a center stake for the proposed well, two reference stakes, and a flagged access road centerline. Staking activities are considered casual use unless the particular activity is likely to cause more than negligible disturbance or damage. Offroad vehicular use for the purposes of staking is casual use unless, in a particular case, it is likely to cause more than negligible disturbance or damage, or otherwise prohibited.

(4) On non-NFS lands, the BLM will invite the surface managing agency and private surface owner, if applicable, to participate in the onsite inspection. If the surface is privately owned, the operator must furnish to the BLM the name, address, and telephone number of the surface owner if known. All parties who attend the onsite inspection will jointly develop a list of resource concerns that the operator must address in the APD. The operator will be provided a list of these concerns either during the onsite inspection or within 7 days of the onsite inspection. Surface owner concerns will be considered to the extent practical within the law. Failure to submit an APD within 60 days of the onsite inspection will result in the Notice of Staking being returned to the operator.

§ 3171.6 Components of a complete APD package.

Operators are encouraged to consider and incorporate Best Management Practices into their APDs because Best Management Practices can result in reduced processing times and reduced number of Conditions of Approval. An APD package must include the following information that will be reviewed by technical specialists of the appropriate agencies to determine the technical adequacy of the package:

(a) A completed Form 3160–3; and

(b) Operators must include in the APD package a well plat and geospatial database prepared by a registered surveyor depicting the proposed location of the well and identifying the points of control and datum used to establish the section lines or metes and bounds. The purpose of this plat is to ensure that operations are within the boundaries of the lease or agreement and that the depiction of these operations is accurately recorded both as to location (latitude and longitude) and in relation to the surrounding lease or agreement boundaries (public land survey corner and boundary ties). The registered surveyor should coordinate with the cadastral survey division of the appropriate BLM State Office, particularly where the lands have not been surveyed under the Public Land Survey System.

(1) The plat and geospatial database must describe the location of operations in:

(i) Geographical coordinates referenced to the National Spatial Reference System, North American Datum 1983 or latest edition; and

(ii) In feet and direction from the nearest two adjacent section lines, or, if not within the Rectangular Survey System, the nearest two adjacent property lines, generated from the BLM's current Geographic Coordinate Data Base.

(2) The surveyor who prepared the plat must sign it, certifying that the location has been staked on the ground as shown on the plat.

(3) Surveying and staking are necessary casual uses, typically involving negligible surface disturbance. The operator is responsible for making access arrangements with the appropriate surface managing agency (other than the BLM and the FS) or private surface owner. On tribal or allotted lands, the operator must contact the appropriate office of the Bureau of Indian Affairs (BIA) to make access arrangements with the Indian surface owners. In the event that not all of the Indian owners consent or may be located, but a majority of those who can be located consent, or the owners of interests are so numerous that it would be impracticable to obtain their consent and the BIA finds that the issuance of the APD will cause no substantive injury to the land or any owner thereof, the BIA may approve access. Typical off-road vehicular use, when conducted in conjunction with these activities, is a

necessary action for obtaining a permit and may be done without advance approval from the surface managing agency, except for:

(i) Lands administered by the Department of Defense;

(ii) Other lands used for military purposes;

(iii) Indian lands; or

(iv) Where more than negligible surface disturbance is likely to occur or is otherwise prohibited.

(4) No entry on split estate lands for surveying and staking should occur without the operator first making a good faith effort to notify the surface owner. Also, operators are encouraged to notify the BLM or the FS, as appropriate, before entering private lands to stake for Federal mineral estate locations.

§ 3171.7 Drilling plan.

With each copy of Form 3160–3, the operator must submit to the BLM either a drilling plan or reference a previously submitted field-wide drilling plan (a drilling plan that can be used for all the wells in a field, any differences for specific wells will be described in the APD specific to that well). The drilling plans must be in sufficient detail to permit a complete appraisal of the technical adequacy of, and environmental effects associated with, the proposed project. The drilling plan must adhere to the provisions and standards of subpart 3172 of this part and, if applicable, subpart 3176 of this part and must include the following information:

(a) Names and estimated tops of all geologic groups, formations, members, or zones.

(b) Estimated depth and thickness of formations, members, or zones potentially containing usable water, oil, gas, or prospectively valuable deposits of other minerals that the operator expects to encounter, and the operator's plans for protecting such resources.

(c) The operator's minimum specifications for blowout prevention equipment and diverter systems to be used, including size, pressure rating, configuration, and the testing procedure and frequency. Blowout prevention equipment must meet the minimum standards outlined in subpart 3172 of this part.

(d) The operator's proposed casing program, including size, grade, weight, type of thread and coupling, the setting depth of each string, and its condition. The operator must include the minimum design criteria, including casing loading assumptions and corresponding safety factors for burst, collapse, and tensions (body yield and joint strength). The operator must also include the lengths and setting depth of each casing when a tapered casing string is proposed. The hole size for each well bore section of hole drilled must be included. Special casing designs such as the use of coiled tubing or expandable casing may necessitate additional information.

(e) The estimated amount and type(s) of cement expected to be used in the setting of each casing string. If stage cementing will be used, provide the setting depth of the stage tool(s) and amount and type of cement, including additives, to be used for each stage. Provide the yield of each cement slurry and the expected top of cement, with excess, for each cemented string or stage.

(f) Type and characteristics of the proposed circulating medium or mediums proposed for the drilling of each well bore section, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the circulating system. The operator must submit the following information when air or gas drilling is proposed:

(1) Length, size, and location of the blooie line, including the gas ignition and dust suppression systems;

(2) Location and capacity of the compressor equipment, including safety devices, describe the distance from the well bore, and location within the drill site; and

(3) Anticipated amounts, types, and other characteristics as defined in this section, of the stand by mud or kill fluid and associated circulating equipment.

(g) The testing, logging, and coring procedures proposed, including drill stem testing procedures, equipment, and safety measures.

(h) The expected bottom-hole pressure and any anticipated abnormal pressures, temperatures, or potential hazards that the operator expects to encounter, such as lost circulation and hydrogen sulfide (see subpart 3176 of this part). A description of the operator's plans for mitigating such hazards must be included.

(i) Any other facets of the proposed operation that the operator would like the BLM to consider in reviewing the application. Examples include, but are not limited to:

(1) For directional wells, proposed directional design, plan view, and vertical section in true vertical and measured depths;

(2) Horizontal drilling; and

(3) Coil tubing operations.

§ 3171.8 Surface Use Plan of Operations.

(a) The Surface Use Plan of Operations must:

(1) Describe the access road(s) and drill pad, the construction methods that the operator plans to use, and the proposed means for containment and disposal of all waste materials;

(2) Provide for safe operations, adequate protection of surface resources, groundwater, and other environmental components;

(3) Include adequate measures for stabilization and reclamation of disturbed lands:

(4) Describe any Best Management Practices the operator plans to use; and

(5) Where the surface is privately owned, include a certification of Surface Access Agreement or an adequate bond, as described in § 3171.19.

(b) All maps that are included in the Surface Use Plan of Operations must be of a scale no smaller than 1:24,000, unless otherwise stated in paragraph (e) of this section. Geospatial vector and raster data must include appropriate attributes and metadata. Georeferenced raster images must be from the same source as hardcopy plats and maps submitted in the APD package. All proposed on-lease surface disturbance must be surveyed and staked as described in paragraphs (e)(1) through (12) of this section, including:

(1) The well location;

(2) Two 200-foot (61-meter) directional reference stakes;

(3) The exterior pad dimensions;

(4) The reserve pit;

(5) Cuts and fills;

(6) Outer limits of the area to be disturbed (catch points); and

(7) Any off-location facilities.

(c) Proposed new roads require centerline flagging with stakes clearly visible from one to the next. In rugged terrain, cut and fill staking and/or slope staking of proposed new access roads and locations for ancillary facilities that may be necessary, as determined by the BLM or the FS.

(d) The onsite inspection will not occur until the required surveying and staking is complete, and any new access road(s) have been flagged, unless a variance is first granted under § 3171.23.

(e) Information required by the Surface Use Plan of Operations may be shown on the same map if it is appropriately labeled or on separate diagrams or maps and must include the following:

(1) *Existing roads.* The operator must submit a legible map such as a highway or county road, United States Geological Survey (USGS) topographic, Alaska Borough, or other such map that shows the proposed well site and access route to the proposed well in relation to a town, village, or other locatable public access point.

(i) The operator must improve or maintain existing roads in a condition the same as or better than before operations began. The operator must provide any plans for improvement and/or maintenance of existing roads. The information provided by the operator for construction and use of roads will be used by the BLM for any Right-of-Way application, as described in § 3171.18. The operator may use existing terrain and two-track trails, where appropriate, to assure environmental protection. The operator should consider using Best Management Practices in improving or maintaining existing roads.

(ii) The operator may use existing roads under the jurisdiction of the FS for access if they meet the transportation objectives of the FS. When access involves the use of existing roads, the FS may require that the operator contribute to road maintenance. This is usually authorized by a Road Use Permit or a joint road use agreement. The FS will charge the operator a pro rata share of the costs of road maintenance and improvement, based upon the anticipated use of the road.

(2) *New or reconstructed access roads.* The operator must identify on a map all permanent and temporary access roads that it plans to construct or reconstruct in connection with the drilling of the proposed well. Locations of all existing and proposed road structures (culverts, bridges, low water crossings, etc.) must be shown. The proposed route to the proposed drill site must be shown, including distances from the point where the access route exits established roads. All permanent and temporary access roads must be located and designed to meet the applicable standards of the appropriate surface managing agency, and be consistent with the needs of the operator. The operator should consider using Best Management Practices in designing and constructing roads. The operator must design roads based upon the class or type of road, the safety requirements, traffic characteristics, environmental conditions, and the vehicles the road is expected to carry. The operator must describe for all road construction or reconstruction:

(i) Road width;

(ii) Maximum grade;

(iii) Crown design;

(iv) Turnouts;

(v) Drainage and ditch design;

(vi) On-site and off-site erosion control;

(vii) Revegetation of disturbed areas;

(viii) Location and size of culverts and/or bridges;

(ix) Fence cuts and/or cattleguards;

(x) Major cuts and fills;

(xi) Source and storage of topsoil; and

(xii) Type of surfacing materials, if any, that will be used.

(3) *Location of existing wells.* The operator must include a map and may include a geospatial database that includes all known wells, regardless of the well status (producing, abandoned, etc.), within a one-mile radius of the proposed location.

(4) *Location of existing and/or proposed production facilities.* The operator must include a map or diagram of facilities planned either on or off the well pad that shows, to the extent known or anticipated, the location of all production facilities and lines likely to be installed if the well is successfully completed for production.

(i) The map or diagram and optional geospatial database must show and differentiate between proposed and existing flow lines, overhead and buried power lines, and water lines. If facilities will be located on the well pad, the information should be consistent with the layout provided in paragraph (e)(9) of this section.

(ii) The operator must show the dimensions of the facility layouts for all new construction. This information may be used by the BLM or the FS for Right-of-Way or Special Use Authorization application information, as specified in § 3171.18.

(iii) If the operator has not developed information regarding production facilities, it may defer submission of that information until a production well is completed, in which case the operator will follow the procedures in § 3171.21. However, for purposes of the National Environmental Policy Act (NEPA) analysis, the BLM or the FS will need a reasonable estimate of the facilities to be employed.

(5) *Location and types of water supply.* Information concerning water supply, such as rivers, creeks, springs, lakes, ponds, and wells, may be shown by quarter-quarter section on a map or plat, or may be described in writing. The operator must identify the source, access route, and transportation method for all water anticipated for use in drilling the proposed well. The operator must describe any newly constructed or reconstructed access roads crossing Federal or Indian lands that are needed to haul the water as provided in paragraph (e)(2) of this section. The operator must indicate if it plans to drill a water supply well on the lease and, if so, the operator must describe the location, construction details, and expected production requirements, including a description of how water will be transported and procedures for well abandonment.

(6) *Construction materials.* The operator must state the character and intended use of all construction materials, such as sand, gravel, stone, and soil material. The proposed source must be shown on a quarter-quarter section of a map or plat or in a written description.

(7) *Methods for handling waste.* The Surface Use Plan of Operations must contain a written description of the methods and locations proposed for safe containment and disposal of each type of waste material (*e.g.,* cuttings, garbage, salts, chemicals, sewage, etc.) that results from drilling the proposed well. The narrative must include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations. The operator must describe plans for the construction and lining, if necessary, of the reserve pit.

(8) *Ancillary facilities.* The operator must identify on a map the location and construction methods and materials for all anticipated ancillary facilities such as camps, airstrips, and staging areas. The operator must stake on the ground the approximate center of proposed camps and the centerline of airstrips. If the ancillary facilities are located off-lease, depending on surface managing agency policy, the BLM or the FS may require the operator to obtain an additional authorization, such as a Right-of-Way or Special Use Authorization.

(9) *Well site layout.* A diagram of the well site layout must have an arrow indicating the north direction. Diagrams with cuts and fills must be surveyed, designed, drawn, digitized, and certified by licensed professional surveyors or engineers.

(i) The operator must submit a plat of a scale of not less than 1 inch = 50 feet showing the location and orientation of:

(A) The proposed drill pad;

(B) Reserve pit/blooie line/flare pit location;

(C) Access road entry points and their approximate location with respect to topographic features and with cross section diagrams of the drill pad; and

(D) The reserve pit showing all cuts; and fills and the relation to topography.

(ii) The plat must also include the approximate proposed location and orientation of the:

(A) Drilling rig;

(B) Dikes and ditches to be constructed; and

(C) Topsoil and/or spoil material stockpiles.

(10) *Plans for surface reclamation.* The operator must submit a plan for the surface reclamation or stabilization of all disturbed areas. This plan must

address interim (during production) reclamation for the area of the well pad not needed for production, as well as final abandonment of the well location.

(i) Such plans must include, as appropriate:

(A) Configuration of the reshaped topography;

(B) Drainage systems;

(C) Segregation of spoil materials (stockpiles);

(D) Surface disturbances;

(E) Backfill requirements;

(F) Proposals for pit/sump closures;

(G) Redistribution of topsoil;

(H) Soil treatments;

(I) Seeding or other steps to reestablish vegetation;

(J) Weed control; and

(K) Practices necessary to reclaim all disturbed areas, including any access roads and pipelines.

(ii) The operator may amend this reclamation plan at the time of abandonment. Further details for reclamation are contained in § 3171.25.

(11) *Surface ownership.* The operator must indicate (in a narrative) the surface ownership at the well location, and of all lands crossed by roads that the operator plans to construct or upgrade, including, if known, the name of the agency or owner, phone number, and address. The operator must certify that they have provided a copy of the Surface Use Plan of Operations required in this section to the private surface owner of the well site location, if applicable, or that they made a good faith effort if unable to provide the document to the surface owner.

(12) *Other information.* The operator must include other information required by applicable orders and notices (43 CFR 3162.3–1(d)(4)). When an integrated pest management program is needed for weed or insect control, the operator must coordinate plans with State or local management agencies and include the pest management program in the Surface Use Plan of Operations. The BLM also encourages the operator to submit any additional information that may be helpful in processing the application.

§ 3171.9 Bonding.

(a) Most bonding needs for oil and gas operations on Federal leases are discussed in 43 CFR part 3100, subpart 3104. The operator must obtain a bond in its own name as principal, or a bond in the name of the lessee or sublessee. If the operator uses the lessee or sublessee's bond, the operator must furnish a rider (consent of surety and principal) that includes the operator under the coverage of the bond. The operator must specify on the APD, Form 3160–3, the type of bond and bond number under which the operations will be conducted.

(1) For Indian oil and gas, the appropriate provisions at 25 CFR chapter I, subchapter I, govern bonding.

(2) Under the regulations at 43 CFR 3104.5 and 36 CFR 228.109, the BLM or the FS may require additional bond coverage for specific APDs. Other factors that the BLM or the FS may consider include:

(i) History of previous violations;

(ii) Location and depth of wells;

(iii) The total number of wells involved;

(iv) The age and production capability of the field; and

(v) Unique environmental issues.

(3) These bonds may be in addition to any statewide, nationwide, or separate lease bond already applicable to the lease. In determining the bond amount, the BLM may consider impacts of activities on both Federal and non-Federal lands required to develop the lease that impact lands, waters, and other resources off the lease.

(4) Separate bonds may be required for associated Rights-of-Way and/or Special Use Authorizations that authorize activities not covered by the approved APD.

(b) On Federal leases, operators may request a phased release of an individual lease bond. The BLM will grant this reduction after reclamation of some portion of the lease only if the operator:

(1) Has satisfied the terms and conditions in the plan for surface reclamation for that particular operation; and

(2) No longer has any down-hole liability.

(c) If appropriate, the BLM may reduce the bond in the amount requested by the operator or appropriate surface managing agency. The FS also may reduce bonds it requires (but not the BLM-required bonds). The BLM and the FS will base the amount of the bond reduction on a calculation of the sum that is sufficient to cover the remaining operations (including royalty payments) and abandonment (including reclamation) as authorized by the Surface Use Plan of Operations.

§ 3171.10 Operator certification.

(a) The operator must include its name, address, and telephone number, and the same information for its field representative, in the APD package.

(b) The following certification must carry the operator's original signature or be submitted to the BLM using the BLM's electronic reporting system:

I hereby certify that I, or someone under my direct supervision, have inspected the drill site and access route proposed herein; that I am familiar with the conditions which currently exist; that I have full knowledge of state and Federal laws applicable to this operation; that the statements made in this APD package are, to the best of my knowledge, true and correct; and that the work associated with the operations proposed herein will be performed in conformity with this APD package and the terms and conditions under which it is approved. I also certify that I, or the company I represent, am responsible for the operations conducted under this application. These statements are subject to the provisions of 18 U.S.C. 1001 for the filing of false statements.

Executed this __ day of _____, 20____.

Name _____

Position _____

Title _____

Address _____

Telephone _____

Field representative (if not above signatory)

Address (if different from above) _____

Telephone (if different from above) _____

Email (optional) _____

(c) Agents not directly employed by the operator must submit a letter from the operator authorizing that agent to act or file this application on their behalf.

§ 3171.11 Onsite inspection.

The onsite inspection must be conducted before the APD will be considered complete.

§ 3171.12 APD posting and processing.

(a) *Posting.* The BLM and the Federal surface managing agency, if other than the BLM, must provide at least 30 days public notice before the BLM may approve an APD or Master Development Plan on a Federal oil and gas lease. Posting is not required for an APD for an Indian oil and gas lease or agreement.

(1) The BLM will post information about the APD or Notice of Staking for Federal oil and gas leases to the internet and in an area of the BLM Field Office having jurisdiction that is readily accessible to the public. Posting to the internet under this provision will not be required until after March 13, 2017. If the surface is managed by a Federal agency other than the BLM, that agency also is required to post the notice for at least 30 days. This would include the BIA where the surface is held in trust but the mineral estate is federally owned. The posting is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral operations has been requested. The BLM or the FS will not post confidential information.

(2) Reposting of the proposal may be necessary if the posted location of the proposed well is:

(i) Moved to a different quarter-quarter section;

(ii) Moved more than 660 feet for lands that are not covered by a Public Land Survey; or

(iii) If the BLM or the FS determine that the move is substantial.

(b) *Processing.* The timeframes established in this paragraph apply to both individual APDs and to the multiple APDs included in Master Development Plans and to leases of Indian minerals as well as leases of Federal minerals. If there is enough information to begin processing the application, the BLM (and the FS if applicable) will process it up to the point that missing information or uncorrected deficiencies render further processing impractical or impossible.

(1) Within 10 days of receiving an application, the BLM (in consultation with the FS if the application concerns NFS lands) will notify the operator as to whether or not the application is complete. The BLM will request additional information and correction of any material submitted, if necessary, in the 10-day notification. If an onsite inspection has not been performed, the applicant will be notified that the application is not complete. Within 10 days of receiving the application, the BLM, in coordination with the operator and surface managing agency, including the private surface owner in the case of split estate minerals, will schedule a date for the onsite inspection (unless the onsite inspection has already been conducted as part of a Notice of Staking). The onsite inspection will be held as soon as practicable based on participants' schedules and weather conditions. The operator will be notified at the onsite inspection of any additional deficiencies that are discovered during the inspection. The operator has 45 days after receiving notice from the BLM to provide any additional information necessary to complete the APD, or the APD may be returned to the operator.

(2) Within 30 days after the operator has submitted a complete application, including incorporating any changes that resulted from the onsite inspection, the BLM will:

(i) Approve the application, subject to reasonable Conditions of Approval, if the appropriate requirements of the NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable law have been met and, if on NFS lands, the FS has approved the Surface Use Plan of Operations;

(ii) Notify the operator that it is deferring action on the permit; or

(iii) Deny the permit if it cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit or the FS to approve the Surface Use Plan of Operations, if applicable.

(3) The notice of deferral in paragraph (b)(2)(ii) of this section must specify:

(i) Any action the operator could take that would enable the BLM (in consultation with the FS if applicable) to issue a final decision on the application. The FS will notify the applicant of any action the applicant could take that would enable the FS to issue a final decision on the Surface Use Plan of Operations on NFS lands. Actions may include, but are not limited to, assistance with:

(A) Data gathering; and

(B) Preparing analyses and documents.

(ii) If applicable, a list of actions that the BLM or the FS need to take before making a final decision on the application, including appropriate analysis under NEPA or other applicable law and a schedule for completing these actions.

(4) The operator has 2 years from the date of the notice under paragraph (b)(3)(i) of this section to take the action specified in the notice. If the appropriate analyses required by NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable laws have been completed, the BLM (and the FS if applicable), will make a decision on the permit and the Surface Use Plan of Operations within 10 days of receiving a report from the operator addressing all of the issues or actions specified in the notice under paragraph (b)(3)(i) of this section and certifying that all required actions have been taken. If the operator has not completed the actions specified in the notice within 2 years from the operator's receipt of the notice under paragraph (b)(3)(i), the BLM will deny the permit.

(5) For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to FS appeal procedures. The BLM cannot approve an APD until the appeal of the Surface Use Plan of Operations is resolved.

§ 3171.13 Approval of APDs.

(a) The BLM has the lead responsibility for completing the environmental review process, except in the case of NFS lands.

(1) The BLM cannot approve an APD or Master Development Plan until the requirements of certain other laws and regulations including NEPA, the National Historic Preservation Act, and the Endangered Species Act have been met. The BLM must document that the needed reviews have been adequately conducted. In some cases, operators conduct these reviews, but the BLM remains responsible for their scope and content and makes its own evaluation of the environmental issues, as required by 40 CFR 1506.5(b).

(2) The approved APD will contain Conditions of Approval that reflect necessary mitigation measures. In accordance with 43 CFR 3101.1–2 and 36 CFR 228.107, the BLM or the FS may require reasonable mitigation measures to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights. The BLM will incorporate any mitigation requirements, including Best Management Practices, identified through the APD review and appropriate NEPA and related analyses, as Conditions of Approval to the APD.

(3) The BLM will establish the terms and Conditions of Approval for any associated Right-of-Way when the application is approved.

(b) For NFS lands, the FS will establish the terms and Conditions of Approval for both the Surface Use Plan of Operations and any associated Surface Use Authorization. On NFS lands the FS has principal responsibility for compliance with NEPA, the National Historic Preservation Act, and the Endangered Species Act, but the BLM should be a cooperating or co-lead agency for this purpose and adopt the analysis as the basis for its decision. After the FS notifies the BLM it has approved a Surface Use Plan of Operations on NFS lands, the BLM must approve the APD before the operator may begin any surface-disturbing activity.

(c) On Indian lands, BIA has responsibility for approving Rights-of-Way.

(d) In the case of Indian lands, the BLM may be a cooperating or co-lead agency for NEPA compliance or may adopt the NEPA analysis prepared by the BIA (516 Department of the Interior Manual (DM) 3).

§ 3171.14 Valid period of approved APD.

(a) An APD approval is valid for 2 years from the date that it is approved, or until lease expiration, whichever occurs first. If the operator submits a written request before the expiration of the original approval, the BLM, in coordination with the FS, as appropriate may extend the APD's validity for up to 2 additional years.

(b) The operator is responsible for reclaiming any surface disturbance that resulted from its actions, even if a well was not drilled.

§ 3171.15 Master Development Plans.

(a) An operator may elect to submit a Master Development Plan addressing two or more APDs that share a common drilling plan, Surface Use Plan of Operations, and plans for future development and production. Submitting a Master Development Plan facilitates early planning, orderly development, and the cumulative effects analysis for all the APDs expected to be drilled by an operator in a developing field. Approval of a Master Development Plan serves as approval of all of the APDs submitted with the Plan. Processing of a Master Development Plan follows the procedures in § 3171.12(b).

(b) After the Master Development Plan is approved, subsequent APDs can reference the Master Development Plan and be approved using the NEPA analysis for the Master Development Plan, absent substantial deviation from the Master Development Plan previously analyzed or significant new information relevant to environmental effects. Therefore, an approved Master Development Plan results in timelier processing of subsequent APDs. Each subsequent proposed well must have a survey plat and an APD (Form 3160–3) that references the Master Development Plan and any specific variations for that well.

§ 3171.16 Waiver from electronic submission requirements.

The operator may request a waiver from the electronic submission requirement for an APD or Notice of Staking if compliance would cause hardship or the operator is unable to file these documents electronically. In the request, the operator must explain the reason(s) that prevent its use of the electronic system, plans for complying with the electronic submission requirement, and a timeframe for compliance. If the request applies to a particular set of APDs or Notices of Staking, then the request must identify the APDs or Notices of Staking to which the waiver applies. The waiver request is subject to BLM approval. If the request does not specify a particular set of APDs or Notices of Staking, then the waiver will apply to all submissions made by the operator during the compliance timeframe included as part of the BLM's waiver approval. The BLM will not consider an APD or Notice of Staking that the operator did not submit through the electronic system, unless the BLM approves a waiver.

§ 3171.17 General operating requirements—operator responsibilities.

(a) In the APD package, the operator must describe or show, as set forth in this subpart, the procedures, equipment, and materials to be used in the proposed operations. The operator must conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform with currently available technology and practice. While appropriate compliance with certain statutes, such as NEPA, the National Historic Preservation Act, and the Endangered Species Act, are Federal responsibilities, the operator may choose to conduct inventories and provide documentation to assist the BLM or the surface managing agency to meet the requirements of this paragraph (a). The inventories and other work may require entering the lease and adjacent lands before approval of the APD. As in staking and surveying, the operator should make a good faith effort to contact the surface managing agency or surface owner before entry upon the lands for these purposes.

(b) The operator cannot commence either drilling operations or preliminary construction activities before the BLM's approval of the APD. A copy of the approved APD and any Conditions of Approval must be available for review at the drill site. Operators are responsible for their contractor and subcontractor's compliance with the requirements of the approved APD and/or Surface Use Plan of Operations. Drilling without approval or causing surface disturbance without approval is a violation of 43 CFR 3162.3–1(c) and is subject to a monetary assessment under 43 CFR 3163.1(b)(2).

(c) The operator must comply with the provisions of the approved APD and applicable laws, regulations, and Notices to Lessees, including, but not limited to, those that address the issues described in paragraphs (c)(1) through (5) of this section.

(1) *Cultural and historic resources.* If historic or archaeological materials are uncovered during construction, the operator must immediately stop work that might further disturb such materials, contact the BLM and if appropriate, the FS or other surface managing agency. The BLM or the FS will inform the operator within 7 days after the operator contacted the BLM as to whether the materials appear eligible for listing on the National Register of Historic Places.

(i) If the operator decides to relocate operations to avoid further costs to mitigate the site, the operator remains responsible for recording the location of any historic or archaeological resource that are discovered as a result of the operator's actions. The operator also is responsible for stabilizing the exposed cultural material if the operator created an unstable condition that must be addressed immediately. The BLM, the FS, or other appropriate surface managing agency will assume responsibility for evaluation and determination of significance related to the historic or archaeological site.

(ii) If the operator does not relocate operations, the operator is responsible for mitigation and stabilization costs and the BLM, the FS, or appropriate surface managing agency will provide technical and procedural guidelines for conducting mitigation. The operator may resume construction operations when the BLM or the FS verifies that the operator has completed the required mitigation.

(iii) Relocation of activities may subject the proposal to additional environmental review. Therefore, if the presence of such sites is suspected, the operator may want to submit alternate locations for advance approval before starting construction.

(2) *Endangered Species Act.* To comply with the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations in 50 CFR chapter I, the operator must conduct all operations such that all operations avoid a ''take'' of listed or proposed threatened or endangered species and their critical habitats.

(3) *Surface protection.* Except as otherwise provided in an approved Surface Use Plan of Operations, the operator must not conduct operations in areas subject to mass soil movement, riparian areas, floodplains, lakeshores, and/or wetlands. The operator also must take measures to minimize or prevent erosion and sediment production. Such measures may include, but are not limited to:

(i) Avoiding steep slopes and excessive land clearing when siting structures, facilities, and other improvements; and

(ii) Temporarily suspending operations when frozen ground, thawing, or other weather-related conditions would cause otherwise avoidable or excessive impacts.

(4) *Safety measures.* The operator must maintain structures, facilities, improvements, and equipment in a safe condition in accordance with the approved APD. The operator must also take appropriate measures as specified in Notices to Lessees to protect the

public from any hazardous conditions resulting from operations.

(i) In the event of an emergency, the operator may take immediate action without prior surface managing agency approval to safeguard life or to prevent significant environmental degradation. The BLM or the FS must receive notification of the emergency situation and the remedial action taken by the operator as soon as possible, but not later than 24 hours after the emergency occurred. If the emergency only affected drilling operations and had no surface impacts, only the BLM must be notified.

(ii) If the emergency involved surface resources on other surface managing agency lands, the operator should also notify the surface managing agency and private surface owner within 24 hours.

(iii) Upon conclusion of the emergency, the BLM or the FS, where appropriate, will review the incident and take appropriate action.

(5) *Completion reports.* Within 30 days after the well completion, the lessee or operator must submit to the BLM two copies of a completed Form 3160–4, Well Completion or Recompletion Report and Log. Well logs may be submitted to the BLM in an electronic format such as ''.LAS'' format. Surface and bottom-hole locations must be in latitude and longitude.

§ 3171.18 Rights-of-Way and Special Use Authorizations.

(a) The BLM or the FS will notify the operator of any additional Rights-of-Way, Special Use Authorizations, licenses, or other permits that are needed for roads and support facilities for drilling or off-lease access, as appropriate. This notification will normally occur at the time the operator submits the APD or Notice of Staking package, or Sundry Notice, or during the onsite inspection.

(b) The BLM or the FS, as appropriate, will approve or accept on-lease activities that are associated with actions proposed in the APD or Sundry Notice and that will occur on the lease as part of the APD or Sundry Notice. These actions do not require a Right-of-Way or Special Use Authorization. For pipeline Rights-of-Way crossing lands under the jurisdiction of two or more Federal surface managing agencies, except lands in the National Park Service or Indian lands, applications should be submitted to the BLM. Refer to 43 CFR parts 2800 and 2880 for guidance on BLM Rights-of-Way and 36 CFR part 251 for guidance on FS Special Use Authorizations.

(1) *Rights-of-Way (BLM).* (i) For BLM lands, the APD package may serve as the supporting document for the Right-of-Way application in lieu of a Right-of-Way plan of development.

(ii) Any additional information specified in 43 CFR parts 2800 and 2880 will be required in order to process the Right- of-Way. The BLM will notify the operator within 10 days of receipt of a Notice of Staking, APD, or other notification if any parts of the project require a Right- of-Way. If a Right-of-Way is needed, the information required from the operator to approve the Right-of-Way may be submitted by the operator with the APD package if the Notice of Staking option has been used.

(2) *Special Use Authorizations (FS) (36 CFR part 251, subpart B).* When a Special Use Authorization is required, the Surface Use Plan of Operations may serve as the application for the Special Use Authorization if the facility for which a Special Use Authorization is required is adequately described (see 36 CFR 251.54(d)(ii)). Conditions regulating the authorized use may be imposed to protect the public interest, to ensure compatibility with other NFS lands programs and activities consistent with the Forest Land and Resources Management Plan. A Special Use Authorization, when related to an APD, will include terms and conditions (36 CFR 251.56) and may require a specific reclamation plan or adopt applicable parts of the Surface Use Plan of Operations by reference.

§ 3171.19 Operating on lands with non-Federal surface and Federal oil and gas.

(a) The operator must submit the name, address, and phone number of the surface owner, if known, in its APD. The BLM will invite the surface owner to the onsite inspection to assure that their concerns are considered. As provided in the oil and gas lease, the BLM may request that the applicant conduct surveys or otherwise provide information needed for the BLM's National Historic Preservation Act consultation with the State Historic Preservation Officer or Indian tribe or its Endangered Species Act consultation with the relevant fisheries agency. The Federal mineral lessee has the right to enter the property for the purpose set out in the preceding sentence, since it is a necessary prerequisite to development of the dominant mineral estate. Nevertheless, the lessee or operator should seek to reach agreement with the surface owner about the time and method by which any survey would be conducted.

(b) Likewise, in the case of actual oil and gas operations, the operator must make a good faith effort to notify the private surface owner before entry and make a good faith effort to obtain a Surface Access Agreement from the surface owner. This section also applies to lands with Indian trust surface and Federal minerals. In these cases, the operator must make a good faith effort to obtain surface access agreement with the tribe in the case of tribally owned surface, otherwise with the majority of the Indian surface owners who can be located with the assistance and concurrence of the BIA. The Surface Access Agreement may include terms or conditions of use, be a waiver, or an agreement for compensation. The operator must certify to the BLM that:

(1) It made a good faith effort to notify the surface owner before entry; and

(2) That an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed. If no agreement was reached with the surface owner, the operator must submit an adequate bond (minimum of $1,000) to the BLM for the benefit of the surface owner sufficient to:

(i) Pay for loss or damages; or

(ii) As otherwise required by the specific statutory authority under which the surface was patented and the terms of the lease.

(c) Surface owners have the right to appeal the sufficiency of the bond. Before the approval of the APD, the BLM will make a good faith effort to contact the surface owner to assure that they understand their rights to appeal.

(d) The BLM must comply with NEPA, the National Historic Preservation Act, the Endangered Species Act, and related Federal statutes when authorizing lease operations on split estate lands where the surface is not federally owned and the oil and gas is Federal. For split estate lands within FS administrative boundaries, the BLM has the lead responsibility, unless there is a local BLM/FS agreement that gives the FS this responsibility.

(e) The operator must make a good faith effort to provide a copy of their Surface Use Plan of Operations to the surface owner. After the APD is approved the operator must make a good faith effort to provide a copy of the Conditions of Approval to the surface owner. The APD approval is not contingent upon delivery of a copy of the Conditions of Approval to the surface owner.

§ 3171.20 Leases for Indian oil and gas.

(a) *Approval of operations.* The BLM will process APDs, Master Development Plans, and Sundry Notices on Indian tribal and allotted oil and gas leases, and Indian Mineral Development Act mineral agreements in a manner similar to Federal leases. For processing such

applications, the BLM considers the BIA to be the surface managing agency. Operators are responsible for obtaining any special use or access permits from appropriate BIA and, where applicable, tribal offices. The BLM is not required to post for public inspection APDs for minerals subject to Indian oil and gas leases or agreements.

(b) *Surface use.* Where the wellsite and/or access road is proposed on Indian lands with a different beneficial owner than the minerals, the operator is responsible for entering into a surface use agreement with the Indian tribe or the individual Indian surface owner, subject to BIA approval. This agreement must specify the requirements for protection of surface resources, mitigation, and reclamation of disturbed areas. The BIA, the Indian surface owner, and the BLM, pursuant to 25 CFR 211.4, 212.4 and 225.4, will develop the Conditions of Approval. If the operator is unable to obtain a Surface Access Agreement, it may provide a bond for the benefit of the surface owner(s) (see § 3171.19).

§ 3171.21 Subsequent operations and Sundry Notices.

Subsequent operations must follow 43 CFR part 3160, applicable lease stipulations, and APD Conditions of Approval. The operator must file the Sundry Notice in the BLM Field Office having jurisdiction over the lands described in the notice or the operator may file it using the BLM's electronic commerce system.

(a) *Surface disturbing operations.* (1) Lessees and operators must submit for BLM or FS approval a request on Form 3160–5 before:

(i) Undertaking any subsequent new construction outside the approved area of operations; or

(ii) Reconstructing or altering existing facilities including, but not limited to, roads, emergency pits, firewalls, flowlines, or other production facilities on any lease that will result in additional surface disturbance.

(2) If, at the time the original APD was filed, the lessee or operator elected to defer submitting information under § 3171.8(e)(4)(iii), the lessee or operator must supply this information before construction and installation of the facilities. The BLM, in consultation with any other involved surface managing agency, may require a field inspection before approving the proposal. The lessee or operator may not begin construction until the BLM approves the proposed plan in writing.

(3) The operator must certify on Form 3160–5 that they have made a good faith effort to provide a copy of any proposal involving new surface disturbance to the private surface owner in the case of split estate.

(b) *Emergency repairs.* Lessees or operators may undertake emergency repairs without prior approval if they promptly notify the BLM. Lessees or operators must submit sufficient information to the BLM or the FS to permit a proper evaluation of any:

(1) Resulting surface disturbing activities; or

(2) Planned accommodations necessary to mitigate potential adverse environmental effects.

§ 3171.22 Well conversions.

(a) *Conversion to an injection well.* When subsequent operations will result in a well being converted to a Class II injection well (*i.e.,* for disposal of produced water, oil and gas production enhancement, or underground storage of hydrocarbons), the operator must file with the appropriate BLM office a Sundry Notice, Notice of Intent to Convert to Injection on Form 3160–5. The BLM and the surface managing agency, if applicable, will review the information to ensure its technical and administrative adequacy. Following the review, the BLM, in consultation with the surface managing agency, where applicable, will decide upon the approval or disapproval of the application based upon relevant laws and regulations and the circumstances (*e.g.,* the well used for lease or non-lease operations, surface ownership, and protection of subsurface mineral ownership). The BLM will determine if a Right-of-Way or Special Use Authorization and additional bonding are necessary and notify the operator.

(b) *Conversion to a water supply well.* In cases where the surface managing agency or private surface owner desires to acquire an oil and gas well and convert it to a water supply well or acquire a water supply well that was drilled by the operator to support lease operations, the surface managing agency or private surface owner must inform the appropriate BLM office of its intent before the approval of the APD in the case of a dry hole and no later than the time a Notice of Intent to Abandon is submitted for a depleted production well. The operator must abandon the well according to BLM instructions, and must complete the surface cleanup and reclamation, in conjunction with the approved APD, Surface Use Plan of Operations, or Notice of Intent to Abandon, if the BLM or the FS require it. The surface managing agency or private surface owner must reach agreement with the operator as to the satisfactory completion of reclamation operations before the BLM will approve any abandonment or reclamation. The BLM approval of the partial abandonment under this section, completion of any required reclamation operations, and the signed release agreement will relieve the operator of further obligation for the well. If the surface managing agency or private surface owner acquires the well for water use purposes, the party acquiring the well assumes liability for the well.

§ 3171.23 Variances.

The operator may make a written request to the agency with jurisdiction to request a variance from this subpart. A request for a variance must explain the reason the variance is needed and demonstrate how the operator will satisfy the intent of this subpart. The operator may include the request in the APD package. A variance from the requirements of this subpart does not constitute a variance to provisions of other regulations, laws, or orders. When the BLM is the decision maker on a request for a variance, the decision whether to grant or deny the variance request is entirely within the BLM's discretion. The decision on a variance request is not subject to administrative appeals either to the State Director or pursuant to 43 CFR part 4.

§ 3171.24 Waivers, exceptions, or modifications.

(a) An operator may also request that the BLM waive (permanently remove), except (case-by-case exemption), or modify (permanently change) a lease stipulation for a Federal lease. In the case of Federal leases, a request to waive, except, or modify a stipulation should also include information demonstrating that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or that the proposed operation would not cause unacceptable impacts.

(b) When the waiver, exception, or modification is substantial, the proposed waiver, exception, or modification is subject to public review for 30 days. Prior to such public review, the BLM, and when applicable the FS, will post it in their local Field Office and, when possible, electronically on the internet. When the request is included in the Notice of Staking or APD, the request will be included as part of the application posting under § 3171.5(c). Prior to granting a waiver, exception, or modification, the BLM will obtain the concurrence or approval of the FS or Federal surface managing agency. Decisions on such waivers,

exceptions, or modifications are subject to appeal pursuant to 43 CFR part 4.

(c) After drilling has commenced, the BLM and the FS may consider verbal requests for waivers, exceptions, or modifications. However, the operator must submit a written notice within 7 days after the verbal request. The BLM and the FS will confirm in writing any verbal approval. Decisions on waivers, exceptions, or modifications submitted after drilling has commenced are final for the Department of the Interior and not subject to administrative review by the State Director or appeal pursuant to 43 CFR part 4.

§ 3171.25 Abandonment.

In accordance with the requirements of 43 CFR 3162.3–4, before starting abandonment operations the operator must submit a Notice of Intent to Abandon on Sundry Notices and Reports on Wells, Form 3160–5. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Notice of Intent to Abandon.

(a) *Plugging.* The operator must obtain BLM approval for the plugging of the well by submitting a Notice of Intent to Abandon. In the case of dry holes, drilling failures, and in emergency situations, verbal approval for plugging may be obtained from the BLM, with the Notice of Intent to Abandon promptly submitted as written documentation. Within 30 days following completion of well plugging, the operator must file with the BLM a Subsequent Report of Plug and Abandon, using Sundry Notices and Reports on Wells, Form 3160–5. For depleted production wells, the operator must submit a Notice of Intent to Abandon and obtain the BLM's approval before plugging.

(b) *Reclamation.* Plans for surface reclamation are a part of the Surface Use Plan of Operations, as specified in § 3171.8(e)(10), and must be designed to return the disturbed area to productive use and to meet the objectives of the land and resource management plan. If the operator proposes to modify the plans for surface reclamation approved at the APD stage, the operator must attach these modifications to the Subsequent Report of Plug and Abandon using Sundry Notices and Reports on Wells, Form 3160–5.

(1) For wells not having an approved plan for surface reclamation, operators must submit to the BLM a proposal describing the procedures to be followed for complete abandonment, including a map showing the disturbed area and roads to be reclaimed. The BLM will forward the request to the FS or other surface managing agency. If applicable, the private surface owner will be notified and their views will be carefully considered.

(2) Earthwork for interim and final reclamation must be completed within 6 months of well completion or well plugging (weather permitting). All pads, pits, and roads must be reclaimed to a satisfactorily revegetated, safe, and stable condition, unless an agreement is made with the landowner or surface managing agency to keep the road or pad in place. Pits containing fluid must not be breached (cut) and pit fluids must be removed or solidified before backfilling. Pits may be allowed to air dry subject to BLM or FS approval, but the use of chemicals to aid in fluid evaporation, stabilization, or solidification must have prior BLM or FS approval. Seeding or other activities to reestablish vegetation must be completed within the time period approved by the BLM or the FS.

(3) Upon completion of reclamation operations, the lessee or operator must notify the BLM or the FS using Form 3160–5, Final Abandonment Notice, when the location is ready for inspection. Final abandonment will not be approved until the surface reclamation work required in the Surface Use Plan of Operations or Subsequent Report of Plug and Abandon has been completed to the satisfaction of the BLM or the FS and surface managing agency, if appropriate.

§ 3171.26 Appeal procedures.

(a) Complete information concerning the review and appeal processes for BLM actions is contained in 43 CFR parts 4 and 3160, subpart 3165. Incorporation of a FS approved Surface Use Plan of Operations into the approval of an APD or a Master Development Plan is not subject to protest to the BLM or appeal to the Interior Board of Land Appeals.

(b) The FS's decisions approving use of NFS lands may be subject to agency appeal procedures, in accordance with 36 CFR part 215 or 251.

(c) Decisions governing Surface Use Plan of Operations and Special Use Authorization approvals on NFS lands that involve analysis, documentation, and other requirements of the NEPA may be subject to agency appeal procedures, under 36 CFR part 215.

(d) The FS's regulations at 36 CFR part 251 govern appeals by an operator of written FS decisions related to Conditions of Approval or administration of Surface Use Plans of Operations or Special Use Authorizations to occupy and use NFS lands.

(e) The operator may appeal decisions of the BIA under 25 CFR part 2.

Appendix A to Subpart 3171—Sample Format for Notice of Staking

(Not to be used in place of Application for Permit to Drill or Reenter Form 3160–3)

1. Oil Well
   Gas Well
   Other (Specify)
2. Name, Address, and Telephone of Operator
3. Name and Telephone of Specific Contact Person
4. Surface Location of Well

Attach:

   (a) Sketch showing road entry onto pad, pad dimensions, and reserve pit
   (b) Topographical or other acceptable map (*e.g.,* a USGS 7–½″ Quadrangle) showing location, access road, and lease boundaries

5. Lease Number
6. If Indian, Allottee or Tribe Name
7. Unit Agreement Name
8. Well Name and Number
9. American Petroleum Institute (API) Well Number (if available)
10. Field Name or Wildcat
11. Section, Township, Range, Meridian; or Block and Survey; or Area
12. County, Parish, or Borough
13. State
14. Name and Depth of Formation Objective(s)
15. Estimated Well Depth
16. For directional or horizontal wells, anticipated bottom-hole location.
17. Additional Information (as appropriate; include surface owner's name, address and, if known, telephone).
18. Signed _____
    Title _____
    Date _____

Note: When the Bureau of Land Management or the Forest Service, as appropriate, receives this Notice, the agency will schedule the date of the onsite inspection. You must stake the location and flag the access road before the onsite inspection. Operators should consider the following before the onsite inspection and incorporate these considerations into the Notice of Staking Option, as appropriate:

(a) H_2S Potential;
(b) Cultural Resources (Archeology); and
(c) Federal Right-of-Way or Special Use Permit.

Subpart 3172—Drilling Operations on Federal and Indian Oil and Gas Leases

Sec.

§ 3172.1 Authority.

(a) This subpart is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160.

(b) Specific authority for the provisions contained in this subpart is found at: 43 CFR 3162.3–1, 3162.3–4, 3162.4–1, 3162.4–3, 3162.5–1, 3162.5–2 (see paragraph (a)), and 3162.5–3; and 43 CFR part 3160, subpart 3163.

§ 3172.2 Purpose.

This subpart details the Bureau's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling. The purpose also is to identify the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner.

§ 3172.3 Scope.

This subpart is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases.

§ 3172.4 General.

(a) If an operator chooses to use higher rated equipment than that authorized in the Application for Permit to Drill (APD), testing procedures shall apply to the approved working pressures, not the upgraded higher working pressures.

(b) Some situations may exist either on a well-by-well or field-wide basis whereby it is commonly accepted practice to vary a particular minimum standard(s) established in this subpart. This situation may be resolved by requesting a variance (see § 3172.13), by the inclusion of a stipulation to the APD, or by the issuance of a Notice to Lessees and Operators (NTL) by the appropriate BLM office.

(c) When a violation is discovered, and if it does not cause or threaten immediate substantial and adverse impact on public health and safety, the environment, production accountability or royalty income, it will be classified as minor. The violation may be reissued as a major violation if not corrected during the abatement period and continued drilling has changed the adverse impact of the violation so that it meets the specific definition of a major violation.

(d) This subpart is not intended to circumvent the reporting requirements or compliance aspects that may be stated elsewhere in existing NTLs, regulations, etc. A lessee's compliance with the requirements of the regulations in this subpart shall not relieve the lessee of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.5–1(c). Lessees should give special attention to the automatic assessment provisions in 43 CFR 3163.1(b).

(e) This subpart is based upon the assumption that operations have been approved in accordance with 43 CFR part 3160 and subpart 3171 of this part. Failure to obtain approval prior to commencement of drilling or related operations shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(2).

§ 3172.5 Definitions.

As used in this subpart, the term:

2M, 3M, 5M, 10M, and *15M* mean the pressure ratings used for equipment with a working pressure rating of the equivalent thousand pounds per square inch (psi) (2M=2,000 psi, 3M=3,000 psi, etc.).

Abnormal pressure zone means a zone that has either pressure above or below the normal gradient for an area and/or depth.

Bleed line means the vent line that bypasses the chokes in the choke manifold system; also referred to as panic line.

Blooie line means a discharge line used in conjunction with a rotating head.

Drilling spool means a connection component with both ends either flanged or hubbed, with an internal diameter at least equal to the bore of the casing, and with smaller side outlets for connecting auxiliary lines.

Exploratory well means any well drilled beyond the known producing limits of a pool.

Fill-up line means the line used to fill the hole when the drill pipe is being removed from the well. It is usually connected to a 2-inch collar that is welded into a drilling nipple.

Flare line means a line used to carry gas away from the rig to be burned at a safer location. The gas comes from the degasser, gas buster, separator, or when drill stem testing, directly from the drill pipe.

Functionally operated means activating equipment without subjecting it to well-bore pressure.

Isolating means using cement to protect, separate, or segregate usable water and mineral resources.

Lease means any contract, profit-share agreement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (see 43 CFR 3160.0–5).

Lessee means a person holding record title in a lease issued by the United States (see 43 CFR 3160.0–5).

Make-up water means water that is used in mixing slurry for cement jobs and plugging operations and is compatible with the cement constituents being used.

Manual locking device means any manually activated device, such as a hand wheel, etc., that is used for the purpose of locking the preventer in the closed position.

Mud for plugging purposes means a slurry of bentonite or similar flocculent/viscosifier, water, and additives needed to achieve the desired weight and consistency to stabilize the hole.

Mudding up means adding materials and chemicals to water to control the viscosity, weight, and filtrate loss of the circulating system.

Operating rights owner (or owner) means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

Operational means capable of functioning as designed and installed without undue force or further modification.

Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer his/her responsibility for the operations conducted in the leased lands or a portion thereof.

Precharge pressure means the nitrogen pressure remaining in the accumulator after all the hydraulic fluid has been expelled from beneath the movable barrier.

Prompt correction means immediate correction of violations, with drilling suspended if required in the discretion of the authorized officer.

Prospectively valuable deposit of minerals means any deposit of minerals that the authorized officer determines to have characteristics of quantity and quality that warrant its protection.

Tagging the plug means running in the hole with a string of tubing or drill

pipe and placing sufficient weight on the plug to ensure its integrity. Other methods of tagging the plug may be approved by the authorized officer.

Targeted tee or turn means a fitting used in pressure piping in which a bull plug or blind flange of the same pressure rating as the rest of the approved system is installed at the end of a tee or cross, opposite the fluid entry arm, to change the direction of flow and to reduce erosion.

Usable water means generally those waters containing up to 10,000 parts per million (ppm) of total dissolved solids.

Weep hole means a small hole that allows pressure to bleed off through the metal plate used in covering well bores after abandonment operations.

§ 3172.6 Well control.

(a) *Requirements.* Blowout preventer (BOP) and related equipment (BOPE) shall be installed, used, maintained, and tested in a manner necessary to assure well control and shall be in place and operational prior to drilling the surface casing shoe unless otherwise approved by the APD. Commencement of drilling without the approved BOPE installed, unless otherwise approved, shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(1). The BOP and related control equipment shall be suitable for operations in those areas which are subject to sub-freezing conditions. The BOPE shall be based on known or anticipated sub-surface pressures, geologic conditions, accepted engineering practice, and surface environment. Item number 7 of the 8 point plan in the APD specifically addresses expected pressures. The working pressure of all BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft.

(b) *Violation classifications.* The gravity of the violation for many of the well control minimum standards listed in paragraphs (b)(1) through (9) of this section are shown as minor. However, very short abatement periods in this subpart are often specified in recognition that by continuing to drill, the violation which was originally determined to be of a minor nature may cause or threaten immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income, which would require it reclassification as a major violation.

(1) *Minimum standards and enforcement provisions for well control equipment.* (i) A well control device shall be installed at the surface that is capable of complete closure of the well bore. This device shall be closed whenever the well is unattended.

TABLE 1 TO § 3172.6(b)(1)(i)

Violation	Corrective action	Normal abatement period
Major	Install the equipment as specified	Prompt correction required.

(ii) For 2M system:

(A) Annular preventer, double ram, or two rams with one being blind and one being a pipe ram (major);

(B) Kill line (2 inch minimum);

(C) 1 kill line valve (2 inch minimum);

(D) 1 choke line valve;

(E) 2 chokes (refer to diagram in appendix A to this subpart);

(F) Upper kelly cock valve with handle available;

(G) Safety valve and subs to fit all drill strings in use;

(H) Pressure gauge on choke manifold;

(I) 2 inch minimum choke line; and

(J) Fill-up line above the uppermost preventer.

TABLE 2 TO § 3172.6(b)(1)(ii)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.
Major (as indicated)	Install the equipment as specified	Prompt correction required.

(iii) For 3M system:

(A) Annular preventers (major);

(B) Double ram with blind rams and pipe rams (major);

(C) Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) (major);

(D) Kill line (2 inch minimum);

(E) A minimum of 2 choke line valves (3 inch minimum) (major);

(F) 3 inch diameter choke line;

(G) 2 kill line valves, one of which shall be a check valve (2 inch minimum) (major);

(H) 2 chokes (refer to diagram in appendix A to this subpart);

(I) Pressure gauge on choke manifold;

(J) Upper kelly cock valve with handle available;

(K) Safety valve and subs to fit all drill string connections in use;

(L) All BOPE connections subjected to well pressure shall be flanged, welded, or clamped (major); and

(M) Fill-up line above the uppermost preventer.

TABLE 3 TO § 3172.6(b)(1)(iii)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.
Major (as indicated)	Install the equipment as specified	Prompt correction required.

(iv) For 5M system:

(A) Annular preventer (major);

(B) Pipe ram, blind ram, and, if conditions warrant, as specified by the authorized officer, another pipe ram shall also be required (major);

(C) A second pipe ram preventer or variable bore pipe ram preventer shall be used with a tapered drill string;

(D) Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) (major);

(E) 3 inch diameter choke line;

(F) 2 choke line valves (3 inch minimum) (major);

(G) Kill line (2 inch minimum);

(H) 2 chokes with 1 remotely controlled from rig floor (refer to diagram in appendix A to this subpart);

(I) 2 kill line valves and a check valve (2 inch minimum) (major);

(J) Upper kelly cock valve with a handle available;

(K) When the expected pressures approach working pressure of the system, 1 remote kill line tested to stack pressure (which shall run to the outer edge of the substructure and be unobstructed);

(L) Lower kelly cock valve with handle available;

(M) Safety valve(s) and subs to fit all drill string connections in use;

(N) Inside BOP or float sub available;

(O) Pressure gauge on choke manifold;

(P) All BOPE connections subjected to well pressure shall be flanged, welded, or clamped (major); and

(Q) Fill-up line above the uppermost preventer.

TABLE 4 TO § 3172.6(b)(1)(iv)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.
Major (as indicated)	Install the equipment as specified	Prompt correction required.

(v) For 10M & 15M system:

(A) Annular preventer (major);

(B) 2 pipe rams (major);

(C) Blind rams (major);

(D) Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) (major):

(E) 3 inch choke line (major);

(F) 2 kill line valves (2 inch minimum) and check valve (major):

(G) Remote kill line (2 inch minimum) shall run to the outer edge of the substructure and be unobstructed;

(H) Manual and hydraulic choke line valves (3 inch minimum) (major);

(I) 3 chokes, 1 being remotely controlled (refer to diagram in appendix A to this subpart);

(J) Pressure gauge on choke manifold;

(K) Upper kelly cock valve with handle available;

(L) Lower kelly cock valve with handle available;

(M) Safety valves and subs to fit all drill string connections in use;

(N) Inside BOP or float sub available;

(O) Wear ring in casing head;

(P) All BOPE connections subjected to well pressure shall be flanged, welded, or clamped (major); and

(Q) Fill-up line installed above the uppermost preventer.

TABLE 5 TO § 3172.6(b)(1)(v)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.
Major (as indicated)	Install the equipment as specified	Prompt correction required.

(vi) If repair or replacement of the BOPE is required after testing, this work shall be performed prior to drilling out the casing shoe.

TABLE 6 TO § 3172.6(b)(1)(vi)

Violation	Corrective action	Normal abatement period
Major	Install the equipment as specified	Prompt correction required.

(vii) When the BOPE cannot function to secure the hole, the hole shall be secured using cement, retrievable packer or a bridge plug packer, bridge plug, or other acceptable approved method to assure safe well conditions.

TABLE 7 TO § 3172.6(b)(1)(vii)

Violation	Corrective action	Normal abatement period
Major	Install the equipment as specified	Prompt correction required.

(2) *Minimum standards and enforcement provisions for choke manifold equipment.* (i) All choke lines shall be straight lines unless turns use tee blocks or are targeted with running tees, and shall be anchored to prevent whip and reduce vibration.

TABLE 8 TO § 3172.6(b)(2)(i)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.

(ii) Choke manifold equipment configuration shall be functionally equivalent to the appropriate example diagram shown in appendix A of this subpart. The configuration of the chokes may vary.

TABLE 9 TO § 3172.6(b)(2)(ii)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	Prompt correction required.

(iii) All valves (except chokes) in the kill line, choke manifold, and choke line shall be a type that does not restrict the flow (full opening) and that allows a straight through flow (same enforcement as paragraph (b)(2)(ii) of this section).

(iv) Pressure gauges in the well control system shall be a type designed for drilling fluid service (same enforcement as paragraph (b)(2)(ii) of this section).

(3) *Minimum standards and enforcement provisions for pressure accumulator system.* (i) 2M system—accumulator shall have sufficient capacity to close all BOP's and retain 200 psi above precharge. Nitrogen bottles that meet manufacturer's specifications may be used as the backup to the required independent power source.

TABLE 10 TO § 3172.6(b)(3)(i)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.

(ii) 3M system—accumulator shall have sufficient capacity to open the hydraulically controlled choke line valve (if so equipped), close all rams plus the annual preventer, and retain a minimum of 200 psi above precharge on the closing manifold without the use of the closing unit pumps. This is a minimum requirement. The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level of the reservoir shall be maintained at the manufacturer's recommendations. The 3M system shall have 2 independent power sources to close the preventers. Nitrogen bottles (3 minimum) may be 1 of the independent power sources and, if so, shall maintain a charge equal to the manufacturer's specifications.

TABLE 11 TO § 3172.6(b)(3)(ii)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.

(iii) 5M and higher system—accumulator shall have sufficient capacity to open the hydraulically controlled gate valve (if so equipped) and close all rams plus the annular preventer (for 3 ram systems add a 50 percent safety factor to compensate for any fluid loss in the control system or preventers) and retain a minimum pressure of 200 psi above precharge on the closing manifold without use of the closing unit pumps. The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level of the reservoir shall be maintained at the manufacturer's recommendations. Two independent sources of power shall be available for powering the closing unit pumps. Sufficient nitrogen bottles are suitable as a backup power source only, and shall be recharged when the pressure falls below manufacturer's specifications.

TABLE 12 TO § 3172.6(b)(3)(iii)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.

(4) *Minimum standards and enforcement provisions for accumulator precharge pressure test.* This test shall be conducted prior to connecting the closing unit to the BOP stack and at least once every 6 months. The accumulator pressure shall be corrected if the measured precharge pressure is found to be above or below the maximum or minimum limit specified in table 13 to this paragraph (b)(4) (only nitrogen gas may be used to precharge):

TABLE 13 TO § 3172.6(b)(4)

Accumulator working pressure rating (psi)	Minimum acceptable operating pressure (psi)	Desired precharge pressure (psi)	Maximum acceptable precharge pressure (psi)	Minimum acceptable precharge pressure (psi)
1,500	1,500	750	800	700
2,000	2,000	1,000	1,100	900
3,000	3,000	1,000	1,100	900

TABLE 14 TO § 3172.6(b)(4)

Violation	Corrective action	Normal abatement period
Minor	Perform test	24 hours.

(5) *Minimum standards and enforcement provisions for power availability.* Power for the closing unit pumps shall be available to the unit at all times so that the pumps shall automatically start when the closing unit manifold pressure has decreased to a pre-set level.

TABLE 15 TO § 3172.6(b)(5)

Violation	Corrective action	Normal abatement period
Major	Install the equipment as specified	Prompt correction required.

(6) *Minimum standards and enforcement provisions for accumulator pump capacity.* Each BOP closing unit shall be equipped with sufficient number and sizes of pumps so that, with the accumulator system isolated from service, the pumps shall be capable of opening the hydraulically operated gate valve (if so equipped), plus closing the annular preventer on the smallest size drill pipe to be used within 2 minutes, and obtain a minimum of 200 psi above specified accumulator precharge pressure.

TABLE 16 TO § 3172.6(b)(6)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.

(7) *Minimum standards and enforcement provisions for locking devices.* A manual locking device (*i.e.,* hand wheels) or automatic locking devices shall be installed on all systems of 2M or greater. A valve shall be installed in the closing line as close as possible to the annular preventer to act as a locking device. This valve shall be maintained in the open position and shall be closed only when the power source for the accumulator system is inoperative.

TABLE 17 TO § 3172.6(b)(7)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.

(8) *Minimum standards and enforcement provisions for remote controls.* Remote controls shall be readily accessible to the driller. Remote controls for all 3M or greater systems shall be capable of closing all preventers. Remote controls for 5M or greater systems shall be capable of both opening and closing all preventers. Master controls shall be at the accumulator and shall be capable of opening and closing all preventers and the choke line valve (if so equipped). No remote control for a 2M system is required.

TABLE 18 TO § 3172.6(b)(8)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.

(9) *Minimum standards and enforcement provisions for well control equipment testing.* (i) Perform all tests described in paragraphs (b)(9)(ii) through (x) of this section using clear water or an appropriate clear liquid for

subfreezing temperatures with a viscosity similar to water.

(ii) Ram type preventers and associated equipment shall be tested to approved (see § 3172.4(a)) stack working pressure if isolated by test plug or to 70 percent of internal yield pressure of casing if BOP stack is not isolated from casing. Pressure shall be maintained for at least 10 minutes or until requirements of test are met, whichever is longer. If a test plug is utilized, no bleed-off of pressure is acceptable. For a test not utilizing a test plug, if a decline in pressure of more than 10 percent in 30 minutes occurs, the test shall be considered to have failed. Valve on casing head below test plug shall be open during test of BOP stack.

(iii) Annular type preventers shall be tested to 50 percent of rated working pressure. Pressure shall be maintained at least 10 minutes or until provisions of test are met, whichever is longer.

(iv) As a minimum, the test in paragraph (b)(9)(iii) of this section shall be performed:

(A) When initially installed;

(B) Whenever any seal subject to test pressure is broken;

(C) Following related repairs; and

(D) At 30-day intervals.

(v) Valves shall be tested from working pressure side during BOPE tests with all down stream valves open.

(vi) When testing the kill line valve(s), the check valve shall be held open or the ball removed.

(vii) Annular preventers shall be functionally operated at least weekly.

(viii) Pipe and blind rams shall be activated each trip, however, this function need not be performed more than once a day.

(ix) A BOPE pit level drill shall be conducted weekly for each drilling crew.

(x) Pressure tests shall apply to all related well control equipment.

(xi) All of the tests described in paragraphs (b)(1)(ii) through (x) of this section and/or drills shall be recorded in the drilling log.

TABLE 19 TO § 3172.6(b)(9)

Violation	Corrective action	Normal abatement period
Minor	Perform the necessary test or provide documentation ...	24 hours or next trip, as most appropriate.

§ 3172.7 Casing and cementing.

(a) *Requirements.* The proposed casing and cementing programs shall be conducted as approved to protect and/or isolate all usable water zones, potentially productive zones, lost circulation zones, abnormally pressured zones, and any prospectively valuable deposits of minerals. Any isolating medium other than cement shall receive approval prior to use. The casing setting depth shall be calculated to position the casing seat opposite a competent formation which will contain the maximum pressure to which it will be exposed during normal drilling operations. Determination of casing setting depth shall be based on all relevant factors, including: presence/absence of hydrocarbons; fracture gradients; usable water zones; formation pressures; lost circulation zones; other minerals; or other unusual characteristics. All indications of usable water shall be reported.

(1) Minimum design factors for tensions, collapse, and burst that are incorporated into the casing design by an operator/lessee shall be submitted to the authorized operator for his review and approval along with the APD for all exploratory wells or as otherwise specified by the authorized officer.

(2) Casing design shall assume formation pressure gradients of 0.44 to 0.50 psi per foot for exploratory wells (lacking better data).

(3) Casing design shall assume fracture gradients from 0.70 to 1.00 psi per foot for exploratory wells (lacking better data).

(4) Casing collars shall have a minimum clearance of 0.422 inches on all sides in the hole/casing annulus, with recognition that variances can be granted for justified exceptions.

(5) All waiting on cement times shall be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out.

(b) *Minimum standards and enforcement provisions for casing and cementing.* (1) All casing, except the conductor casing, shall be new or reconditioned and tested casing. All casing shall meet or exceed American Petroleum Institute (API) standards for new casing. The use of reconditioned and tested used casing shall be subject to approval by the authorized officer: approval will be contingent upon the wall thickness of any such casing being verified to be at least 87½ percent of the nominal wall thickness of new casing.

TABLE 1 TO § 3172.7(b)(1)

Violation	Corrective action	Normal abatement period
Major	Perform remedial action as specified by the authorized officer.	Prompt correction required.

(2) For liners, a minimum of 100 feet of overlap between a string of casing and the next larger casing is required. The interval of overlap shall be sealed and tested. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and next larger string has been achieved. The test pressure shall be the maximum anticipated pressure to which the seal will be exposed. No test shall be required for liners that do not incorporate or need a seal mechanism.

TABLE 2 TO § 3172.7(b)(2)

Violation	Corrective action	Normal abatement period
Minor	Perform remedial action as specified by the authorized officer.	Upon determination of corrective action.

(3) The surface casing shall be cemented back to surface either during the primary cement job or by remedial cementing.

TABLE 3 TO § 3172.7(b)(3)

Violation	Corrective action	Normal abatement period
Major	Perform remedial cementing	Prompt correction required.

(4) All of the tests described in paragraphs (b)(1) through (3) of this section shall be recorded in the drilling log.

TABLE 4 TO § 3172.7(b)(4)

Violation	Corrective action	Normal abatement period
Minor	Perform the necessary test or provide documentation	24 hours.

(5) All indications of usable water shall be reported to the authorized officer prior to running the next string of casing or before plugging orders are requested, whichever occurs first.

TABLE 5 TO § 3172.7(b)(5)

Violation	Corrective action	Normal abatement period
Major	Report information as required	Prompt correction required.

(6) Surface casing shall have centralizers on the bottom 3 joints of the casing (a minimum of 1 centralizer per joint, starting with the shoe joint).

TABLE 6 TO § 3172.7(b)(6)

Violation	Corrective action	Normal abatement period
Major	Logging/testing may be required to determine the quality of the job. Recementing may then be specified.	Prompt correction upon determination of corrective action.

(7) Top plugs shall be used to reduce contamination of cement by displacement fluid. A bottom plug or other acceptable technique, such as a suitable preflush fluid, inner string cement method, etc., shall be utilized to help isolate the cement from contamination by the mud fluid being displaced ahead of the cement slurry.

TABLE 7 TO § 3172.7(b)(7)

Violation	Corrective action	Normal abatement period
Major	Logging may be required to determine the quality of the cement job. Recementing or further recementing may then be specified.	Based upon determination of corrective action.

(8) All casing strings below the conductor shall be pressure tested to 0.22 psi per foot of casing string length or 1,500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield. If pressure declines more than 10 percent in 30 minutes, corrective action shall be taken.

TABLE 8 TO § 3172.7(b)(8)

Violation	Corrective action	Normal abatement period
Minor	Perform the test and/or remedial action as specified by the authorized officer.	24 hours.

(9) On all exploratory wells, and on that portion of any well approved for a 5M BOPE system or greater, a pressure integrity test of each casing shoe shall be performed. Formation at the shoe shall be tested to a minimum of the mud weight equivalent anticipated to control the formation pressure to the next casing depth or at total depth of the

well. This test shall be performed before drilling more than 20 feet of new hole.

TABLE 9 TO § 3172.7(b)(9)

Violation	Corrective action	Normal abatement period
Minor	Perform the specified test	24 hours.

§ 3172.8 Mud program.

(a) *Requirements.* The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained or readily accessible for the purpose of assuring well control.

(b) *Minimum standards and enforcement provisions for mud program and equipment.* (1) Record slow pump speed on daily drilling report after mudding up.

TABLE 1 TO § 3172.8(b)(1)

Violation	Corrective action	Normal abatement period
Minor	Record required information	24 hours.

(2) Visual mud monitoring equipment shall be in place to detect volume changes indicating loss or gain of circulating fluid volume.

TABLE 2 TO § 3172.8(b)(2)

Violation	Corrective action	Normal abatement period
Minor	Install necessary equipment	24 hours.

(3) When abnormal pressures are anticipated, electronic/mechanical mud monitoring equipment shall be required, which shall include as a minimum: pit volume totalizer (PVT); stroke counter; and flow sensor.

TABLE 3 TO § 3172.8(b)(3)

Violation	Corrective action	Normal abatement period
Minor	Install necessary instrumentation	24 hours.

(4) A mud test shall be performed every 24 hours after mudding up to determine, as applicable: density, viscosity, gel strength, filtration, and pH.

TABLE 4 TO § 3172.8(b)(4)

Violation	Corrective action	Normal abatement period
Minor	Perform necessary tests	24 hours.

(5) A trip tank shall be used on 10M and 15M systems and on upgraded 5M systems as determined by the authorized officer.

TABLE 5 TO § 3172.8(b)(5)

Violation	Corrective action	Normal abatement period
Minor	Install necessary equipment	24 hours.

(6)(i) Gas detecting equipment shall be installed in the mud return system for exploratory wells or wells where abnormal pressure is anticipated, and hydrocarbon gas shall be monitored for pore pressure changes.

(ii) Hydrogen sulfide safety and monitoring equipment requirements may be found in subpart 3176 of this part.

TABLE 6 TO § 3172.8(b)(6)(ii)

Violation	Corrective action	Normal abatement period
Minor	Install necessary equipment	24 hours.

(7) All flare systems shall be designed to gather and burn all gas. The flare line(s) discharge shall be located not less than 100 feet from the well head, having straight lines unless turns are targeted with running tees, and shall be positioned downwind of the prevailing wind direction and shall be anchored. The flare system shall have an effective method for ignition. Where noncombustible gas is likely or expected to be vented, the system shall be provided supplemental fuel for ignition and to maintain a continuous flare.

TABLE 6 TO § 3172.8(b)(7)

Violation	Corrective action	Normal abatement period
Major	Install equipment as specified	24 hours.

(8) A mud-gas separator (gas buster) shall be installed and operable for all systems of 10M or greater and for any system where abnormal pressure is anticipated beginning at a point at least 500 feet above any anticipated hydrocarbon zone of interest.

TABLE 8 TO § 3172.8(b)(8)

Violation	Corrective action	Normal abatement period
Minor	Install required equipment	Prompt correction required.

§ 3172.9 Drill stem testing.

(a) *Requirements.* Initial opening of drill stem test tools shall be restricted to daylight hours unless specific approval to start during other hours is obtained from the authorized officer. However, drill stem tests (DSTs) may be allowed to continue at night if the test was initiated during daylight hours and the rate of flow is stabilized and if adequate lighting is available (*i.e.,* lighting which is adequate for visibility and vapor-proof for safe operations). Packers can be released, but tripping shall not begin before daylight, unless prior approval is obtained from the authorized officer. Closed chamber DSTs may be accomplished day or night.

(b) *Minimum standards for drill stem testing.* (1) A DST that flows to the surface with evidence of hydrocarbons shall be either reversed out of the testing string under controlled surface conditions, or displaced into the formation prior to pulling the test tool. This would involve providing some means for reserve circulation.

TABLE 1 TO § 3172.9(b)(1)

Violation	Corrective action	Normal abatement period
Major	Contingent on circumstances and as specified by the authorized officer.	Prompt correction required.

(2) Separation equipment required for the anticipated recovery shall be properly installed before a test starts.

TABLE 2 TO § 3172.9(b)(2)

Violation	Corrective action	Normal abatement period
Major	Install required equipment	Prompt correction required.

(3) All engines within 100 feet of the wellbore that are required to ''run'' during the test shall have spark arresters or water-cooled exhausts.

TABLE 3 TO § 3172.9(b)(3)

Violation	Corrective action	Normal abatement period
Major	Install required equipment	Prompt correction required.

§ 3172.10 Special drilling operations.

(a) In addition to the equipment already specified elsewhere in this subpart, the following equipment shall be in place and operational during air/gas drilling:

(1) Properly lubricated and maintained rotating head (major);

(2) Spark arresters on engines or water-cooled exhaust (major);

(3) Blooie line discharge 100 feet from well bore and securely anchored;

(4) Straight run on blooie line unless otherwise approved;

(5) Deduster equipment (major);

(6) All cuttings and circulating medium shall be directed into a reserve or blooie pit (major);

(7) Float valve above bit (major);

(8) Automatic igniter or continuous pilot light on the blooie line (major);

(9) Compressors located in the opposite direction from the blooie line a minimum of 100 feet from the well bore; and

(10) Mud circulating equipment, water, and mud materials (does not have to be premixed) sufficient to maintain the capacity of the hole and circulating tanks or pits.

TABLE 1 TO § 3172.10(a)

Violation	Corrective action	Normal abatement period
Minor	Install the equipment as specified	24 hours.
Major (as indicated)	Install the equipment as specified	Prompt correction required.

(b) Hydrogen sulfide operation is specifically addressed under subpart 3176 of this part.

§ 3172.11 Surface use.

(a) *Responsibilities.* Subpart 3171 of this part specifically addresses surface use. Subpart 3171 provides for safe operations, adequate protection of surface resources and uses, and other environmental components. The operator/lessee is responsible for, and liable for, all building, construction, and operating activities and subcontracting activities conducted in association with the APD. Requirements and special stipulations for surface use are contained in or attached to the approved APD.

(b) *Minimum standards and enforcement provisions for surface use.* The requirements and stipulations of approval shall be strictly adhered to by the operator/lessee and any contractors.

(c) *Violation.* If a violation is identified by the authorized officer he shall determine whether it is major or minor, considering the definitions in 43 CFR 3160.0–5, and shall specify the appropriate corrective action and abatement period.

§ 3172.12 Drilling abandonment.

(a) *Requirements.* The standards in paragraphs (a)(1) through (11) of this section apply to the abandonment of newly drilled dry or non- productive wells in accordance with § 3171.18 and 43 CFR 3162.3–4. Approval shall be obtained prior to the commencement of abandonment. All formations bearing usable-quality water, oil, gas, or geothermal resources, and/or a prospectively valuable deposit of minerals shall be protected. Approval may be given orally by the authorized officer before abandonment operations are initiated. This oral request and approval shall be followed by a written Notice of Intent to Abandon filed not later than the fifth business day following oral approval. Failure to obtain approval prior to commencement of abandonment operations shall result in immediate assessment of under 43 CFR 3163.1(b)(3). The hole shall be in static condition at the time any plugs are placed (this does not pertain to plugging lost circulation zones). Within 30 days of completion of abandonment, a subsequent report of abandonment shall be filed. Plugging design for an abandonment hole shall include the following:

(1) *Open hole.* (i) A cement plug shall be placed to extend at least 50 feet below the bottom (except as limited by total depth (TD) or plugged back total depth (PBTD)), to 50 feet above the top of:

(A) Any zone encountered during drilling which contains fluid or gas with a potential to migrate; and (B) Any prospectively valuable deposit of minerals.

(ii) All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth.

(iii) No plug, except the surface plug, shall be less than 25 sacks without receiving specific approval from the authorized officer.

(iv) Extremely thick sections of a single formation may be secured by placing 100-foot plugs across the top and bottom of the formation, and in accordance with paragraph (a)(1)(ii) of this section.

(v) In the absence of productive zones or prospectively valuable deposits of minerals which otherwise require placement of cement plugs, long sections of open hole shall be plugged at least every 3,000 feet. Such plugs shall be placed across in-gauge sections of the hole, unless otherwise approved by the authorized officer.

(2) *Cased hole.* A cement plug shall be placed opposite all open perforations and extend to a minimum of 50 feet below (except as limited by TD or PBTD) to 50 feet above the perforated interval. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth. In lieu of the cement plug, a bridge plug is acceptable, provided:

(i) The bridge plug is set within 50 feet to 100 feet above the open perforations; (ii) The perforations are isolated from any open hole below; and (iii) The bridge plug is capped with 50 feet of cement. If a bailer is used to cap this plug, 35 feet of cement shall be sufficient.

(3) *Casing removed from hole.* If any casing is cut and recovered, a cement plug shall be placed to extend at least 50 feet above and below the stub. The exposed hole resulting from the casing removal shall be secured as required in paragraphs (a)(1)(i) and (ii) of this section.

(4) *Cement plug.* An additional cement plug placed to extend a minimum of 50 feet above and below the shoe of the surface casing (or intermediate string, as appropriate).

(5) *Annular space.* No annular space that extends to the surface shall be left open to the drilled hole below. If this condition exists, a minimum of the top 50 feet of annulus shall be plugged with cement.

(6) *Isolating medium.* Any cement plug which is the only isolating medium for a fresh water interval or a zone containing a prospectively valuable deposit of minerals shall be tested by tagging with the drill string. Any plugs placed where the fluid level will not remain static also shall be tested by either tagging the plug with the working pipe string, or pressuring to a minimum

pump (surface) pressure of 1,000 psi, with no more than a 10 percent drop during a 15-minute period (cased hole only). If the integrity of any other plug is questionable, or if the authorized officer has specific concerns for which he/she orders a plug to be tested, it shall be tested in the same manner.

(7) *Silica sand or silica flour.* Silica sand or silica flour shall be added to cement exposed to bottom hole static temperatures above 230°F to prevent heat degradation of the cement.

(8) *Surface plug.* A cement plug of at least 50 feet shall be placed across all annuluses. The top of this plug shall be placed as near the eventual casing cutoff point as possible.

(9) *Mud.* Each of the intervals between plugs shall be filled with mud of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. In the absence of other information at the time plugging is approved, a minimum mud weight of 9 pounds per gallon shall be specified.

(10) *Surface cap.* All casing shall be cut-off at the base of the cellar or 3 feet below final restored ground level (whichever is deeper). The well bore shall then be covered with a metal plate at least ¼ inch thick and welded in place, or a 4-inch pipe, 10-feet in length, 4 feet above ground and embedded in cement as specified by the authorized officer. The well location and identity shall be permanently inscribed. A weep hole shall be left if a metal plate is welded in place.

(11) *Cellar.* The cellar shall be filled with suitable material as specified by the authorized officer and the surface restored in accordance with the instructions of the authorized officer.

(b) *Minimum standard.* All plugging orders shall be strictly adhered to.

TABLE 1 TO § 3172.12(b)

Violation	Corrective action	Normal abatement period
Major	Contingent upon circumstances	Prompt correction required.

§ 3172.13 Variances from minimum standards.

(a) An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in §§ 3172.6 through 3172.12. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

(b) Emergency or other situations of an immediate nature that could not be reasonably foreseen at the time of APD approval may receive oral approval. However, such requests shall be followed up by a written notice filed not later than the fifth business day following oral approval.

Appendix A to Subpart 3172—Diagrams of Choke Manifold Equipment

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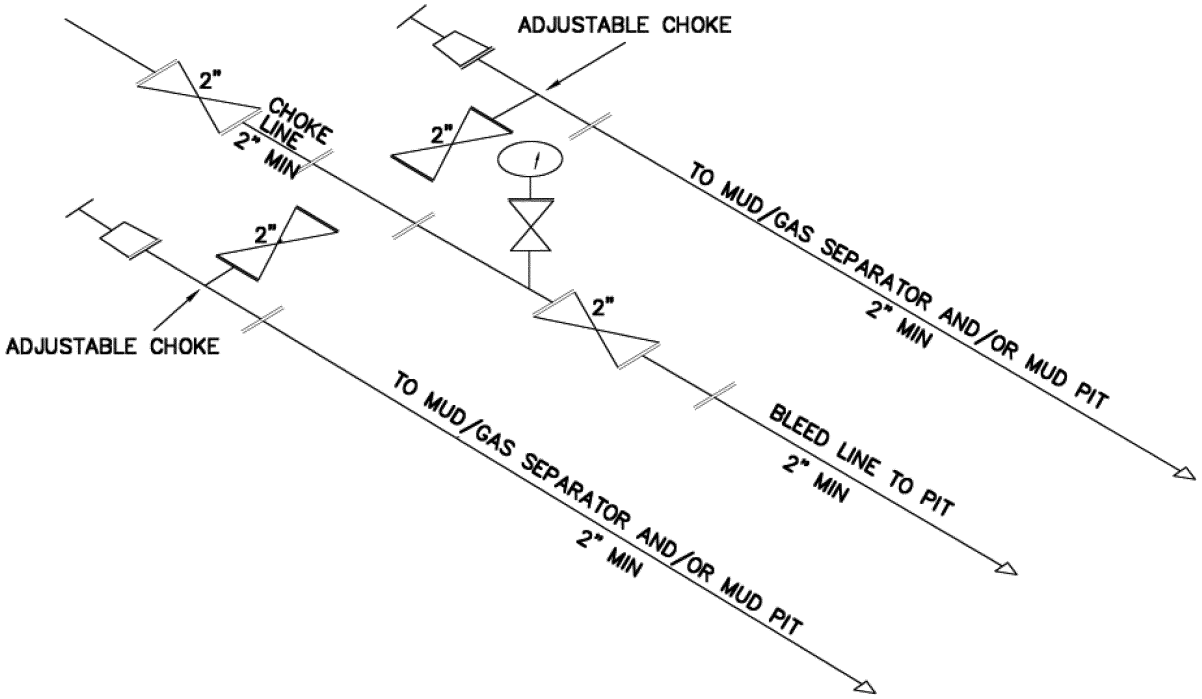
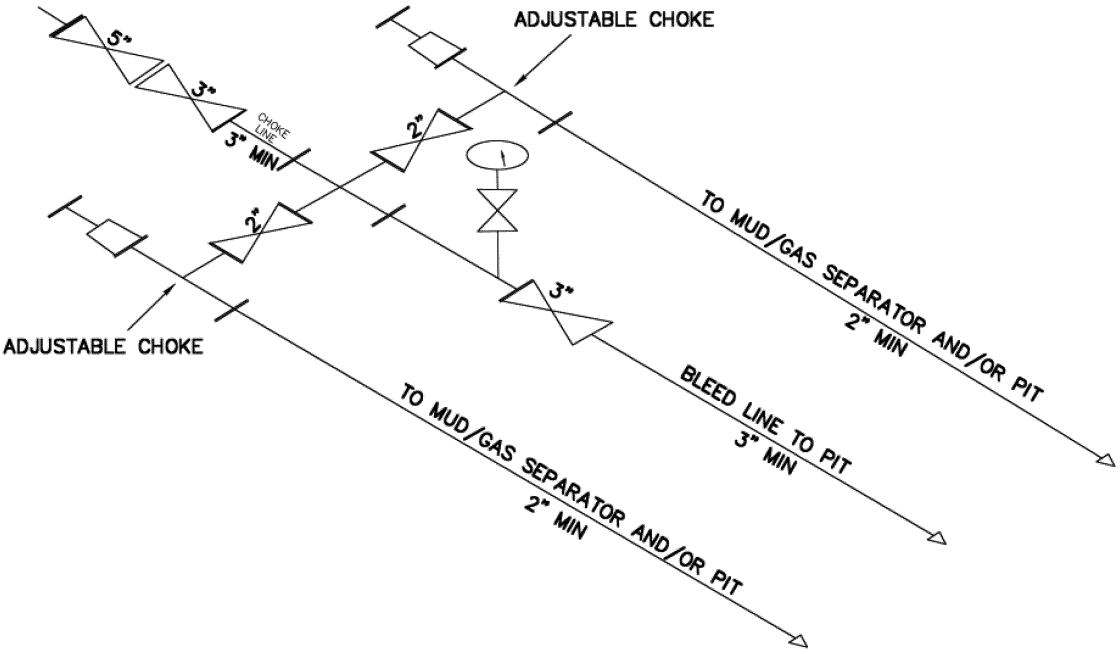
Figure 1 to Appendix A to Subpart 3172—2M Choke Manifold Equipment



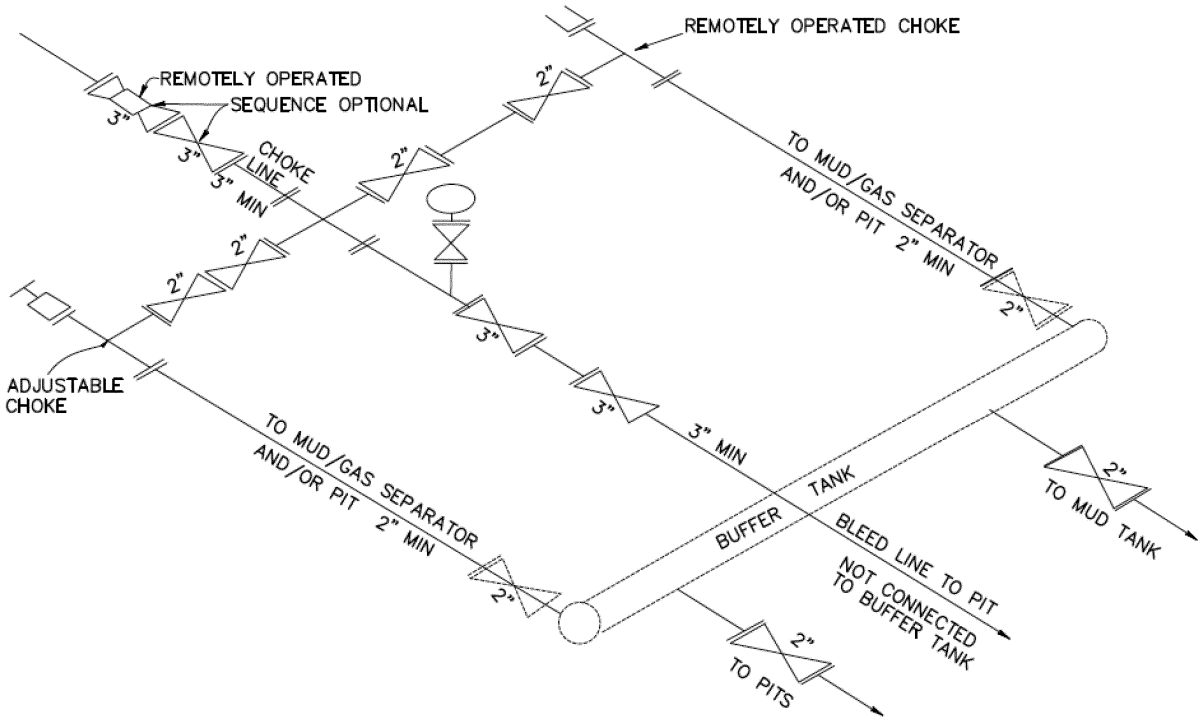
2M CHOKE MANIFOLD EQUIPMENT – CONFIGURATION MAY VARY

Figure 2 to Appendix A to Subpart 3172—3M Choke Manifold Equipment



3M CHOKE MANIFOLD EQUIPMENT – CONFIGURATION MAY VARY

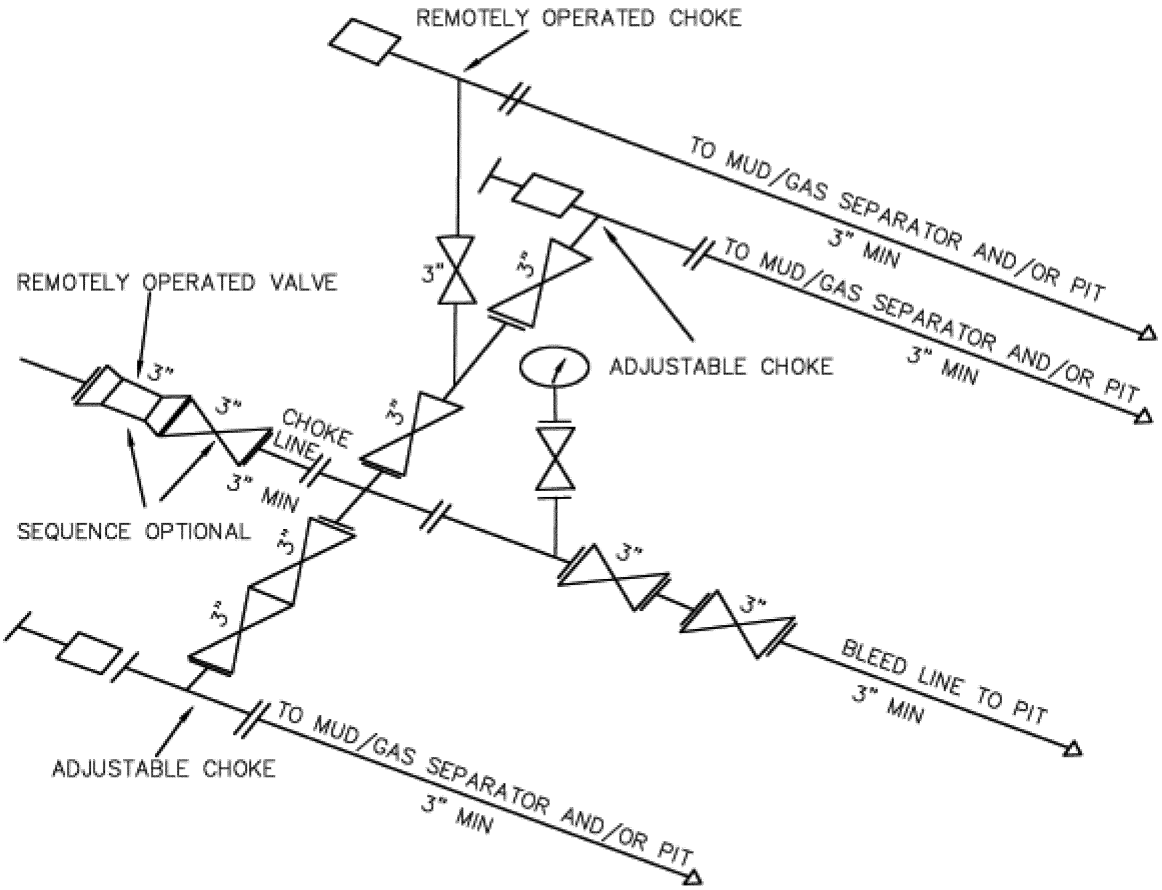
Figure 3 to Appendix A to Subpart 3172—5M Choke Manifold Equipment



5 M CHOKE MANIFOLD EQUIPMENT – CONFIGURATION MAY VARY

Although not required for any of the choke manifold systems, buffer tanks are sometimes installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together. When buffer tanks are employed, values shall be installed upstream to isolate a failure or malfunction without interrupting flow control. Though not shown on 2M, 3M 10M, or 15M drawings, it would also be applicable to those situations.

Figure 4 to Appendix A to Subpart 3172—10M and 15M Choke Manifold Equipment



10M and 15M CHOKE MANIFOLD EQUIPMENT CONFIGURATION MAY VARY

BILLING CODE 4331–29–C

■ 3. Add subparts 3176 and 3177 to read as follows

Subpart 3176—Onshore Oil and Gas Production: Hydrogen Sulfide Operations

Sec.

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

§ 3176.1 Authority.

This subpart is established pursuant to the authority granted to the Secretary of the Interior through various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. More specifically, this subpart implements and supplements the provisions of 43 CFR 3162.1, 3162.5–1(a), (c), and (d), 3162.5–2(a), and 3162.5–3.

§ 3176.2 Purpose.

The purpose of this subpart is to protect public health and safety and those personnel essential to maintaining control of the well. This subpart identifies the Bureau of Land Management's uniform national requirements and minimum standards of performance expected from operators when conducting operations involving oil or gas that is known or could reasonably be expected to contain hydrogen sulfide (H_2S) or which results in the emission of sulfur dioxide (SO_2) as a result of flaring H_2S. This subpart also identifies the gravity of violations, probable corrective action(s), and normal abatement periods.

§ 3176.3 Scope.

(a) This subpart is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases when drilling, completing, testing, reworking, producing, injecting, gathering, storing, or treating operations are being conducted in zones which are known or could reasonably be expected to contain H_2S or which, when flared, could produce SO_2, in such concentrations that upon release could constitute a hazard to human life. The requirements and minimum standards of this subpart do not apply when operating in zones where H_2S is presently known not to be present or cannot reasonably be expected to be present in concentrations of 100 parts per million (ppm) or more in the gas stream.

(b) The requirements and minimum standards in this subpart do not relieve an operator from compliance with any applicable Federal, State, or local requirement(s) regarding H_2S or SO_2 which are more stringent.

§ 3176.4 Definitions.

As used in this subpart, the term:

Authorized officer means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR parts 3000 and 3100 (43 CFR 3000.0–5).

Christmas tree means an assembly of valves and fittings used to control production and provide access to the producing tubing string. The assembly includes all equipment above the tubinghead top flange.

Dispersion technique means a mathematical representation of the physical and chemical transportation, dilution, and transformation of H_2S gas emitted into the atmosphere.

Escape rate means that the maximum volume (Q) used as the escape rate in determining the radius of exposure shall be that specified in paragraphs (1) through (4) of this definition, as applicable:

(1) For a production facility, the escape rate shall be calculated using the maximum daily rate of gas produced through that facility or the best estimate thereof;

(2) For gas wells, the escape rate shall be calculated by using the current daily absolute open-flow rate against atmospheric pressure;

(3) For oil wells, the escape rate shall be calculated by multiplying the producing gas/oil ratio by the maximum daily production rate or best estimate thereof; or

(4) For a well being drilled in a developed area, the escape rate may be determined by using the offset wells completed in the interval(s) in question.

Essential personnel means those on-site personnel directly associated with the operation being conducted and necessary to maintain control of the well.

Exploratory well means any well drilled beyond the known producing limits of a pool.

Gas well means a well for which the energy equivalent of the gas produced, including the entrained liquid hydrocarbons, exceeds the energy equivalent of the oil produced.

H_2S Drilling Operations Plan means a written plan which provides for safety of essential personnel and for maintaining control of the well with regard to H_2S and SO_2.

Lessee means a person or entity holding record title in a lease issued by the United States (43 CFR 3160.0–5).

Major violation means noncompliance which causes or threatens immediate. substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (43 CFR 3160.0–5).

Minor violation means noncompliance which does not rise to the level of a major violation (43 CFR 3160.0–5).

Oil well means a well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, including the entrained liquid hydrocarbons.

Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee may also be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title (43 CFR 3160.0–5).

Operator means any person or entity including but not limited to the lessee or operating rights owner who has stated in writing to the authorized officer that he/she is responsible under the terms of the lease for the operations conducted on the leased lands or a portion thereof (43 CFR 3160.0–5).

Potentially hazardous volume means a volume of gas of such H_2S concentration and flow rate that it may result in radius of exposure-calculated ambient concentrations of 100 ppm H_2S at any occupied residence, school, church, park, school bus stop, place of business, or other area where the public could reasonably be expected to frequent, or 500 ppm H_2S at any Federal, State, County, or municipal road or highway.

Production facilities means any wellhead, flowline, piping, treating, or separating equipment, water disposal pits, processing plant, or combination thereof prior to the approved measurement point for any lease, communitization agreement, or unit participating area.

Prompt correction means immediate correction of violations, with operation suspended if required at the discretion of the authorized officer.

Public Protection Plan means a written plan which provides for the safety of the potentially affected public with regard to H_2S and SO_2.

Radius of exposure means the calculation resulting from using the following Pasquill-Gifford derived equation, or by such other method(s) as may be approved by the authorized officer:

(1) For determining the 100 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10:

$$X = [1.589)(H_2S \text{ concentration})(Q)]^{(0.6258)}$$; or

(2) For determining the 500 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10:

$$X = [(0.4546)(H_2S \text{ concentration})(Q)]^{(0.6258)}$$

Where:

X = radius of exposure in feet;

H_2S Concentration = decimal equivalent of the mole or volume fractions of H_2S in the gaseous mixture; and

Q = maximum volume of gas determined to be available for escape in cubic feet per day (at standard conditions of 14.73 psia and 60°F).

(3) For determining the 100 ppm or the 500 ppm radius of exposure in gas streams containing H_2S concentrations of 10 percent or greater, a dispersion technique that takes into account representative wind speed, direction, atmospheric stability, complex terrain, and other dispersion features shall be utilized. Such techniques may include, but shall not be limited to, one of a series of computer models outlined in the Environmental Protection Agency's ''Guidelines on Air Quality Models'' (EPA–450/2–78–027R).

(4) Where multiple H_2S sources (*i.e.,* wells, treatment equipment, flowlines, etc.) are present, the operator may elect to utilize a radius of exposure which covers a larger area than would be calculated using radius of exposure formula for each component part of the drilling/completion/workover/production system.

(5) For a well being drilled in an area where insufficient data exits to calculate a radius of exposure, but where H_2S could reasonably be expected to be present in concentrations in excess of 100 ppm in the gas stream, a 100 ppm radius of exposure equal to 3,000 feet shall be assumed.

Zones known not to contain H_2S means geological formations in a field where prior drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S-bearing zones that contain 100 ppm or more of H_2S in the gas stream.

Zones known to contain H_2S means geological formations in a field where prior drilling, logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that contain 100 ppm or more of H_2S in the gas stream.

Zones which can reasonably be expected to contain H_2S means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is a potential for 100 ppm or more of H_2S in the gas stream.

Zones which cannot reasonably be expected to contain H_2S means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is not a potential for 100 ppm or more of H_2S in the gas stream.

§ 3176.5 Requirements.

The requirements of this subpart are the minimum acceptable standards with regard to H_2S operations. This subpart also classifies violations as typically major or minor for purposes of the assessment and penalty provisions of 43 CFR part 3160, subpart 3163, specifies the corrective action which will probably be required, and establishes the normal abatement period following detection of a major or minor violation in which the violator may take such corrective action without incurring an assessment. However, the authorized officer may, after consideration of all appropriate factors, require reasonable and necessary standards, corrective actions, and abatement periods that may, in some cases, vary from those specified in this subpart that he/she determines to be necessary to protect public health and safety, the environment, or to maintain control of a well to prevent waste of Federal mineral resources. To the extent such standards, actions, or abatement periods differ from those set forth in this subpart, they may be subject to review pursuant to 43 CFR 3165.3.

§ 3176.6 Applications, approvals, and reports.

(a) *Drilling.* For proposed drilling operations where formations will be penetrated which have zones known to contain or which could reasonably be expected to contain concentrations of H_2S of 100 ppm or more in the gas stream, the H_2S Drilling Operation Plan and, if the applicability criteria in § 3176.7(a) are met, a Public Protection Plan as outlined in § 3176.7(b), shall be submitted as part of the Application for Permit to Drill (APD) (refer to subpart 3171 of this part). In cases where multiple filings are being made with a single drilling plan, a single H_2S Drilling Operations Plan and, if applicable, a single Public Protection Plan may be submitted for the lease, communitization agreement, unit, or field in accordance with subpart 3171. Failure to submit either the H_2S Drilling Operations Plan or the Public Protection Plan when required by this subpart shall result in an incomplete APD pursuant to 43 CFR 3162.3–1.

(b) *Drilling plan.* The H_2S Drilling Operations Plan shall fully describe the manner in which the requirements and minimum standards in § 3176.8, shall be met and implemented. As required by this subpart (§ 3176.8), the following must be submitted in the H_2S Drilling Operations Plan:

(1) Statement that all personnel shall receive proper H_2S training in accordance, with § 3176.8(c)(1).

(2) A legible well site diagram of accurate scale (may be included as part of the well site layout as required by subpart 3171 of this part) showing the following:

(i) Drill rig orientation;

(ii) Prevailing wind direction;

(iii) Terrain of surrounding area;

(iv) Location of all briefing areas (designate primary briefing area);

(v) Location of access road(s) (including secondary egress);

(vi) Location of flare line(s) and pit(s);

(vii) Location of caution and/or danger signs; and

(viii) Location of wind direction indicators.

(3) As required by this subpart, a complete description of the following H_2S safety equipment/systems:

(i) *Well control equipment.* (A) Flare line(s) and means of ignition;

(B) Remote controlled choke;

(C) Flare gun/flares; and

(D) Mud-gas separator and rotating head (if exploratory well);

(ii) *Protective equipment for essential personnel.* (A) Location, type, storage, and maintenance of all working and escape breathing apparatus; and

(B) Means of communication when using protective breathing apparatus;

(iii) *H_2S detection and monitoring equipment.* (A) H_2S sensors and associated audible/visual alarm(s); and

(B) Portable H_2S and SO_2 monitor(s);

(iv) *Visual warning systems.* (A) Wind direction indicators; and (B) Caution/danger sign(s) and flag(s);

(v) *Mud program.* (A) Mud system and additives; and (B) Mud degassing system;

(vi) *Metallurgy.* Metallurgical properties of all tubular goods and well control equipment which could be exposed to H_2S (§ 3176.8(d)(3)); and

(vii) *Communication.* Means of communication from wellsite.

(4) Plans for well testing.

(c) *Production.* (1) For each existing production facility having an H_2S concentration of 100 ppm or more in the gas stream, the operator shall calculate and submit the calculations to the authorized officer within 180 days of January 22, 1991, the 100 and, if applicable, the 500 ppm radii of exposure for all facilities to determine if the applicability criteria in § 3176.7(a) are met. Radii of exposure calculations shall not be required for oil or water flowlines. Further, if any of the applicability criteria (§ 3176.7(a)) are met, the operator shall submit a complete Public Protection Plan which meets the requirements of § 3176.7(b)(2) to the authorized officer within 1 year of January 22, 1991. For production facilities constructed after January 22, 1991, and meeting the minimum concentration (100 ppm in gas stream), the operator shall report the radii of exposure calculations, and if the applicability criteria in § 3176.7(a) are met, submit a complete Public Protection Plan (§ 3176.7(b)(2)) to the authorized officer within 60 days after completion of production facilities.

TABLE 1 TO § 3176.6(c)(1)

Violation	Corrective action	Normal abatement period
Minor for failure to submit required information.	Submit required information (radii of exposure and/or complete Public Protection Plan).	20 to 40 days.

(2) The operator shall initially test the H_2S concentration of the gas stream for each well or production facility and shall make the results available to the authorized officer, upon request.

TABLE 2 TO § 3176.6(c)(2)

Violation	Corrective action	Normal abatement period
Minor	Test gas from well or production facility	20 to 40 days.

(3) If operational or production alterations result in a 5 percent or more increase in the H_2S concentration (*i.e.,* well recompletion, increased gas-to-oil ratios) or the radius of exposure as calculated under paragraph (c)(1) of this section, notification of such changes shall be submitted to the authorized officer within 60 days after identification of the change.

TABLE 3 TO § 3176.6(c)(3)

Violation	Corrective action	Normal abatement period
Minor	Submit information to authorized officer	20 to 40 days.

(d) *Plans and reports.* (1) H_2S Drilling Operations Plan(s) or Public Protection Plan(s) shall be reviewed by the operator on an annual basis and a copy of any necessary revisions shall be submitted to the authorized officer upon request.

TABLE 4 TO § 3176.6(d)(1)

Violation	Corrective action	Normal abatement period
Minor	Submit information to authorized officer	20 to 40 days.

(2) Any release of a potentially hazardous volume of H_2S shall be reported to the authorized officer as soon as practicable, but no later than 24 hours following identification of the release.

TABLE 5 TO § 3176.6(d)(2)

Violation	Corrective action	Normal abatement period
Minor	Report undesirable event to the authorized officer	24 hours.

§ 3176.7 Public protection.

(a) *Applicability criteria.* For both drilling/completion/workover and production operations, the H_2S radius of exposure shall be determined on all wells and production facilities subject to this subpart. A Public Protection Plan (paragraph (b) of this section) shall be required when any of the following conditions apply:

(1) The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent;

(2) The 500 ppm radius of exposure is greater than 50 feet and includes any part of a Federal, State, County, or municipal road or highway owned and principally maintained for public use; or

(3) The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are principally maintained for public use. Additional specific requirements for drilling/completion/workover or producing operations are described in §§ 3176.8 and 3176.9, respectively.

(b) *Public Protection Plan*—(1) *Plan submission/implementation/availability.* (i) A Public Protection Plan providing details of actions to alert and protect the public in the event of a release of a potentially hazardous volume of H_2S shall be submitted to the authorized officer as required by § 3176.6(a) for drilling or by § 3176.6(c) for producing operations when the applicability criteria established in paragraph (a) of this section are met. One plan may be submitted for each well, lease, communitization agreement, unit, or field, at the operator's discretion. The Public Protection Plan shall be maintained and updated, in accordance with § 3176.6(d).

(ii) The Public Protection Plan shall be activated immediately upon detection of release of a potentially hazardous volume of H_2S.

TABLE 1 TO § 3176.7(b)(1)(ii)

Violation	Corrective action	Normal abatement period
Major	Immediate implementation of the Public Protection Plan	Prompt correction required.

(iii) A copy of the Public Protection Plan shall be available at the drilling/completion site for such wells and at the facility, field office, or with the pumper, as appropriate, for producing wells, facilities, and during workover operations.

TABLE 2 TO § 3176.7(b)(1)(iii)

Violation	Corrective action	Normal abatement period
Minor	Make copy of Plan available	24 hours (drilling/completion/workover), 5 to 7 days (production).

(2) *Plan content.* (i) The details of the Public Protection Plan may vary according to the site-specific characteristics (concentration, volume, terrain, etc.) expected to be encountered and the number and proximity of the population potentially at risk. In the areas of high population density or in other special cases, the authorized officer may require more stringent plans to be developed. These may include public education seminars, mass alert systems, and use of sirens, telephone, radio, and television depending on the number of people at risk and their location with respect to the well site.

(ii) The Public Protection Plan shall include:

(A) The responsibilities and duties of key personnel, and instructions for alerting the public and requesting assistance;

(B) A list of names and telephone numbers of residents, those responsible for safety of public roadways, and individuals responsible for the safety of occupants of buildings within the 100 ppm radius of exposure (*e.g.,* school principals, building managers, etc.) as defined by the applicability criteria in paragraph (a) of this section. The operator shall ensure that those who are at the greatest risk are notified first. The Plan shall define when and how people are to be notified in case of an H_2S emergency;

(C) A telephone call list (including telephone numbers) for requesting assistance from law enforcement, fire department, and medical personnel and Federal and State regulatory agencies, as required. Necessary information to be communicated and the emergency responses that may be required shall be listed. This information shall be based on previous contacts with these organizations;

(D) A legible 100 ppm (or 3,000 feet, if conditions unknown) radius plat of all private and public dwellings, schools, roads, recreational areas, and other areas where the public might reasonably be expected to frequent;

(E) Advance briefings, by visit, meeting, or letter to the people identified in paragraph (b)(2)(ii)(B) of this section, including:

(*1*) Hazards of H_2S and SO_2;

(*2*) Necessity for an emergency action plan;

(*3*) Possible sources of H_2S and $S0_2$;

(*4*) Instructions for reporting a leak to the operator;

(*5*) The manner in which the public shall be notified of an emergency; and

(*6*) Steps to be taken in case of an emergency, including evacuation of any people;

(F) Guidelines for the ignition of the H_2S bearing gas. The Plan shall designate the title or position of the person(s) who has the authority to ignite the escaping gas and define when, how, and by whom the gas is to be ignited;

(G) Additional measures necessary following the release of H_2S and SO_2 until the release is contained are as follows:

(*1*) Monitoring of H_2S and SO_2 levels and wind direction in the affected area;

(*2*) Maintenance of site security and access control;

(*3*) Communication of status of well control; and

(*4*) Other necessary measures as required by the authorized officer; and

(H) For production facilities, a description of the detection system(s) utilized to determine the concentration of H_2S released.

§ 3176.8 Drilling/completion/workover requirements.

(a) *General.* (1) A copy of the H_2S Drilling Operations Plan shall be available during operations at the well site, beginning when the operation is subject to the terms of this subpart (*i.e.,* 3 days or 500 feet of known or probable H_2S zone).

TABLE 1 TO § 3176.8(a)(1)

Violation	Corrective action	Normal abatement period
Minor	Make copy of Plan available	24 hours.

(2) Initial H_2S training shall be completed and all H_2S related safety equipment shall be installed, tested, and operational when drilling reaches a depth of 500 feet above, or 3 days prior to penetrating (whichever comes first) the first zone containing or reasonably expected to contain H_2S. A specific H_2S operations plan for completion and workover operations will not be required for approval. For completion and workover operations, all required equipment and warning systems shall be operational and training completed prior to commencing operations.

TABLE 2 TO § 3176.8(a)(2)

Violation	Corrective action	Normal abatement period
Major	Implement H_2S operational requirements, such as completion of training and/or installation, repair, or replacement of equipment, as necessary.	Prompt correction required.

(3) If H_2S was not anticipated at the time the APD was approved, but is encountered in excess of 100 ppm in the gas stream, the following measures shall be taken:

(i) The operator shall immediately ensure control of the well, suspend drilling ahead operations (unless detrimental to well control), and obtain materials and safety equipment to bring the operations into compliance with the applicable provisions of this subpart.

TABLE 3 TO § 3176.8(a)(3)(i)

Violation	Corrective action	Normal abatement period
Major	Implement H_2S operational requirements, as applicable	Prompt correction required.

(ii) The operator shall notify the authorized officer of the event and the mitigating steps that have or are being taken as soon as possible, but no later than the next business day. If said notification is subsequent to actual resumption of drilling operations, the operator shall notify the authorized officer of the date that drilling was resumed no later than the next business day.

TABLE 4 TO § 3176.8(a)(3)(ii)

Violation	Corrective action	Normal abatement period
Minor	Notify authorized officer	24 hours.

(iii) It is the operator's responsibility to ensure that the applicable requirements of this subpart have been met prior to the resumption of drilling ahead operations. Drilling ahead operations will not be suspended pending receipt of a written H_2S Drilling Operations Plan(s) and, if necessary, Public Protection Plan(s) provided that complete copies of the applicable Plan(s) are filed with the authorized officer for approval within 5 business days following resumption of drilling ahead operations.

TABLE 5 TO § 3176.8(a)(3)(iii)

Violation	Corrective action	Normal abatement period
Minor	Submit plans to authorized officer	5 days.

(b) *Locations.* (1) Where practical, 2 roads shall be established, 1 at each end of the location, or as dictated by prevailing winds and terrain. If an alternate road is not practical, a clearly marked footpath shall be provided to a safe area. The purpose of such an alternate escape route is only to provide a means of egress to a safe area.

TABLE 6 TO § 3176.8(b)(1)

Violation	Corrective action	Normal abatement period
Minor	Designate or establish an alternate escape route	24 hours.

(2) The alternate escape route shall be kept passable at all times.

TABLE 7 TO § 3176.8(b)(2)

Violation	Corrective action	Normal abatement period
Minor	Make alternate escape route passable	24 hours.

(3) For workovers, a secondary means of egress shall be designated.

TABLE 8 TO § 3176.8(b)(3)

Violation	Corrective action	Normal abatement period
Minor	Designate secondary means of egress	24 hours.

(c) *Personnel protection*—(1) *Training program.* The operator shall ensure that all personnel who will be working at the wellsite will be properly trained in H_2S drilling and contingency procedures in accordance with the general training requirements outlined in API RP–49, Section 2 (incorporated by reference, see § 3176.11). (The use of later editions of API RP–49 is deemed to comply with the requirements of this paragraph (c)(1).) The operator also shall ensure that the training will be accomplished prior to a well coming under the terms of this subpart (*i.e.,* 3 days or 500 feet of known or probable H_2S zone). In addition to the requirements of API RP–49, a minimum of an initial training session and weekly H_2S and well control drills for all personnel in each working crew shall be conducted. The initial training session for each well shall include a review of the site-specific Drilling Operations Plan and, if applicable, the Public Protection Plan.

TABLE 9 TO § 3176.8(c)(1)

Violation	Corrective action	Normal abatement period
Major	Train all personnel and conduct drills	Prompt correction required.

(i) All training sessions and drills shall be recorded on the driller's log or its equivalent.

TABLE 10 TO § 3176.8(c)(1)(i)

Violation	Corrective action	Normal abatement period
Minor	Record on driller's log or equivalent	24 hours.

(ii) For drilling/completion/workover wells, at least 2 briefing areas shall be designated for assembly of personnel during emergency conditions, located a minimum of 150 feet from the well bore, and 1 of the briefing areas shall be upwind of the well at all times. The briefing area located most normally upwind shall be designated as the ''primary briefing area.''

TABLE 11 TO § 3176.8(c)(1)(ii)

Violation	Corrective action	Normal abatement period
Major	Designate briefing areas	24 hours.

(iii) One person (by job title) shall be designated and identified to all on-site personnel as the person primarily responsible for the overall operation of the on-site safety and training programs.

TABLE 12 TO § 3176.8(c)(1)(iii)

Violation	Corrective action	Normal abatement period
Minor	Designate safety responsibilities	24 hours.

(2) *Protective equipment.* (i) The operator shall ensure that proper respiratory protection equipment program is implemented, in accordance with ANSI Z88.2–1992 (incorporated by reference, see § 3176.11). (The use of ANSI Z88.2–1980 is deemed to comply with the requirements of this paragraph (d)(2)(i).) Proper protective breathing apparatus shall be readily accessible to all essential personnel on a drilling/completion/workover site. Escape and pressure-demand type working equipment shall be provided for essential personnel in the H_2S environment to maintain or regain control of the well. For pressure-demand type working equipment those essential personnel shall be able to obtain a continuous seal to the face with the equipment. The operator shall ensure that service companies have the proper respiratory protection equipment when called to the location. Lightweight, escape-type, self-contained breathing apparatus with a minimum of 5-minute rated supply shall be readily accessible at a location for the derrickman and at any other location(s) where escape from an H_2S contaminated atmosphere would be difficult.

TABLE 13 TO § 3176.8(c)(2)(i)

Violation	Corrective action	Normal abatement period
Major	Acquire, repair, or replace equipment, as necessary	Prompt correction required.

(ii) Storage and maintenance of protective breathing apparatus shall be planned to ensure that at least 1 working apparatus per person is readily available for all essential personnel.

TABLE 14 TO § 3176.8(c)(2)(ii)

Violation	Corrective action	Normal abatement period
Major	Acquire or rearrange equipment, as necessary	Prompt correction required.

(iii) The following additional safety equipment shall be available for use:

(A) Effective means of communication when using protective breathing apparatus;

(B) Flare gun and flares to ignite the well; and

(C) Telephone, radio, mobile phone, or any other device that provides communication from a safe area at the rig location, where practical.

TABLE 15 TO § 3176.8(c)(2)(iii)

Violation	Corrective action	Normal abatement period
Major	Acquire, repair, or replace equipment	24 hours.

(3) *H_2S detection and monitoring equipment.* (i) Each drilling/completion site shall have an H_2S detection and monitoring system that automatically activates visible and audible alarms when the ambient air concentration of H_2S reaches the threshold limits of 10 and 15 ppm in air, respectively. The sensors shall have a rapid response time and be capable of sensing a minimum of 10 ppm of H_2S in ambient air, with at least 3 sensing points located at the shale shaker, rig floor, and bell nipple for a drilling site and the cellar, rig floor, and circulating tanks or shale shaker for a completion site. The detection system shall be installed, calibrated, tested, and maintained in accordance with the manufacturer's recommendations.

TABLE 16 TO § 3176.8(c)(3)(i)

Violation	Corrective action	Normal abatement period
Major	Install, repair, calibrate, or replace equipment, as necessary.	Prompt correction required.

(ii) All tests of the H_2S monitoring system shall be recorded on the driller's log or its equivalent.

TABLE 17 TO § 3176.8(c)(3)(ii)

Violation	Corrective action	Normal abatement period
Minor	Record on driller's log or equivalent	24 hours.

(iii) For workover operations, 1 operational sensing point shall be located as close to the wellbore as practical. Additional sensing points may be necessary for large and/or long-term operations.

TABLE 18 TO § 3176.8(c)(3)(iii)

Violation	Corrective action	Normal abatement period
Major	Install, repair, calibrate, or replace equipment, as necessary.	Prompt correction required.

(4) *Visible warning system.* (i) Equipment to indicate wind direction at all times shall be installed at prominent locations and shall be visible at all times during drilling operations. At least 2 such wind direction indicators (*i.e.,* windsocks, windvanes, pennants with tailstreamers, etc.) shall be located at separate elevations (*i.e.,* near ground level, rig floor, and/or treetop height). At least 1 wind direction indicator shall be clearly visible from all principal working areas at all times so that wind direction can be easily determined. For completion/workover operations, 1 wind direction indicator shall suffice, provided it is visible from all principal working areas on the location. In addition, a wind direction indicator at each of the 2 briefing areas shall be provided if the wind direction

indicator(s) previously required in this paragraph (c)(4)(i) are not visible from the briefing areas.

TABLE 19 TO § 3176.8(c)(4)(i)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, move, or replace wind direction indicator(s), as necessary.	24 hours.

(ii) At any time when the terms of this subpart are in effect, operational danger or caution sign(s) shall be displayed along all controlled accesses to the site.

TABLE 20 TO § 3176.8(c)(4)(ii)

Violation	Corrective action	Normal abatement period
Minor	Erect appropriate signs	24 hours.

(iii) Each sign shall be painted a high visibility red, black and white, or yellow with black lettering.

TABLE 21 TO § 3176.8(c)(4)(iii)

Violation	Corrective action	Normal abatement period
Minor	Replace or alter sign, as necessary	5 to 20 days.

(iv) The sign(s) shall be legible and large enough to be read by all persons entering the well site and be placed a minimum of 200 feet but no more than 500 feet from the well site and at a location which allows vehicles to turn around at a safe distance prior to reaching the site.

TABLE 22 TO § 3176.8(c)(4)(iv)

Violation	Corrective action	Normal abatement period
Major	Replace, alter, or move sign, as necessary	24 hours.

(v) The sign(s) shall read: ''DANGER—POISON GAS—HYDROGEN SULFIDE,'' and in smaller lettering: ''Do Not Approach If Red Flag is Flying'' or equivalent language if approved by the authorized officer. Where appropriate, bilingual or multilingual danger sign(s) shall be used.

TABLE 23 TO § 3176.8(c)(4)(v)

Violation	Corrective action	Normal abatement period
Minor	Alter sign(s), as necessary	5 to 20 days.

(vi) All sign(s) and, when appropriate, flag(s) shall be visible to all personnel approaching the location under normal lighting and weather conditions.

TABLE 24 TO § 3176.8(c)(4)(vi)

Violation	Corrective action	Normal abatement period
Major	Erect or move sign(s) and/or flag(s), as necessary	24 hours.

(vii) When H_2S is detected in excess of 10 ppm at any detection point, red flag(s) shall be displayed.

TABLE 25 TO § 3176.8(c)(4)(vii)

Violation	Corrective action	Normal abatement period
Major	Display red flag	Prompt correction required.

(5) *Warning system response.* When H_2S is detected in excess of 10 ppm at any detection point, all non-essential personnel shall be moved to a safe area and essential personnel (*i.e.,* those necessary to maintain control of the well) shall wear pressure-demand type protective breathing apparatus. Once accomplished, operations may proceed.

TABLE 26 TO § 3176.8(c)(5)

Violation	Corrective action	Normal abatement period
Major	Move non-essential personnel to safe area and mask-up essential personnel.	Prompt correction required.

(d) *Operating procedures and equipment*—(1) *General/operations.* Drilling/completion/workover operations in H_2S areas shall be subject to the following requirements:

(i) If zones containing in excess of 100 ppm of H_2S gas are encountered while drilling with air, gas, mist, other nonmud circulating mediums or aerated mud, the well shall be killed with a water- or oil-based mud and mud shall be used thereafter as the circulating medium for continued drilling.

TABLE 27 TO § 3176.8(d)(1)(i)

Violation	Corrective action	Normal abatement period
Major	Convert to appropriate fluid medium	Prompt correction required.

(ii) A flare system shall be designed and installed to safely gather and burn H_2S-bearing gas.

TABLE 28 TO § 3176.8(d)(1)(ii)

Violation	Corrective action	Normal abatement period
Major	Install flare system	Prompt correction required.

(iii) Flare lines shall be located as far from the operating site as feasible and in a manner to compensate for wind changes. The flare line(s) mouth(s) shall be located not less than 150 feet from the wellbore unless otherwise approved by the authorized officer. Flare lines shall be straight unless targeted with running tees.

TABLE 29 TO § 3176.8(d)(1)(iii)

Violation	Corrective action	Normal abatement period
Minor	Adjust flare line(s) as necessary	24 hours.

(iv) The flare system shall be equipped with a suitable and safe means of ignition.

TABLE 30 TO § 3176.8(d)(1)(iv)

Violation	Corrective action	Normal abatement period
Major	Install, repair, or replace equipment, as necessary	24 hours.

(v) Where noncombustible gas is to be flared, the system shall be provided supplemental fuel to maintain ignition.

TABLE 31 TO § 3176.8(d)(1)(v)

Violation	Corrective action	Normal abatement period
Major	Acquire supplemental fuel	24 hours.

(vi) At any wellsite where SO_2, may be released as a result of flaring of H_2S during drilling, completion, or workover operations, the operator shall make SO_2, portable detection equipment available for checking the SO_2 level in the flare impact area.

TABLE 32 TO § 3176.8(d)(1)(vi)

Violation	Corrective action	Normal abatement period
Minor	Acquire, repair, or replace equipment as necessary	24 hours to 3 days.

(vii) If the flare impact area reaches a sustained ambient threshold level of 2 ppm or greater of SO_2 in air and includes any occupied residence, school, church, park, or place of business, or other area where the public could reasonably be expected to frequent, the Public Protection Plan shall be implemented.

TABLE 33 TO § 3176.8(d)(1)(vii)

Violation	Corrective action	Normal abatement period
Major	Contain SO_2 release and/or implement Public Protection Plan.	Prompt correction required.

(viii) A remote controlled choke shall be installed for all H_2S drilling and, where feasible, for completion operations. A remote-controlled valve may be used in lieu of this requirement for completion operations.

TABLE 34 TO § 3176.8(d)(1)(viii)

Violation	Corrective action	Normal abatement period
Major	Install, repair, or replace equipment, as necessary	Prompt correction required.

(ix) Mud-gas separators and rotating heads shall be installed and operable for all exploratory wells.

TABLE 35 TO § 3176.8(d)(1)(ix)

Violation	Corrective action	Normal abatement period
Major	Install, repair, or replace equipment, as necessary	Prompt correction required.

(2) *Mud program.* (i) A pH of 10 or above in a fresh water-base mud system shall be maintained to control corrosion, H_2S gas returns to surface, and minimize sulfide stress cracking and embrittlement unless other formation conditions or mud types justify to the authorized officer a lesser pH level is necessary.

TABLE 36 TO § 3176.8(d)(2)(i)

Violation	Corrective action	Normal abatement period
Major	Adjust pH	Prompt correction required.

(ii) Drilling mud containing H_2S gas shall be degassed in accordance with API RP–49, sec. 5.14 (incorporated by reference, see § 3176.11), at an optimum location for the rig configuration. These gases shall be piped into the flare system. (The use of later editions of API RP–49 is deemed to comply with the requirements of this paragraph (d)(2)(ii).)

TABLE 37 TO § 3176.8(d)(2)(ii)

Violation	Corrective action	Normal abatement period
Major	Install, repair, or replace equipment, as necessary	24 hours.

(iii) Sufficient quantities of mud additives shall be maintained on location to scavenge and/or neutralize H_2S where formation pressures are unknown.

TABLE 38 TO § 3176.8(d)(2)(iii)

Violation	Corrective action	Normal abatement period
Major	Obtain proper mud additives	24 hours.

(3) *Metallurgical equipment.* (i) All equipment that has the potential to be exposed to H_2S shall be suitable for H_2S service. Equipment which shall meet these metallurgical standards include the drill string, casing, wellhead, blowout preventer assembly, casing head and spool, rotating head, kill lines, choke, choke manifold and lines, valves, mud-gas separators, drill-stem test tools, test units, tubing, flanges, and other related equipment.

(ii) To minimize stress corrosion cracking and/or H_2S embrittlement, the equipment shall be constructed of material whose metallurgical properties are chosen with consideration for both an H_2S working environment and the anticipated stress. The metallurgical properties of the materials used shall conform to NACE MR 0175–2021 (incorporated by reference, see § 3176.11). (The use of NACE MR 0175–90 through NACE MR 0175–2021 is deemed to comply with the requirements of this paragraph (d)(3)(ii).) These metallurgical properties include the grade of steel, the processing method (rolled, normalized, tempered, and/or quenched), and the resulting strength properties. The working environment considerations include the H_2S concentration, the well fluid pH, and the wellbore pressures and temperatures. Elastomers, packing, and similar inner parts exposed to H_2S shall be resistant at the maximum anticipated temperature of exposure. The manufacturer's verification of design for use in an H_2S environment shall be sufficient verification of suitable service in accordance with this subpart.

TABLE 39 TO § 3176.8(d)(3)(ii)

Violation	Corrective action	Normal abatement period
Major	Install, repair, or replace appropriate equipment, as necessary.	Prompt correction required.

(4) *Well testing in an H_2S environment.* Testing shall be performed with a minimum number of personnel in the immediate vicinity which are necessary to safely and adequately operate the test equipment. Except with prior approval by the authorized officer, the drill-stem testing of H_2S zones shall be conducted only during daylight hours and formation fluids shall not be flowed to the surface (closed chamber only).

TABLE 40 TO § 3176.8(d)(4)

Violation	Corrective action	Normal abatement period
Major	Terminate the well test	Prompt correction required.

§ 3176.9 Production requirements.

(a) *General.* (1) All existing production facilities which do not currently meet the requirements and minimum standards set forth in this section shall be brought into conformance within 1 year after January 22, 1991. All existing equipment that is in a safe working condition as of January 22, 1991, is specifically exempt from the metallurgical requirements prescribed in paragraph (c)(7) of this section.

TABLE 1 TO § 3176.9(a)(1)

Violation	Corrective action	Normal abatement period
Minor	Bring facility into compliance	60 days.

(2) Production facilities constructed after January 22, 1991, shall be designed, constructed, and operated to meet the requirements and minimum standards set forth in this section. Any variations from the standards or

established time frames shall be approved by the authorized officer in accordance with the provisions of § 3176.10. Except for storage tanks, a determination of the radius of exposure for all production facilities shall be made in the manner prescribed in § 3176.4.

TABLE 2 TO § 3176.9(a)(2)

Violation	Corrective action	Normal abatement period
Minor	Bring facility into compliance	60 days.

(3) At any production facility or storage tank(s) where the sustained ambient H_2S concentration is in excess of 10 ppm at 50 feet from the production facility or storage tank(s) as measured at ground level under calm (1 mph) conditions, the operator shall collect or reduce vapors from the system and they shall be sold, beneficially used, reinjected, or flared provided terrain and conditions permit.

TABLE 3 TO § 3176.9(a)(3)

Violation	Corrective action	Normal abatement period
Major, if the authorized officer determines that a health or safety problem to the public is imminent, otherwise minor.	Bring facility into compliance	3 days for major, 30 days for minor.

(b) *Storage tanks.* Storage tanks containing produced fluids and utilized as part of a production operation and operated at or near atmospheric pressure, where the vapor accumulation has an H_2S concentration in excess of 500 ppm in the tank, shall be subject to the following:

(1) No determination of a radius of exposure need be made for storage tanks.

(2) All stairs/ladders leading to the top of storage tanks shall be chained and/or marked to restrict entry. For any storage, tank(s) which require fencing (see paragraph (b)(6) of this section), a danger sign posted at the gate(s) shall suffice in lieu of this requirement.

TABLE 4 TO § 3176.9(b)(2)

Violation	Corrective action	Normal abatement period
Minor	Chain or mark stair(s)/ladder(s) or post sign, as necessary.	5 to 20 days.

(3) A danger sign shall be posted on or within 50 feet of the storage tank(s) to alert the public of the potential H_2S danger. For any storage tank(s) which require fencing (see paragraph (b)(6) of this section), a danger sign posted at the locked gate(s) shall suffice in lieu of this requirement.

TABLE 5 TO § 3176.9(b)(3)

Violation	Corrective action	Normal abatement period
Minor	Post or move sign(s), as necessary	5 to 20 days.

(4) The sign(s) shall be painted in high-visibility red, black, and white. The sign(s) shall read: ''DANGER—POISON GAS—HYDROGEN SULFIDE'' or equivalent language if approved by the authorized officer. Where appropriate, bilingual or multilingual warning signs shall be used.

TABLE 6 TO § 3176.9(b)(4)

Violation	Corrective action	Normal abatement period
Minor	Post, move, replace, or alter sign(s), as necessary	20 to 40 days.

(5) At least 1 permanent wind direction indicator shall be installed so that wind direction can be easily determined at or approaching the storage tank(s).

TABLE 7 TO § 3176.9(b)(5)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, or replace wind direction indicator, as necessary.	20 to 40 days.

(6) A minimum 5-foot chain-link, 5-strand barbed wire, or comparable type fence and gate(s) that restrict(s) public access shall be required when storage tanks are located within ¼ mile of or contained inside a city or incorporated limits of a town or within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or where the public could reasonably be expected to frequent.

TABLE 8 TO § 3176.9(b)(6)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, or replace fence and/or gate(s), as necessary.	20 to 40 days.

(7) Gate(s), as required by paragraph (b)(6) of this section, shall be locked when unattended by the operator.

TABLE 9 TO § 3176.9(b)(7)

Violation	Corrective action	Normal abatement period
Minor	Lock gate	24 hours.

(c) *Production facilities.* Production facilities containing 100 ppm or more of H_2S in the gas stream shall be subject to the following:

(1) Danger signs as specified in paragraph (b)(4) of this section shall be posted on or within 50 feet of each production facility to alert the public of the potential H_2S danger. In the event the storage tanks and production facilities are located at the same site, 1 such danger sign shall suffice. Further, for any facilities which require fencing (paragraph (b)(6) of this section), 1 such danger sign at the gate(s) shall suffice in lieu of this requirement.

TABLE 10 TO § 3176.9(c)(1)

Violation	Corrective action	Normal abatement period
Minor	Post, move, or alter sign(s), as necessary	5 to 20 days.

(2) Danger signs, as specified in paragraph (b)(4) of this section, shall be required for well flowlines and lease gathering lines that carry H_2S gas. Placement shall be where said lines cross public or lease roads. The signs shall be legible and shall contain sufficient additional information to permit a determination of the owner of the line.

TABLE 11 TO § 3176.9(c)(2)

Violation	Corrective action	Normal abatement period
Minor	Post, move, or alter sign(s), as necessary	5 to 20 days.

(3) Fencing and gate(s), as specified in paragraph (b)(6) of this section, shall be required when production facilities are located within ¼ mile of or contained inside a city or incorporated limits of a town or within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or any other area where the public could reasonably be expected to frequent. Flowlines are exempted from this additional fencing requirement.

TABLE 12 TO § 3176.9(c)(3)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, or replace fence, and/or gate(s), as necessary.	20 to 40 days.

(4) Gate(s), as required by paragraph (c)(3) of this section, shall be locked when unattended by the operator.

TABLE 13 TO § 3176.9(c)(4)

Violation	Corrective action	Normal abatement period
Minor	Lock gate	24 hours.

(5) Wind direction indicator(s) as specified in paragraph (b)(5) of this section shall be required. In the event the storage tanks and production facilities are located at the same site, 1 such indicator shall suffice. Flowlines are exempt from this requirement.

TABLE 14 TO § 3176.9(c)(5)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, or replace wind direction indicator(s), as necessary.	20 to 40 days.

(6) All wells, unless produced by artificial lift, shall possess a secondary means of immediate well control through the use of appropriate christmas tree and/or downhole completion equipment. Such equipment shall allow downhole accessibility (reentry) under pressure for permanent well control operations. If the applicability criteria stated in § 3176.7(a) are met, a minimum of 2 master valves shall be installed.

TABLE 15 TO § 3176.9(c)(6)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, or replace equipment, as necessary	20 to 40 days.

(7) All equipment shall be chosen with consideration for both the H_2S working environment and anticipated stresses. NACE MR 0175–2021 (incorporated by reference, see § 3176.11) shall be used for metallic equipment selection and, if applicable, adequate protection by chemical inhibition or other such method that controls or limits the corrosive effects of H_2S shall be used. (The use of NACE MR 0175–90 through NACE MR 0175–2021 is deemed to comply with the requirements of this paragraph (c)(7).)

TABLE 16 TO § 3176.9(c)(7)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, or replace equipment, as necessary	20 to 40 days.

(8) Where the 100 ppm radius of exposure for H_2S includes any occupied residence, place of business, school, or other inhabited structure or any area where the public may reasonably be expected to frequent, the operator shall install automatic safety valves or shutdowns at the wellhead, or other appropriate shut-in controls for wells equipped with artificial lift.

TABLE 17 TO § 3176.9(c)(8)

Violation	Corrective action	Normal abatement period
Minor	Install, repair, or replace equipment, as necessary	20 to 40 days.

(9) The automatic safety valves or shutdowns, as required by paragraph (c)(8) of this section, shall be set to activate upon a release of a potentially hazardous volume of H_2S.

TABLE 18 TO § 3176.9(c)(9)

Violation	Corrective action	Normal abatement period
Major	Repair, replace or adjust equipment, as necessary	Prompt correction required.

(10) If the sustained ambient concentration of H_2S or SO_2 from a production facility which is venting or flaring reaches a concentration of H_2S (10 ppm) or SO_2 (2 ppm), respectively, at any of the following locations, the operator shall modify the production facility as approved by the authorized officer. The locations include any occupied residence, school, church, park, playground, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent.

TABLE 19 TO § 3176.9(c)(10)

Violation	Corrective action	Normal abatement period
Major	Repair facility to bring into compliance.	Prompt correction required

(d) *Public protection.* When conditions as defined in § 3176.7(a) exist, a Public Protection Plan for producing operations shall be submitted to the authorized officer in accordance with § 3176.7(b)(1) which includes the provisions of § 3176.7(b)(2).

TABLE 20 TO § 3176.9(d)

Violation	Corrective action	Normal abatement period
Minor	Submit Public Protection Plan	20 to 40 days.

§ 3176.10 Variances from requirements.

An operator may request the authorized officer to approve a variance from any of the requirements prescribed in §§ 3176.5 through 3176.9. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related requirement(a) of minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, may approve the requested variance(s) if it is determined that the proposed alterative(s) meets or exceeds the objectives of the applicable requirement(s) or minimum standard(s).

§ 3176.11 Incorporation by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at all Bureau of Land Management offices with jurisdiction over oil and gas activities, and at the National Archives and Records Administration (NARA). Contact the BLM at: Office of Energy, Minerals, and Realty Management, 1849 C Street Northwest, Washington, DC 20240; telephone 202–208–3801; email *begruber@blm.gov;* website *www.blm.gov/programs/energy-and-minerals/oil-and-gas.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material also may be obtained from the following sources:

(a) *American National Standards Institute (ANSI),* 25 West 43rd St., 4th floor, New York, NY 10036; telephone: 212–642–4980; email: *info@ansi.org;* website: *www.ansi.org.*

(1) ANSI Standard Z88.2–1992 for Respiratory Protection, Approved August 6, 1992 (''ANSI Z88.2–1992''), IBR approved for § 3176.8.

(2) [Reserved]

Note 1 to paragraph (a): If ANSI Z88.2 is not available from document resellers, contact the BLM to obtain a copy.

(b) *American Petroleum Institute (API),* 200 Massachusetts Avenue NW, Suite 1100, Washington, DC 20001; telephone: 202–682–8000; email: *apipubs@api.org;* website: *www.api.org.*

(1) API Recommended Practice 49—Recommended Practice for Drilling and Well Servicing Operations Involving Hydrogen Sulfide; Third Edition, May 2001; Reaffirmed, January 2013 (''API RP 49''), IBR approved for § 3176.8.

(2) [Reserved]

(c) *Association for Materials Protection and Performance (AMPP)* formerly known as NACE International, 15835 Park Ten Place, Houston, TX 77084; telephone: 1–800–797–6223; website: *www.ampp.org.*

(1) ANSI/NACE MR0175–2021/ISO 15156–1:2020; Petroleum and natural gas industries—Materials for use in H_2S-containing environments in oil and gas production; Part 1: General principles for selection of cracking-resistant materials; Fourth Edition, Approved September 21, 2022 (''NACE MR 0175–2021''); IBR approved for §§ 3176.8; 3176.9.

(2) [Reserved]

Subpart 3177—Onshore Oil and Gas Production: Disposal of Produced Water

Sec.

§ 3177.1 Authority.

This subpart is established pursuant to the authority granted to the Secretary of the Interior by various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. Said authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. As directed by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, for National Forest lands the Secretary of Agriculture shall regulate all surface-disturbing activities and shall determine reclamation and other actions required in the interest of conservation of surface resources. Specific authority for the provisions contained in this subpart is found at 43

CFR 3162.3 and 3162.5 and 43 CFR part 3160, subpart 3163.

§ 3177.2 Purpose.

This subpart supersedes Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (NTL–2B), Disposal of Produced Water. The purpose of this subpart is to specify informational and procedural requirements for submittal of an application for the disposal of produced water, and the design, construction, and maintenance requirements for pits as well as the minimum standards necessary to satisfy the requirements and procedures for seeking a variance from the minimum standards. Also set forth in this subpart are certain specific acts of noncompliance, corrective actions required, and the abatement period allowed for correction.

§ 3177.3 Scope.

This subpart is applicable to disposal of produced water from completed wells on Federal and Indian (except Osage) oil and gas leases. It does not apply to approval of disposal facilities on lands other than Federal and Indian lands. Separate approval under this subpart is not required if the method of disposal has been covered under an enhanced recovery project approved by the authorized officer.

§ 3177.4 Definitions.

As used in this subpart, the term:

Authorized officer means any employee of the Bureau of Land Management authorized to perform duties described in 43 CFR parts 3000 and 3100.

Federal lands means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

Free-board means the vertical distance from the top of the fluid surface to the lowest point on the top of the dike surrounding the pit.

Injection well means a well used for the disposal of produced water or for enhanced recovery operations.

Lease means any contract, profit share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorized exploration for, extraction of, or removal of oil or gas (see 43 CFR 3160.0–5).

Lessee means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0–5).

Lined pit means an excavated and/or bermed area that is required to be lined with natural or manmade material that will prevent seepage. Such pit shall also include a leak detection system.

Major violation means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0–5).

Minor violation means noncompliance that does not rise to the level of a ''major violation'' (see 43 CFR 3160.0–5).

Natural Pollutant Discharge Elimination System (NPDES) means a program administered by the Environmental Protection Agency or primacy State that requires permits for the discharge of pollutants from any point source into navigable waters of the United States.

Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof (see 43 CFR 3610.0–5).

Produced water means water produced in conjunction with oil and gas production.

Toxic constituents means substances in produced water that when found in toxic concentrations specified by Federal or State regulations have harmful effects in plant or animal life. These substances include but are not limited to arsenic (As), barium (Ba), cadmium (Cd), hexavalent chromium (hCr), total chromium (tCr), lead (Pb), mercury (Hg), zinc (Zn), selenium (Se), benzene, toluene, ethylbenzene, and xylenes, as defined in 40 CFR part 261.

Underground Injection Control (UIC) program means a program by administered by the EPA, primacy State, or Indian Tribe under the Safe Drinking Water Act to ensure that subsurface injection does not endanger underground sources of drinking water.

Unlined pit means an excavated and/or bermed area that is not required to be lined, or any pit that is lined but does not contain a leak detection system.

§ 3177.5 Requirements.

(a) *General requirements.* Operators of onshore Federal and Indian oil and gas leases shall comply with the requirements and standards of this subpart for the protection of surface and subsurface resources. Except as provided under § 3177.8(c), the operator may not dispose of produced water unless and until approval is obtained from the authorized officer. All produced water from Federal/Indian leases must be disposed of by injection into the subsurface, discharging into pits, or other acceptable methods approved by the authorized officer, including surface discharge under NPDES permit. Injection is generally the preferred method of disposal. Operators are encouraged to contact the appropriate authorized officer before filing an application for disposal of produced water so that the operator may be apprised of any existing agreements outlining cooperative procedures between the Bureau of Land Management and either the State/Indian Tribe or the Environmental Protection Agency concerning Underground Injection Control permits for injection wells, and of any potentially significant adverse effects on surface and/or subsurface resources. The approval of the Environmental Protection Agency or a State/Tribe shall not be considered as granting approval to dispose of produced water from leased Federal or Indian lands until and unless BLM approval is obtained. Applications filed pursuant to NTL–2B and still pending approval shall be supplemented or resubmitted if they do not meet the requirements and standards of this subpart. The disposal methods shall be approved in writing by the authorized officer regardless of the physical location of the disposal facility. Existing NTL–2B approvals will remain valid. However, upon written justification, the authorized officer may impose additional conditions or revoke any previously approved disposal permit, if the authorized officer, for example, finds that an existing facility is creating environmental problems, or that an unlined pit should be lined, because the quality of the produced water has changed so that it no longer meets the standards for unlined pits set out in this subpart.

(b) *Temporary disposal.* Unless prohibited by the authorized officer, produced water from newly completed wells may be temporarily disposed of into reserve pits for a period of up to 90 days, if the use of the pit was approved as a part of an application for permit to drill. Any extension of time beyond this period requires documented approval by the authorized officer.

(c) *Approval timeline.* (1) Upon receipt of a completed application the authorized officer shall take one of the following actions within 30 days:

(i) Approve the application as submitted or with appropriate modification or conditions;

(ii) Return the application and advise the applicant in writing of the reasons for disapproval; or

(iii) Advise the applicant in writing of the reasons for delay and the excepted final action date.

(2) If the approval for a disposal facility, *e.g.,* commercial pit or class II injection well, is revoked or suspended by the permitting agencies such as the Environmental Protection Agency or the primacy State, the BLM water disposal approval is immediately terminated and the operator is required to propose an alternative disposal method.

§ 3177.6 Application and approval authority.

(a) *On-lease disposal.* For water produced from a Federal/Indian lease and disposed of on the same Federal/Indian lease, or on other committed Federal/Indian leases if in a unit or communitized area, the approval of the disposal method is usually granted in conjunction with the approval for the disposal facilities. An example would be the approval of a proposal to drill an injection well to be used for the disposal of produced water from a well or wells on the same lease.

(1) *Disposal of water in injection wells.* When approval is requested for on-lease disposal of produced water into an injection well, the operator shall submit a Sundry Notice, Form 3160–5. Information submitted in support of obtaining the Underground Injection Control permit shall be accepted by the authorized officer in approving the disposal method, provided the information submitted in support of obtaining such a permit satisfies all applicable Bureau of Land Management statutory responsibilities (including but not limited to drilling safety, down hole integrity, and protection of mineral and surface resources) and requirements in this subpart. If the authorized officer has on file a copy of the approval for the receiving facilities, he/she may determine that a reference to that document is sufficient.

(2) *Disposal of water in pits.* When approval is requested for disposal of produced water in a lined or unlined pit, the operator shall submit a Sundry Notice, Form 3160–5. The operator shall comply with all the applicable Bureau of Land Management requirements and standards for pits established in this subpart. On National Forest lands, where the proposed pit location creates new surface disturbance, the authorized officer shall not approve the proposal without the prior approval of the Forest Service.

(b) *Off-lease disposal*—(1) *On leased or unleased Federal/Indian lands.* The purpose of the off-lease disposal approval process is to ensure that the removal of the produced water from a Federal or Indian oil and gas lease is proper and that the water is disposed of in an authorized facility. Therefore, the operator shall submit a Sundry Notice, Form 3160–5, for removal of the water together with a copy of the authorization for the disposal facility. If the authorized officer has a copy of the approval for the receiving facilities on file, he/she may determine that a reference to that document is sufficient. Where an associated right-of-way authorization is required, the information for the right-of-way authorization may be incorporated in the Sundry Notice, and the Bureau of Land Management will process both authorizations simultaneously for Bureau lands.

(i) *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160–5, along with a copy of the Underground Injection Control permit issued to the operator of the injection well, unless the well is authorized by rule under 40 CFR part 144.

(ii) *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and is to be disposed of into a lined or unlined pit located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160–5.

(iii) *Right-of-way procedures.* The operator of the injection well or pit is required to have an authorization from the Bureau of Land Management for disposing of the water into the pit or well, under Title V of the Federal Land Policy and Management Act (FLPMA) and 43 CFR part 2800, or a similar authorization from the responsible surface management agency. In transporting the produced water from the lease to the pit or injection well, *e.g.,* building a road or laying a pipeline, a right-of-way authorization under Title V of FLPMA and 43 CFR part 2800 from the Bureau of Land Management or a similar permit from the responsible surface management agency also shall be obtained by the operator of the pit or any injection well or other responsible party.

(2) *Disposal of water on State and privately owned lands*—(i) *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on State or privately owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160–5, a copy of the Underground Injection Control permit issued for the injection well by Environmental Protection Agency or the State where the State has achieved primacy. Submittal of the Underground Injection Control permit will be accepted by the authorized officer and approval will be granted for the removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety.

(ii) *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal and/or Indian lands and is to be disposed of into a pit located on State or privately owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160–5, a copy of the permit issued for the pit by the State or any other regulatory agency, if required, for disposal in such pit. Submittal of the permit will be accepted by the authorized officer and approval will be granted for removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety. If such a permit is not issued by the State or other regulatory agency, the requested removal of the produced water from leased Federal or Indian lands will be denied.

(iii) *Right-of-way procedures.* If the water produced from wells on leased Federal and/or Indian lands, and to be disposed of at a location on State or privately owned lands, will be transported over off-lease Federal or Indian lands, the operator of the disposal facility or other responsible party shall have an authorization from the Bureau of Land Management under Title V of FLPMA and 43 CFR part 2800, or a similar authorization from the responsible surface management agency.

§ 3177.7 Informational requirements for injection wells.

For an injection well proposed on Federal or Indian leases, the operator shall obtain an Underground Injection Control (UIC) permit pursuant to 40 CFR parts 144 and 146 from the Environmental Protection Agency or the State/Tribe where the State/Tribe has achieved primacy. The operator shall also comply with the pertinent procedural and informational requirements for Application for Permit to Drill or Sundry Notice as set forth in

subpart 3171 of this part. The injection well shall be designed and drilled or conditioned in accordance with the requirements and standards described in subpart 3172 of this part and pertinent NTLs, as well as the UIC permit.

§ 3177.8 Informational requirements for pits.

Operators who request approval for disposal of produced water into a lined or unlined pit shall file an application on a Sundry Notice, Form 3160–5, and identify the operator's field representative by name, address, and telephone number and the source of the produced water. Sources of produced water shall be identified by facility, lease number, well number and name, and legal description of well location. All samples for water analysis shall be taken at the current discharge a point. A reclamation plan detailing the procedures expected to be followed for closure of the pit and the contouring and revegetating of the site shall be submitted prior to pit abandonment. If requested by the authorized officer, a contingency plan to deal with specific anticipated emergency situations shall be submitted as provided for in 43 CFR 3162.5–1(d).

(a) *Lined pits.* The authorized officer shall not consider for approval an application for disposal into lined pits on Federal/Indian leases unless the operator also provides the following information:

(1) A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, leak detection system, and location relative to other site facilities;

(2) The daily quantity of water to be disposed of (maximum daily quantity shall be cited if major fluctuations are anticipated) and a water analysis (unless waived by the authorized officer as unnecessary) that includes the concentrations of chlorides, sulfates, pH, total dissolved solids (TDS), and toxic constituents that the authorized officer reasonably believes to be present;

(3) Criteria used to determine the pit size, which includes a minimum of 2 feet of free-board;

(4) The average monthly evaporation and average monthly precipitation for the area;

(5) The method and schedule for periodic disposal of precipitated solids and a copy of the appropriate disposal permit, if any; and

(6) The type, thickness, and life span of material to be used for lining the pit and the method of installation. The manufacturer's guidebook and information for the product shall be included, if available.

(b) *Unlined pits.* (1) Application for disposal into unlined pits may be considered for approval by the authorized officer where the application of the operator shows that such disposal meets one or more of the following criteria:

(i) The water to be disposed of has an annual average TDS concentration equal to or less than that of the existing water to be protected, provided that the level of any toxic constituents in the produced water does not exceed established State or Federal standards for protection of surface and/or ground water;

(ii) All, or a substantial part, of the produced water is being used for beneficial purposes and meets minimum water quality standards for such uses. For example, uses of produced water for purposes such as irrigation and livestock or wildlife watering shall be considered as beneficial;

(iii)(A) The water to be disposed of will not degrade the quality of surface or subsurface waters in the area;

(B) The surface and subsurface waters contain TDS above 10,000 ppm, or toxic constituents in high concentrations; or

(C) The surface and subsurface waters are of such poor quality or small quantity as to eliminate any practical use thereof; and

(iv) That the volume of water to be disposed of per disposal facility does not exceed an average of 5 barrels per day on a monthly basis.

(2) Operators applying for disposal into an unlined pit shall also submit the following information, as appropriate:

(i) Applications for disposal into unlined pits that meet the criteria in paragraphs (b)(1)(i) through (iv) of this section shall include:

(A) A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, size, and location relative to other site facilities;

(B) The daily quantity of water to be disposed of and a water analysis that includes total dissolved solids (in ppm), pH, oil and grease content, the concentrations of chlorides and sulfates, and other parameters or constituents toxic to animal or plant life as reasonably prescribed by the authorized officer. The applicant should also indicate any effect or interaction of produced water with any water resources present at or near the surface and other known mineral deposits. For applications submitted under criterion in paragraph (b)(1)(iv) of this section, the water quality analysis is not needed unless requested by the authorized officer;

(C) The average monthly evaporation and the average monthly precipitation for the area. For applications submitted under criterion in paragraph (b)(1)(iv) of this section, average annual data will be acceptable;

(D) The estimated percolation rate based on soil characteristics under and adjacent to the pit. In some cases the authorized officer may require percolation tests using accepted test procedures; and

(E) Estimated depth and areal extent of the shallowest known aquifer with TDS less than 10,000 ppm, and the depth and extent of any known mineral deposits in the area.

(ii) Where beneficial use (criterion in paragraph (b)(1)(ii) of this section) is the basis for the application, the justification submitted shall also contain written confirmation from the user(s).

(iii) If the application is made on the basis that surface and subsurface waters will not be adversely affected by disposal in an unlined pit (paragraph (b)(1)(iii) of this section), the justification shall also include the following additional information:

(A) Map of the site showing the location of surface waters, water wells, and existing water disposal facilities within 1 mile of the proposed disposal facility;

(B) Average concentration of TDS (in ppm) of all surface and subsurface waters within the 1-mile radius that might be affected by the proposed disposal;

(C) Reasonable geologic and hydrologic evidence that shows the proposed disposal method will not adversely affect existing water quality or major uses of such waters, and identifies the presence of any impermeable barrier(s), as necessary; and

(D) A copy of any State order or other authorization granted as a result of a public hearing that is pertinent to the authorized officer's consideration of the application.

(c) *Emergency pits.* Application for a permanent pit (lined or unlined) to be used for anticipated emergency purposes shall be submitted by the operator on a Sundry Notice, Form 3160–5, for approval by the authorized officer, unless it has been approved in conjunction with a previously approved operational activity. Design criteria for an emergency pit will be established by the authorized officer on a case-by-case basis. Any emergency use of such pits shall be reported in accordance with NTL–3A, and the pit shall be emptied and the liquids disposed of in

accordance with applicable State and/or Federal regulations within 48 hours following its use, unless such time is extended by the authorized officer.

§ 3177.9 Design requirements for pits.

(a) Pits shall be designed to meet the following requirements and minimum standards. For unlined pits approved under criterion in § 3177.8(b)(1)(iv), requirements in paragraphs (a)(4) and (5) of this section, do not apply.

(1) As much as practical, the pit shall be located on level ground and away from established drainage patterns, including intermittent/ephemeral drainage ways, and unstable ground or depressions in the area.

(2) The pit shall have adequate storage capacity for safe containment of all produced water, even in those periods when evaporation rates are at a minimum. The design shall provide for a minimum of 2 feet of free-board.

(3) The pit shall be fenced or enclosed to prevent access by livestock, wildlife, and unauthorized personnel. If necessary, the pit shall be equipped to deter entry by birds. Fences shall not be constructed on the levees. Figure 1 in appendix A to this subpart shows an example of an acceptable fence design.

(4) The pit levees are to be constructed so that the inside grade of the levee is no steeper than 1 (vertical):2 (horizonal), and the outside grade no steeper than 1:3.

(5) The top of levees shall be level and at least 18 inches wide.

(6) The pit location shall be reclaimed pursuant to the requirements and standards of the surface management agency. On a spilt estate (private surface, Federal mineral) a surface owner's release statement or form is acceptable.

(b) Lined pits shall be designed to meet following requirement and minimum standards in addition to those specified in paragraph (a) of this section:

(1) The material used in lining pits shall be impervious. It shall be resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances likely to be contained in the produced water.

(2) If rigid materials are used, leak-proof expansion joints shall be provided, or the material shall be of sufficient thickness and length to withstand expansion without cracking, contraction, and settling movements in the underlying earth. Semi-rigid liners such as compacted bentonite or clay may also be used provided that, considering the thickness of the lining material chosen and its degree of permeability, the liner is impervious for the expected period of use. Figure 2 in appendix A to this subpart shows examples of acceptable standards for concrete, asphalt, and bentonite/clay liners.

(3) If flexible membrane materials are used, they shall have adequate resistance to tears or punctures. Figure 3 in appendix A to this subpart gives an example of acceptable standards for installation of the flexible membrane.

(4) Lined pits shall have an underlying gravel-filled sump and lateral system or other suitable devices for the detection of leaks. Examples of the acceptable design of the leak detection system are shown in Figures 4 and 5 of appendix A to this subpart.

(c) Failure to design the pit to meet the requirements in paragraphs (a) and (b) of this section and minimum standards in this subpart will result in disapproval of the proposal or a requirement that it be modified unless a request for variance is approved by the authorized officer.

§ 3177.10 Construction and maintenance requirements for pits.

Inspections will be conducted according to the following requirements and minimum standards during the construction and operation of the pit. Failure to meet the requirements and standards may result in issuance of an Incident of Noncompliance (INC) for the violation. The gravity of the violation, corrective actions, and the normal abatement period allowed are specified for each of the requirements/standards.

(a) Any disposal method that has not been approved shall be considered an incident of noncompliance and may result in the issuance of a shut-in order, assessments, or penalties pursuant to 43 CFR part 3163 until an acceptable disposal method is provided and approved by the authorized officer.

TABLE 1 TO § 3177.10(a)

Violation	Corrective action	Normal abatement period
Minor: If it causes no significant environmental damages or effects. *Major*: If it causes or threatens immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income.	*Minor*: Submit acceptable application ..... *Major*: Shut-in, take corrective action to repair or replace damages according to instructions of authorized officer.	*Minor*: 1 to 20 days or as directed by authorized officer. *Major*: Within 10 days.

(b) The operator shall notify the authorized officer to inspect the leak detection system at least 2 business days prior to the installation of the pit liner.

TABLE 2 TO § 3177.10(b)

Violation	Corrective action	Normal abatement period
Minor	Require verification of its installation	Prior to use of pit.

(c) At least 2 business days prior to its use, the operator shall notify the authorized officer of completion of the pit construction, so that the authorized officer may verify that the pit has been constructed in accordance with the approved plan.

TABLE 3 TO § 3177.10(c)

Violation	Corrective action	Normal abatement period
(For failure to notify) Minor ..	N/A	N/A.
(For failure to construct in accordance with the approved plan) Minor, unless Major by definition.	The authorized officer may shut-in operations and require corrections to comply with the plan or require amendment of the plan.	1 to 20 days depending on the severity of the violation and the degree of difficulty to correct, if the pit is in use.

(d) Lined pit shall be maintained and operated to prevent unauthorized subsurface discharge of water.

TABLE 4 TO § 3177.10(d)

Violation	Corrective action	Normal abatement period
Usually Minor, unless Major as result of discharge.	Repair/replace liner and possibly shut in operations	1 to 20 days depending on the onsite situation.

(e) The pit shall be maintained as designed to prevent entrance of surface water by providing adequate surface drainage away from the pit.

TABLE 5 TO § 3177.10(e)

Violation	Corrective action	Normal abatement period
Minor	Provide surface drainage	Within 20 days.

(f) The pit shall be maintained and operated to prevent unauthorized surface discharge of water.

TABLE 6 TO § 3177.10(f)

Violation	Corrective action	Normal abatement period
Usually Minor, unless discharge results in Major.	Clean up if spill occurs, and reduce the water level to maintain the 2 feet of free-board; shut-in operations, if required by authorized officer.	1 to 20 days depending upon the onsite situation.

(g) The outside walls of the pit levee shall be maintained as designed to minimize erosion.

TABLE 7 TO § 3177.10(g)

Violation	Corrective action	Normal abatement period
Minor	Necessary repair	Within 20 days.

(h) The pit shall be kept reasonably free from surface accumulation of liquid hydrocarbons that would retard evaporation.

TABLE 8 TO § 3177.10(h)

Violation	Corrective action	Normal abatement period
Minor	Clean-up, and may require skimmer pits, settling tanks, or other suitable equipment.	Within 20 days.

(i) The operator shall inspect the leak detection system at least once a month or more often if required by the authorized officer in appropriate circumstances. The record of inspection shall describe the result of the

inspection by date and shall be kept and made available to the authorized officer upon request.

TABLE 9 TO § 3177.10(i)

Violation	Corrective action	Normal abatement period
Minor	Commence the required routine inspection and record-keeping.	Within 30 days.

(j) Prior to pit abandonment and reclamation, the operator shall submit a Sundry Notice for approval by the authorized officer, if not previously approved.

TABLE 10 TO § 3177.10(j)

Violation	Corrective action	Normal abatement period
Minor	Cease operations and file an application	Within 10 days.

(k) When change in the quantity and/or quality of the water disposed into an unlined pit causes the pit no longer to meet the unlined pit criteria listed under § 3177.8(b)(1), the operator shall submit a Sundry Notice amending the pit design for approval by the authorized officer.

TABLE 11 TO § 3177.10(k)

Violation	Corrective action	Normal abatement period
Minor unless the resulting damage is Major.	Submit the required amendment; shut-in operations if damage is determined by the authorized officer to be Major.	As specified by the authorized officer.

§ 3177.11 Other disposal methods.

(a) The person applying to use the surface discharge disposal method under an NPDES permit shall furnish a copy of the NPDES permit issued by the EPA or the primacy State, a current water quality analysis, and a Sundry Notice, Form 3160–5, describing site facilities (*e.g.,* retention ponds, skimmer pits and equipment, tanks, and any additional surface disturbance). Operations from the point of origin to the point of discharge are under the jurisdiction of the BLM. Operations from the point of discharge downstream are under the jurisdiction of the EPA or the primacy State.

(b) Use of existing commercial pits designed for containment of produced water or tanks in lieu of pits.

(c) New technology or any other proposal meeting the objective of this subpart that the authorized officer deems acceptable and that meets the requirements of State and Federal laws and regulations.

§ 3177.12 Reporting requirements for disposal facilities.

All unauthorized discharge or spills from disposal facilities on Federal/Indian leases shall be reported to the authorized officer in accordance with the provisions of NTL–3A.

TABLE 1 TO § 3177.12

Violation	Corrective action	Normal abatement period
Minor unless resulting damage is major.	Submit the required report	As specified by the authorized officer.

§ 3177.13 Variances from requirements or minimum standards.

An operator may request that the authorized officer approve a variance from any of the requirements or minimum standards prescribed in §§ 3177.5 through 3177.12. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the requirements or related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, will approve the requested variance(s) if it is determined that the proposed alterative(s) meet or exceed the objectives of the applicable minimum standard(s); or if the authorized officer determines that the exemption of the requirement is justified. Variances granted by BLM under this section shall be limited to proposals and requirements under BLM statutory and/or regulatory authority only, and shall not be construed as granting variances to regulations under EPA, State, or Tribal authority.

Appendix A to Subpart 3177—Examples of Acceptable Designs and Construction

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Figure 1 to Appendix A to Subpart 3177—Construction of Fences and Corner Posts

FIGURE 1. EXAMPLES FOR DESIGN AND CONSTRUCTION OF FENCES AND CORNER POSTS.

Figure 2 to Appendix A to Subpart 3177—Concrete, Asphalt, and Bentonite/Clay Liners

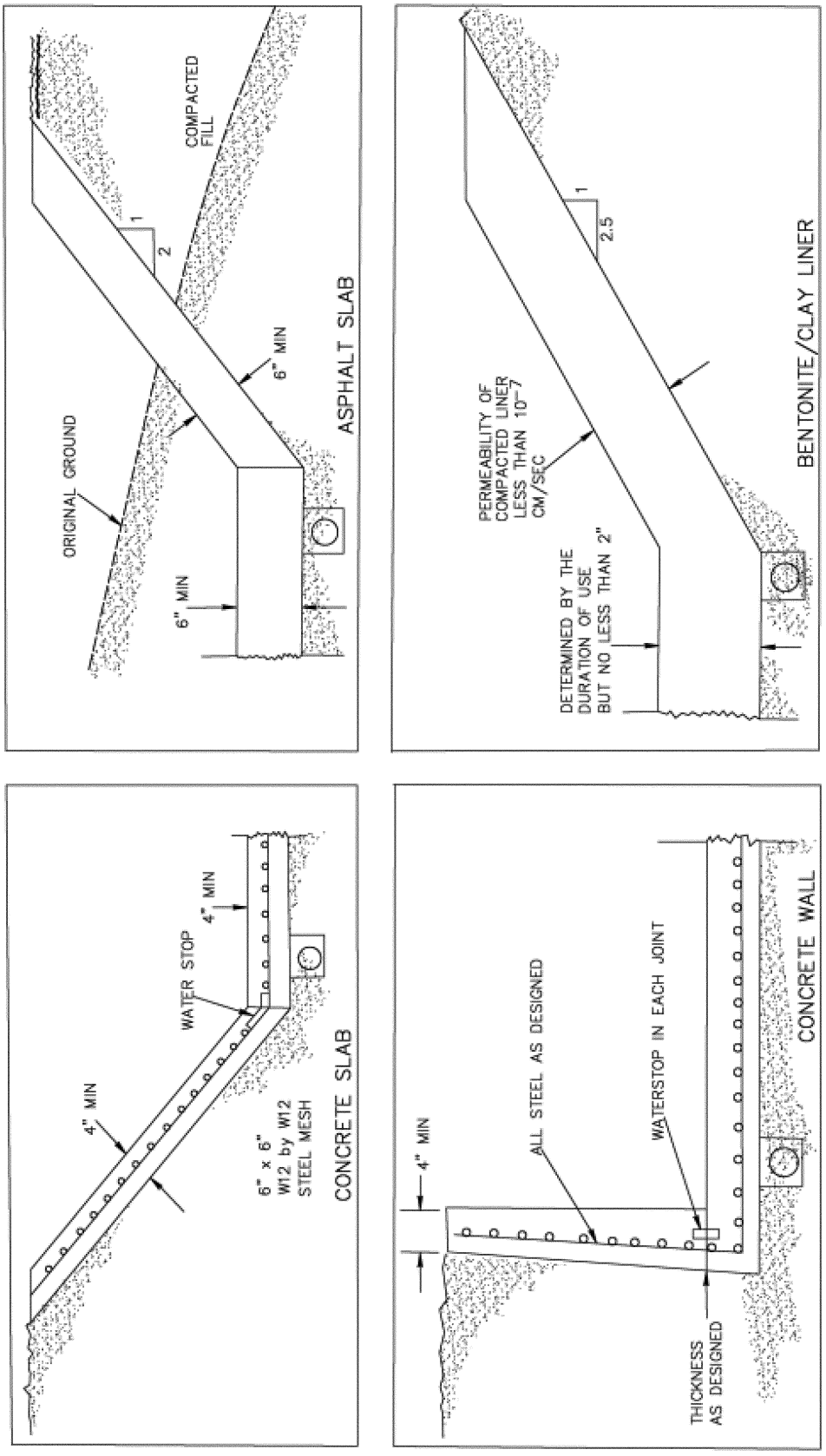

FIGURE 2. EXAMPLE OF ACCEPTABLE DESIGN FOR CONCRETE, ASPHALT AND BENTONITE/CLAY LINERS

Figure 3 to Appendix A to Subpart 3177—Flexible Liners

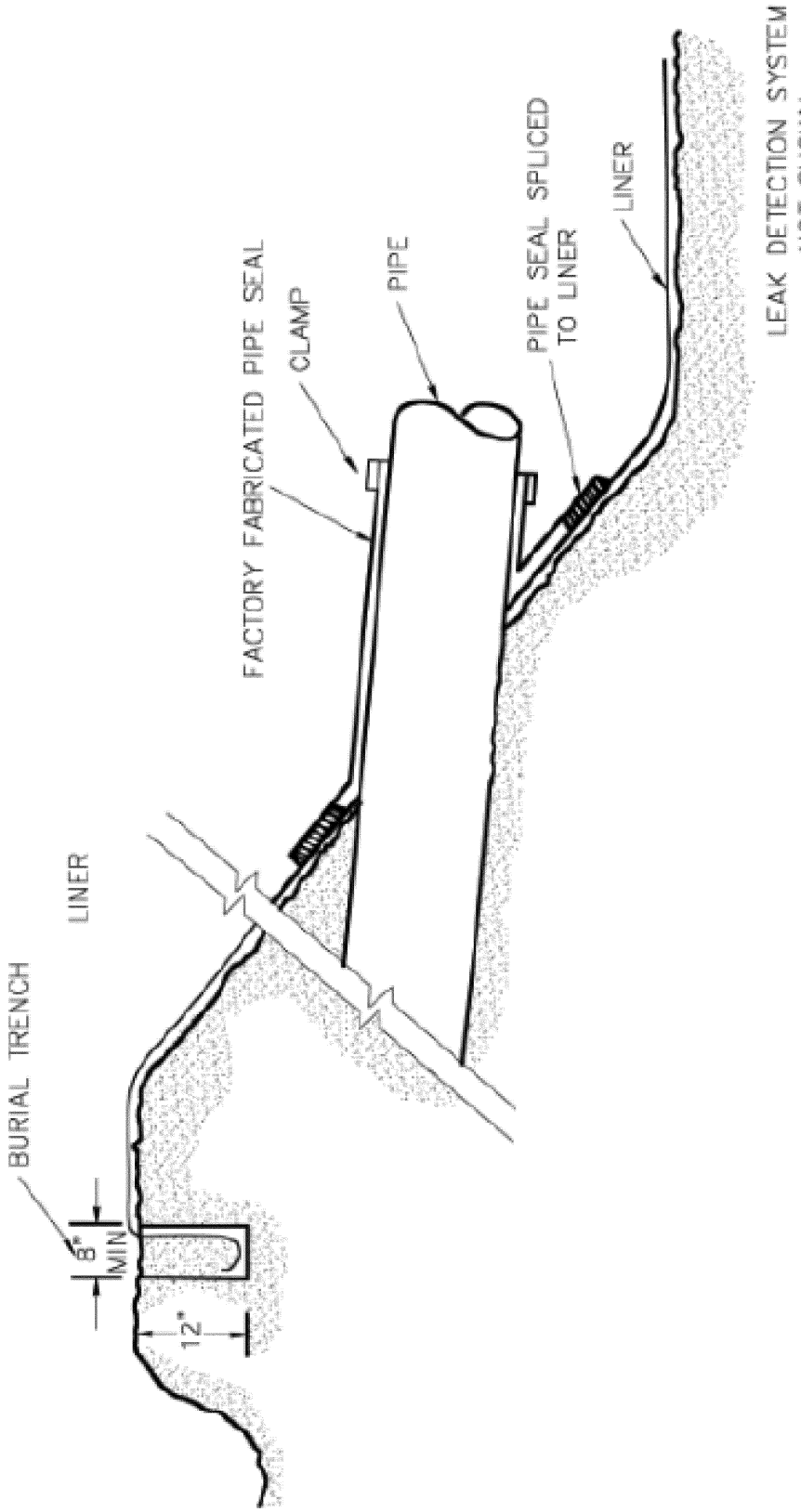

FIGURE 3. EXAMPLE OF ACCEPTABLE DESIGN OF A FLEXIBLE LINER.

Figure 4 to Appendix A to Subpart 3177—Leak Detection System for a Lined Pit Constructed in Relatively Impermeable Soils

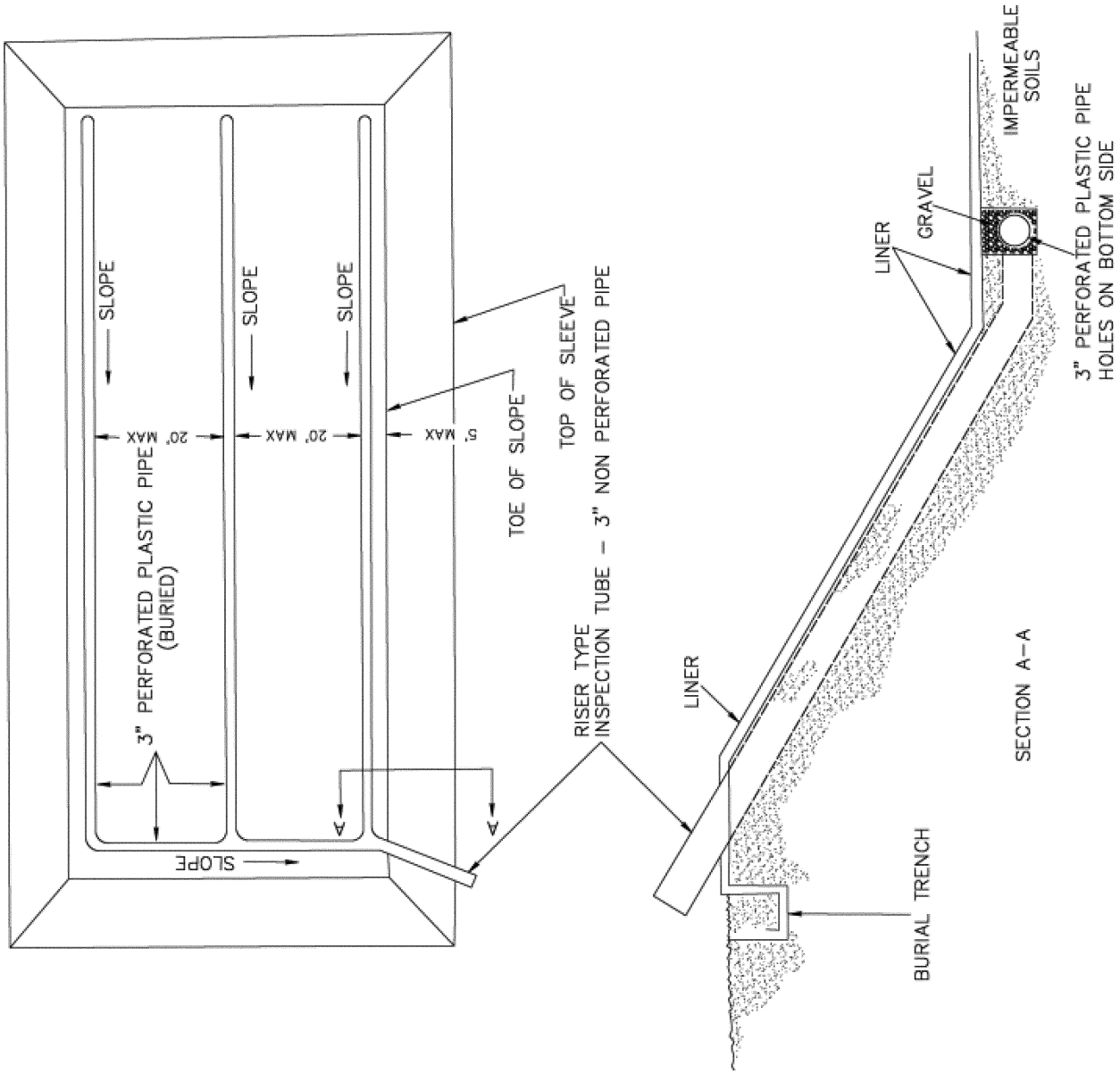

Figure 5 to Appendix A to Subpart 3177—Leak Detection System for a Lined Pit Constructed in Permeable Soils

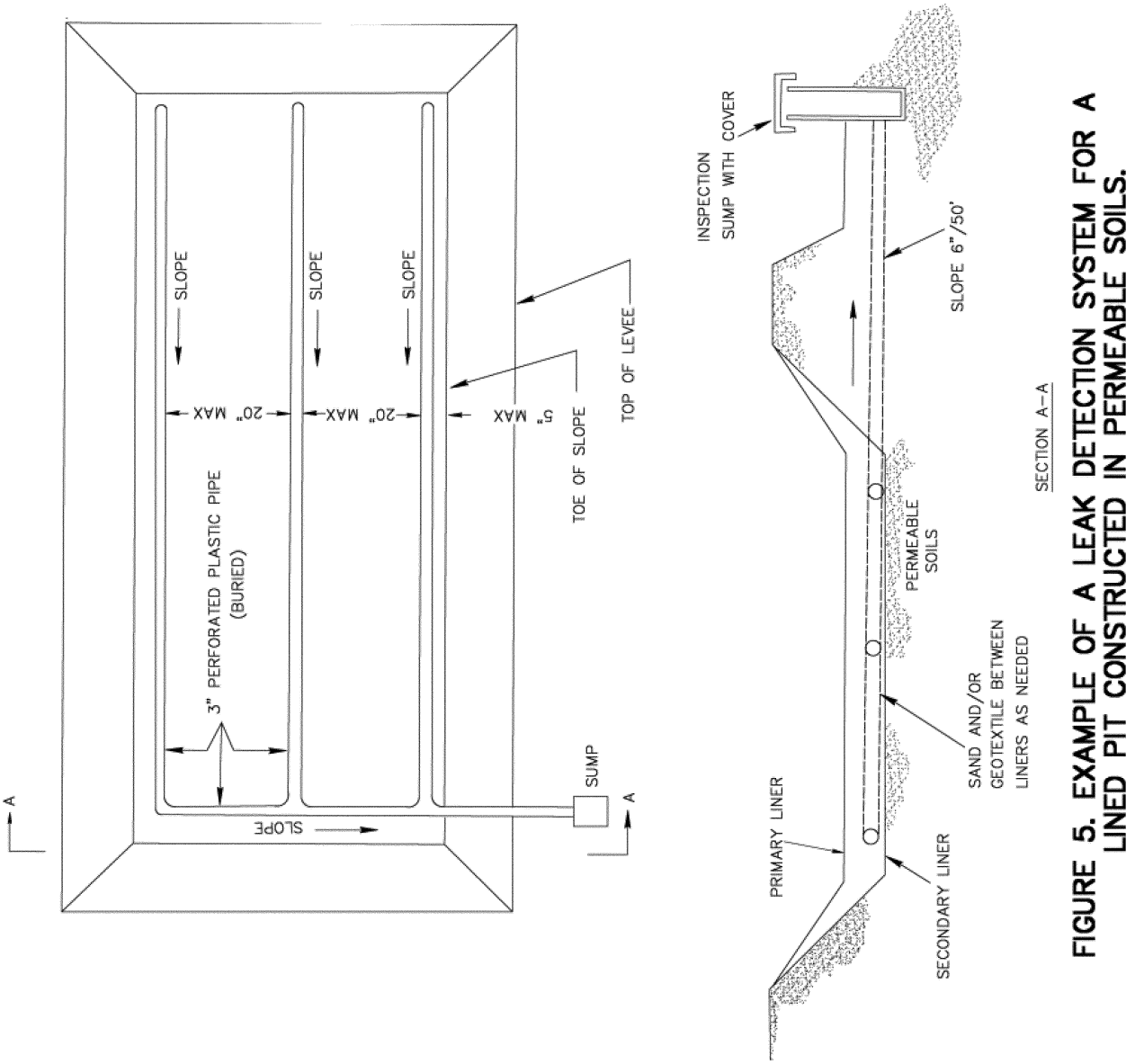

FIGURE 5. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN PERMEABLE SOILS.

[FR Doc. 2023–11742 Filed 6–15–23; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of Health and Human Services

Administration for Community Living

45 CFR Parts 1321, 1322, 1323, et al.
Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

45 CFR Parts 1321, 1322, 1323, and 1324

RIN 0985–AA17

Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities

AGENCY: Administration for Community Living (ACL), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Community Living (ACL) within The Department of Health and Human Services (''the Department'' or HHS) is issuing this notice of proposed rulemaking (NPRM) to modernize the implementing regulations of the Older Americans Act of 1965 (''the Act'' or OAA), which have not been substantially altered since their promulgation in 1988. These changes advance the policy goals of the Older Americans Act as articulated by Congress, including equity in service delivery, accountability for funds expended, and clarity of administration for the Administration for Community Living and its grantees. Our proposals will ultimately facilitate improved service delivery and enhanced benefits for OAA participants, particularly those in greatest economic need and greatest social need consistent with the statute.

DATES: To be assured consideration, comments must be received at the address provided below, no later than August 15, 2023.

ADDRESSES: You may submit comments, including mass comment submissions, to this proposed rule, identified by RIN Number 0985–AA17, by any of the following methods:

1. Electronically. You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. Regular, Express, or Overnight Mail: You may mail written comments to the following address ONLY:

Administration on Aging, Administration for Community Living, Department of Health and Human Services, Attention: ACL–AA17–P, 330 C Street SW, Washington, DC 20201.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted without change to content to *https://www.regulations.gov* and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received.

We will consider all comments received or officially postmarked by the methods and due date specified above, but because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to provide individual acknowledgements of receipt. Please allow sufficient time for mailed comments to be timely received in the event of delivery or security delays. Electronic comments with attachments should be in Microsoft Word or Portable Document Format (PDF).

Please note that comments submitted by fax or email, and those submitted or postmarked after the comment period, will not be accepted.

Inspection of Public Comments: All comments received before the close of the comment period will be available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.* Follow the search instructions on that website to view the public comments.

FOR FURTHER INFORMATION CONTACT: Amy Wiatr-Rodriguez, Director of Regional Operations, Administration for Community Living, Department of Health and Human Services, 330 C Street SW, Washington, DC 20201. Email: *amy.wiatr-rodriguez@acl.hhs.gov,* Telephone: (312) 938–9858. Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: Upon request, the Department will provide an accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please call (312) 938–9858 or email *amy.wiatr-rodriguez@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Congress passed the Older Americans Act (''the Act'' or OAA) in 1965 to expand and enhance community social services for older persons.[1] The original legislation established authority for grants to States for community planning and social services, research and development projects, and personnel training in the field of aging. Subsequent reauthorizations expanded and enhanced the reach of the Act, including through the authorization of the Long-Term Care Ombudsman Program (Ombudsman program). The Act created the Administration on Aging (AoA) within the Department of Health, Education and Welfare, now the Department of Health and Human Services (HHS), as the principal agency designated to carry out the provisions of the OAA and serve as Federal focal point on matters concerning older persons.[2] It designated a Commissioner on Aging, now Assistant Secretary for Aging, to lead the activities of AoA and administer the OAA.[3] Since 2012, AoA has been housed in the Administration for Community Living (ACL) within HHS.[4]

Title III of the OAA authorizes grants to State agencies on aging (State agencies), who in turn provide funding to area agencies on aging (AAAs) to serve as advocates on behalf of older persons and create comprehensive and coordinated community-based continuums of services and supports.[5] In 2022, the national aging network was comprised of 56 State agencies (including the District of Columbia and five territories), over 600 AAAs, and over 20,000 local service providers, in addition to one Native Hawaiian organization and 281 Tribal

[1] Public Law 89–73, 42 U.S.C. 3001 et. seq.

[2] Title II. of the OAA.

[3] Sec. 201 of the OAA; Title V of the Act added in the 1978 reauthorization of the OAA is administered by the Dep't of Labor.

[4] 80 FR. 31389 (June 2, 2015).

[5] Title II and Title III of the OAA.

organizations, representing 400 Indian Tribes.[6]

Title III authorizes the largest OAA programs by population served and Federal funds expended as administered by ACL. These include supportive, nutrition, evidence-based disease prevention and health promotion, caregiver, legal, and other services.[7] Title III programs served 10.9 million older persons in 2019 (the most recent year for which data is available).[8] Title III spending accounted for nearly three quarters of the $2.177 billion OAA FY 2022 budget [9] and funding for these programs is based on a statutory formula that determines yearly allocations to individual territories and States.[10]

Title III services are available to persons aged 60 and older; however, they are prioritized to those with the greatest economic need and greatest social need, particularly low-income and minority individuals, older persons with limited English proficiency (LEP), older persons residing in rural areas, and older persons with disabilities.[11]

First included as a part of the 1978 reauthorization of the Act, Title VI authorizes funds for nutrition, supportive, and caregiver services to older Native Americans. The purpose of Title VI programs is to support the independence and well-being of tribal elders and caregivers living in their communities consistent with locally determined needs. ACL awards funding directly to Tribal organizations, including Native Alaskan organizations, and a not-for-profit group representing Native Hawaiians. To be eligible for funding, a Tribal organization must represent at least 50 Native Americans aged 60 and older. In FY2021, grants were awarded to 282 Tribal organizations representing over 400 Indian Tribes and villages, and one organization serving Native Hawaiian elders.[12]

Title VII authorizes the Ombudsman program, programs for Elder Abuse, Neglect, and Exploitation Prevention, and a requirement for States to provide a State Legal Assistance Developer.[13] States' Ombudsman programs investigate and resolve complaints related to the health, safety, welfare, and rights of individuals who live in long-term care facilities. Begun in 1972 as a demonstration program, Ombudsman programs today exist in all States, the District of Columbia, Puerto Rico, and Guam, under the authorization of the Act. These States and territories have an Office of the State Long-Term Care Ombudsman (the Office), headed by a full-time State Long-Term Care Ombudsman (the Ombudsman). In FY 2022, the program had a budget of $19.9 million. In FY 2021, the program handled more than 164,000 complaints and provided more than 624,000 instances of information and assistance to individuals and long-term care facilities.[14] Title VII also authorizes grants to State agencies for program activities aimed at preventing and remedying elder abuse, neglect, and exploitation.

II. Statutory and Regulatory History

This proposed regulation is published under the authority granted to the Assistant Secretary for Aging by the Older Americans Act of 1965, Public Law 89–73, 79 Stat. 218 (1965), as amended through Supporting Older Americans Act of 2020, Public Law 116–131, 134 Stat. 240 (2020), sections 201(e)(3), 305(a)(1), 306(d)(1), 307(a), 307(d)(3), 331(a), 614(a), 624(a) and 712–713 (42 U.S.C. 3011(e), 42 U.S.C. 3025, 42 U.S.C. 3026(d), 42 U.S.C. 3027(a), 42 U.S.C. 3027(a), 3027(d), 42 U.S.C. 3057e, 42 U.S.C. 3057j, and 3058g–3058h, respectively). These provisions authorize the Assistant Secretary for Aging to prescribe regulations regarding designation of State agency activities; development and approval of State plans on aging; and funding for supportive, nutrition, evidence-based disease prevention and health promotion, family caregiver support, and legal services under Title III of the Act; funding for Indian Tribes, Tribal organizations, and a Hawaiian Native grantee to serve Hawaiian Native and tribal elders and family caregivers under Title VI of the Act; and allotments for Vulnerable Elder Rights Protection Activities, including the Long-Term Care Ombudsman Program under Title VII of the Act.

The OAA was passed in 1965 and vested authority for carrying out the purposes of the Act, including through the issuance of regulation, in the Assistant Secretary for Aging (then the Commissioner for Aging). Since its initial passage, the OAA has been amended a total of eighteen times. Current regulations for programs authorized under the Act date from 1988.[15] Title III, except regarding the Ombudsman program, and Title VI implementing regulations have not been revised since that time, while Title VII regulations 45 CFR part 1324 *Allotments for Vulnerable Elder Rights Protection Activities, Subpart A* and portions of 45 CFR part 1321—*Grants to State and Community Programs on Aging* regarding the Ombudsman program were published in 2015.[16]

There have been substantial statutory changes since 1988, as detailed by the Congressional Research Service in several summary publications.[17] *Title VII: State Long-Term Care Ombudsman and Vulnerable Elder Rights Protection* was added to the Act by the 1992 Amendments (Pub. L. 102–375, 42 U.S.C. 3058g–3058i).[18] It consolidated and expanded existing programs focused on protecting the rights of older persons. Title VII incorporated separate authorizations of appropriations for the Ombudsman program; the program for the prevention of elder abuse, neglect, and exploitation; elder rights and legal assistance development program; and outreach, counseling, and assistance for insurance and public benefit programs. The 1992 amendments also strengthened requirements related to focusing Title III funding and services on populations in greatest need with particular attention to older low-income minority individuals. Other elements of the 1992 amendments authorized programs for assistance to caregivers of the frail elderly, clarified the role of Title III agencies in working with the private sector, and required improvements in AoA data collection.

The National Family Caregiver Support Program under Title III and Native American Caregiver Support Program under Title VI were authorized by the 2000 amendments (Pub. L.106–501), which also permitted States to impose cost-sharing, subject to limitations, for some Title III services certain older persons receive while retaining authority for voluntary contributions towards the costs of services.[19] The 2006 amendments (Pub. L. 109–365) authorized the Assistant Secretary for Aging to designate an individual within AoA to be responsible

[6] The Congressional Research Service, Older Americans Act: Overview and Funding (June 23, 2022) R43414 (*congress.gov*) (last visited Jan. 18, 2023).

[7] Title III of the OAA.

[8] *Supra* at 6.

[9] *Supra* at 6.

[10] ACL, FY 2022 OAA Title III Annual Grant Awards (without transfers) (last visited Jan. 18, 2023).

[11] Title III of the OAA.

[12] Fiscal Year 2023 Justification of Estimates for Appropriations Committees.

[13] Title VII of the OAA.

[14] *Supra* at 6; ACL, AGing Integrated Database (AGID), National Ombudsman Reporting System (NORS), Data at a Glance, (last visited Jan. 18, 2023); ACL, Fiscal Year 2023 Justification of Estimates for Appropriations Committees, p. 132.

[15] 53 FR 33758 (Aug. 31, 1988).

[16] 80 FR 7704 (Feb. 11, 2015).

[17] Congressional Research Service, Older Americans Act: A 2020 Reauthorization (July 1, 2020) (last visited Jan. 18, 2023); *Supra* at Note 6.

[18] 42 U.S.C. 3058g.

[19] OAA Sec. 316, 42 U.S.C. 3030p, 3030q, 3030r; OAA Sec. 631, 42 U.S.C. 3057k–11.

for prevention of elder abuse, neglect, and exploitation and to coordinate Federal elder justice activities.[20] In addition, the 2006 amendments expanded the reach of Aging and Disability Resource Centers (ADRCs), brought increased attention to services and supports related to mental health and mental disorders, required States to conduct increased planning efforts related to the growing number of older people in coming decades, and focused attention on the needs of older people with LEP and those at risk of institutional placement.[21]

The 2016 amendments (Pub. L. 114–144) provided additional flexibility to States, AAAs, and social services providers in addressing the modernization of senior centers,[22] falls prevention,[23] and behavioral health screening,[24] and codified existing practices, such as requiring ''evidence-based'' [25] disease prevention and health promotion services. For the Ombudsman program, they clarified conflicts of interest provisions,[26] strengthened confidentiality and Ombudsman training requirements,[27] and improved resident access to representatives of the Office.[28] They addressed coordination among ADRCs [29] and other home and community-based service (HCBS) [30] organizations providing information and referrals.

The Supporting Older Americans Act of 2020 (Pub. L. 116–131) added new definitions, including *person-centered* and *trauma-informed*.[31] The legislation amended the Act to address a range of disease prevention and health promotion activities, such as chronic disease self-management and falls prevention,[32] as well as addressing the negative effects of social isolation among older individuals.[33] Congress focused on other reauthorization issues as well, including changes to nutrition services programs and to programs that provide support to family caregivers.

[20] OAA Sec. 201, 42 U.S.C. 3012.

[21] 42 U.S.C. 3002, 3012, 3025, 3032k.

[22] 42 U.S.C. 3012

[23] 42 U.S.C. 3030d.

[24] Ibid.

[25] 42 U.S.C. 3030m; 3030s.

[26] 42 U.S.C. 3058g.

[27] 42 U.S.C. 3012.

[28] 42 U.S.C. 3058g.

[29] 42 U.S.C. 3012.

[30] 42 U.S.C. 3012, 3025, 3026.

[31] Sec. 102, 42 U.S.C. 3002.

[32] Sec. 303, 42 U.S.C. 3032.

[33] Sec 110, 42 U.S.C. 3002; Sec. 115 42 U.S.C. 3012(a); Sec. 126; Sec. 213, 42 U.S.C. 3030d; Sec. 304, 42 U.S.C. 3032(a).

III. Reasons for the Proposed Rulemaking

The OAA has been amended seven times since 1988 and twice since 2015. Other than Title VII regulations 45 CFR part 1324 *Allotments for Vulnerable Elder Rights Protection Activities, Subpart A* and portions of 45 CFR part 1321—*Grants to State and Community Programs on Aging* regarding the Ombudsman program which were promulgated in 2015, these OAA regulations have not been amended since 1988. As a result, the OAA statute and regulations are no longer in alignment. The entire National Family Caregiver Support Program has been created by OAA reauthorizing legislation for which there is no conforming rule. Similarly, portions of the Act have been significantly altered since 1988, with no analogous updates to regulation. This discordance creates confusion for grantees, sub-grantees, and service providers, inhibiting their ability to most effectively serve OAA participants. In addition to areas where we propose to better align statute with regulation, we are proposing modifications to regulatory text that will modernize our rules to reflect ongoing stakeholder feedback and responses to our Request for Information in areas where our current regulations do not address the evolving needs of Title III, VI, and VII grantees and the older adults and family caregivers they serve.

The National Caregiver Support Act, passed as a part of the 2000 Amendments, created Title III part E and Title VI part C of the OAA.[34] The programs had a combined budget of nearly $200 million in FY 2022; in FY 2021, the most recent year for which data is available, nearly 800,000 caregivers received services.[35] However, there are currently no regulations implementing this far-reaching program. Consequently, we have proposed regulatory text at Subpart D § 1321.91 (Title III part E) and Subpart C§ 1322.29 (Title VI part C) to implement statutory mandates and clarify areas related to required family caregiver support services, allowable use of funds, and the method of funds distribution. These additions provide necessary direction to grantees in meeting their fiscal and programmatic responsibilities under the Act, and alleviating inefficiencies and uncertainties caused by reliance on sub-regulatory guidance rather than on regulations.

Additionally, newly proposed section 1321, subpart E, and section 1322, subpart D provide direction on emergency and disaster requirements under the Act. There is very limited guidance in § 1321.65 of the current regulations, which only address weather-related emergencies, and no mention of emergency or disaster requirements in current section 1322 or 1323. Our proposals take into account lessons from the COVID–19 public health emergency (PHE), which demonstrated that emergencies beyond those discussed in the current regulations could have a devastating effect on older adults, Native American elders, and family caregivers. In developing the proposed rule, we considered the evolution of what may constitute an ''emergency'' or ''disaster;'' how emergencies and disasters may uniquely affect older adults, Native American elders, and family caregivers; and how best to meet the needs of OAA grantees and participants. The proposed provisions allow Title VI grantees, States, AAAs, and service providers to have the flexibility in funding requirements to adequately plan for emergency situations, as contemplated by the Act.

We are likewise proposing to modernize our nutrition rules to better support grantees' efforts to meet the needs of older adults. Our previous sub-regulatory guidance required that meals must either be consumed on-site at a congregate meal setting or delivered to a participant's residence. This guidance does not take into account those who may leave their homes to pick up a meal but are not able to consume the meal in the congregate setting for various reasons, including safety concerns such as those experienced during the COVID–19 pandemic. Again, the COVID–19 pandemic brought to light limitations in our current nutrition regulations, which we have sought to address in proposed § 1321.87 to allow for ''grab and go'' meals as part of a congregate site where participants can collect their meal and return to the community off-site to enjoy it. Our proposal is a direct response to stakeholder feedback, including as gathered from the RFI, and appropriately reflects the evolving needs of both grantees and OAA participants.

Finally, in response to robust comment, we also propose to include greater detail on the programmatic fiscal policies and procedures State agencies must develop and implement under the Act, including in areas of sub-awardee monitoring, data collection and

[34] 42 U.S.C. 3030s (Title III part E); 42 U.S.C. 3057k–11 (Title VI part C).

[35] The Dept. of Health and Human Serv. *Fiscal Year 2024 Admin. for Community Living Justification of Estimates for Appropriations Committee.*

reporting, direct service provision, matching, contribution requirements, transfer allowances between and among Title III part B, C–1 and/or C–2 funds, allowable administration funding, voluntary contributions/cost sharing, and required annual certification, among others. The lack of detailed instruction in this area to date has created administrative confusion and programmatic inefficiencies for both States and ACL.

Specific to services for Native American elders and caregivers, we propose a number of changes to improve coordination and clarify requirements. Title VI of the Act is titled ''Grants for Native Americans,'' and states a purpose of providing supportive services, including nutrition services, to American Indians, Alaskan Natives, and Native Hawaiians that are comparable to the services provided under Title III. Current section 1323 applies to one Native Hawaiian grantee who receives funds under Title VI part B of the Act. To more clearly and consistently specify requirements, we propose to combine sections 1322 and 1323 and incorporate requirements specific to Title VI, part B in the proposed § 1322. By so doing we anticipate reducing confusion and improving appropriate consistency in service provision to both older Indians and Native Hawaiians and family caregivers.

The Act sets forth expectations that States, area agencies on aging, Tribal organizations, and a Native Hawaiian grantee will coordinate regarding provision of services. We propose to include requirements for coordination between Title III and Title VI in each applicable Subpart of sections 1321 and 1322.

To further improve service provision to Native American elders and family caregivers, we propose to specify service requirements, where appropriate, similar to those for services funded under Title III of the Act. Our approach is to identify issues relating to service provision about which the grantee under Title VI of the Act must have policies and procedures, while affirming tribal sovereignty regarding the responsibility for decision-making, development, and implementation of such policies and procedures.

We propose updates to regulatory guidance for Ombudsman programs that receive funding under Title VII of the Act. There has been significant variation in the interpretation and implementation of the provisions of the Act and our 2015 implementing regulations. For example, some State agencies have incorrectly interpreted the 2015 regulations to mean they may still access the files and records of the Ombudsman program that are subject to strict disclosure requirements for monitoring purposes. This has resulted in inconsistent protection of resident identities and Ombudsman records based on residents' State of residence.

We issued a Request for Information [36] on May 6, 2022 seeking input from the aging network, Indian Tribes, States, and Territories on challenges they face administering services, as well as feedback from individuals and other interested parties on experiences with services, providers, and programs under the Act.[37] We received over 900 individual comments, most of which focused on a few topic areas including: equitably serving older adults and family caregivers from underserved and marginalized communities, the Ombudsman program, area plans on aging, and flexibilities within the nutrition and other programs. We have sought to address these areas of focus in our proposed rulemaking.

IV. Grants to State and Community Programs on Aging

A. Provisions Revised To Reflect Statutory Changes or Provide Clarity

For the following provisions, we propose revisions that reflect statutory changes (*e.g.,* changing ''Commissioner'' to ''Assistant Secretary'' throughout) and provide direction in response to grantee and other stakeholder requests for technical assistance, RFI responses, listening sessions, and Tribal consultation. We also propose redesignating provisions, reorganizing the placement of provisions, updating statutory references, and other technical revisions. We welcome comment on these proposed changes.

Subpart A—Introduction

§ 1321.1 Basis and Purpose of This Part

Proposed section 1321.1 sets forth the requirements of Title III of the Act to provide grants to State and community programs on aging. We propose revisions to ensure consistency with statutory terminology and requirements, such as references to evidence-based disease prevention and health promotion and caregiver services, specifying family caregivers as a service population, and listing the key roles of the State agency identified to implement Title III and Title VII of the Act.

§ 1321.3 Definitions

We propose to update the definitions of significant terms in § 1321.3 by adding several new definitions, revising several existing definitions, and deleting definitions of terms that are obsolete or no longer necessary. The additions, revisions, and deletions are intended to reflect changes to the statute, important practices in the administration of programs under the Act, and feedback we have received from a range of stakeholders.

We propose to add definitions of the following terms: ''Access to services,'' ''Acquiring,'' ''Area agency on aging,'' ''Area plan administration,'' ''Best available data,'' ''Conflicts of interest,'' ''Cost sharing,'' ''Domestically-produced foods,'' ''Family caregiver,'' ''Governor,'' ''Greatest economic need,'' ''Greatest social need,'' ''Immediate family,'' ''Local sources,'' ''Major disaster declaration,'' ''Multipurpose senior center,'' ''Native American,'' ''Nutrition Services Incentive Program,'' ''Older relative caregiver,'' ''Planning and service area,'' ''Private pay programs,'' ''Program development and coordination activities,'' ''Program income,'' ''Single planning and service area state,'' ''State,'' ''State agency,'' ''State plan administration,'' ''Supplemental foods,'' and ''Voluntary contributions.''

We propose to retain and make minor revisions to the terms: ''Altering or renovating,'' ''Constructing,'' ''Department,'' ''Direct services,'' ''In-home supportive services,'' ''Means test,'' ''Official duties,'' ''Periodic,'' ''Reservation,'' and ''Service provider.'' We propose to retain with no revisions the terms: ''Act'' and ''Fiscal year,'' and we propose to delete the terms: ''Frail,'' ''Human services,'' and ''Severe disability.''

New definitions of note are discussed below.

''Conflicts of Interest''

Recognizing the importance of ensuring the integrity of, and trust in, activities carried out under the Act, section 307(a)(7) [38] of the Act requires State agencies to have mechanisms in place to identify and remove conflicts of interest. We propose several provisions related to conflicts of interest (COI) to provide clarity for State agencies, AAAs, and service providers: §§ 1321.3, 1321.47, and 1321.67. These provisions include a general definition of COI and specific requirements for State agencies and AAAs (respectively) which are discussed in more detail below. These

[36] 87 FR 27160 (May 6, 2022).

[37] Sec. 2013A of the OAA, 42 U.S.C. 3013a.

[38] 42 U.S.C. 3027(a)(7).

provisions reflect the expanded potential for conflicts of interest due to changes in the scope of activities undertaken by these entities since the Act was first passed and these regulations were first issued. The intent of the COI provisions is to ensure that State agencies, AAAs, and service providers carry out the objectives of the Act consistent with the best interests of the older people they serve.

''Cost Sharing''

We propose to clarify the definition of cost sharing to implement the intent of § 315 of the Act.[39] The term ''cost sharing'' generally refers to the portion of the cost of an item or service for which an individual is responsible in order to receive that item or service. However, as set forth in the OAA, this term is used differently than how it is used in other settings. There are many restrictions on how cost sharing may be implemented, including that an eligible individual may not be denied service for failure to make a cost sharing payment. The OAA allows for cost sharing from certain individuals for some services,[40] but many other requirements apply to State agencies who wish to allow the practice of cost sharing that are later described in proposed § 1321.9(c)(2)(x)(I).

''Family Caregiver''

We propose to define ''family caregiver'' to include the following subsets: adults who are caring for older individual, adults who are caring for an individual of any age with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction, and older relative caregivers. We later propose to define ''older relative caregiver.'' With this inclusive approach to defining ''family caregiver,'' we include those populations specified in the National Family Caregiver Support Program, as set forth in Title III–E of the Act. For example, this includes unmarried partners, friends, or neighbors caring for an older adult.

''Greatest Economic Need''

Focusing OAA services towards individuals who have the greatest economic need is one of the basic tenets of the Act. The definition of ''greatest economic need'' in the Act incorporates income and poverty status. The Act also permits State agencies to set policies, consistent with our regulations, that incorporate other considerations into the definition of ''greatest economic need.'' [41] Through its policies, the State agency may permit AAAs to even further refine specific target populations of greatest economic need within their planning and service area. A variety of local conditions and individual situations, other than income, could factor into an individual's level of economic need. State agencies and AAAs are in the best position to understand the conditions and factors in their State and local areas that contribute to individuals falling within this category. Accordingly, this definition allows State agencies and AAAs to further refine target populations of greatest economic need.

''Greatest Social Need''

Focusing OAA services towards individuals who have the greatest social need is one of the basic tenets of the Act. ''Greatest social need'' is defined as ''need caused by noneconomic factors,'' including physical and mental disabilities, language barriers, and cultural, social, or geographic isolation, including isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently.[42] This definition allows for consideration of other noneconomic factors that contribute to cultural, social, or geographic isolation.

For example, in multiple places the Act requires special attention to the needs of older individuals residing in rural locations. In some communities, such isolation may be caused by minority religious affiliation. Isolation may also be related to sexual orientation, gender identity, or sex characteristics. For example, research indicates that LGBTQI+ older adults are at risk for poorer health outcomes and have lived through discrimination, social stigma, and the effects of prejudice, impacting their connections with families of origin, lifetime earnings, opportunities for retirement savings, and ability to trust health care professional and aging services providers.[43] Demographics indicate that the population of HIV-positive older adults are likely to grow significantly for the next two decades, and such older adults may experience isolation due to stigma or lack of knowledge on aging issues for people who are HIV-positive. Other chronic conditions may also result in isolation or stigma, as may housing instability, food insecurity, lack of transportation, utility assistance needs, or interpersonal safety concerns, including abuse, neglect, and exploitation.

We received many comments through the RFI urging ACL to set clear and consistent expectations regarding such populations to be included, and our intent is to do so in this proposed definition. As with ''greatest economic need,'' the Act permits State agencies to set policies, consistent with our regulations, that further define the noneconomic considerations that contribute to populations designated as having the ''greatest social need.'' [44] Through its policies, the State agency may permit AAAs to even further refine specific target populations of greatest social need within their planning and service area. State agencies and AAAs are in the best position to understand additional conditions and factors in their State and local areas that contribute to individuals falling within this category. Accordingly, this definition allows State agencies and AAAs to further refine target populations of greatest social need.

''Program Development and Coordination Activities''

We propose to add the term ''*program development and coordination activities*'' to the definitions to explain certain activities of State agencies and AAAs to achieve the goals of the Act. This work includes the development of innovative ways to address the evolving social service, health, and economic climates in which they operate. Separate from administering programs to provide direct services, State agencies and AAAs plan, develop, provide training regarding, and coordinate at a systemic level, programs and activities aimed at the Act's target populations. In addition to the new definition, we propose to

[39] 42 U.S.C. 3030c–2.

[40] 42 U.S.C. 3030c–2(a)(2) prohibits a State from implementing cost sharing for the following services: information and assistance, outreach, benefits counseling, or case management; ombudsman, elder abuse prevention, legal assistance, or other consumer protection services; congregate and home delivered meals; and any services delivered through Tribal organizations. 42 U.S.C. 3030c–2(a)(3) prohibits cost-sharing for any services delivered through a Tribal organization or to an individual whose income is at or below the Federal poverty level. States are prohibited from considering assets and other resources when considering whether a low-income individual is exempt from cost-sharing, when creating a sliding scale for cost sharing, or when seeking a contribution from a low-income individual.

[41] *See,* 42 U.S.C. 3026(a)(4)(A)(i)(I)(aa); 42. U.S.C. 3025(a)(1).

[42] 42 U.S.C. 3002(24).

[43] National Resource Center on LGBT Aging, Inclusive Services for LGBT Older Adults: A Practical Guide To Creating Welcoming Agencies (2020), *https://www.lgbtagingcenter.org/resources/pdfs/Sage_GuidebookFINAL1.pdf.*

[44] *See,* 42 U.S.C. 3026(a)(4)(A)(i)(I)(aa); 42. U.S.C. 3025(a)(1).

include language in § 1321.27 to clarify requirements for these activities.

Subpart B—State Agency Responsibilities

§ 1321.5 Mission of the State Agency

Section 1321.7 of the existing regulation (*Mission of the State agency*) is redesignated here as § 1321.5. for clarity with respect to other relevant provisions. Proposed § 1321.5 sets forth the State agency's mission, role, and functions as the lead on all aging issues in the State under the Act, and it specifies that the State agency will designate AAAs in States with multiple planning and service areas to assist in carrying out the mission. We propose minor revisions to align with reauthorizations of the statute, such as adding family caregivers as a service population per the 2000 reauthorization. We also propose to update regulatory references and revise language for clarity.

§ 1321.7 Organization and Staffing of the State Agency

Section 1321.9 of the existing regulation (*Organization and staffing of the State agency*) is redesignated here as § 1321.7. We propose several changes to the provision on organization and staffing for consistency and for clarification. Proposed minor changes at § 1321.7(a), (c), and (d) reflect consistent wording with the State agency's obligations under 45 CFR 1324 with respect to the administration of the Ombudsman program. The Ombudsman program is authorized under Title VII of the Act, and the implementing regulations for the program were promulgated in 2015 at 45 CFR 1324. Proposed § 1321.7(d) includes minor language changes to clarify the State agency's existing obligations to carry out the Ombudsman program in accordance with the Act's requirements, regardless of any applicable State law requirements.

Section 307(a)(13)[45] and § 731[46] of the Act require the State agency to ensure that there are a Legal Assistance Developer and other personnel, as needed, to provide State leadership in developing legal assistance programs for older individuals throughout the State. These staffing requirements are absent from the existing regulation regarding staffing; we propose to add a new paragraph (e) to this provision that sets forth these requirements to assist States to better understand their obligations under the Act related to staffing. The role of the Legal Assistance Developer is discussed more fully in the preamble, below.

§ 1321.9 State Agency Policies and Procedures. [Updated Title and Revised]

We propose to retitle the provision contained in § 1321.11 of the existing regulation (*State agency policies*) to better reflect the intent of the provision and to redesignate it here as § 1321.9. We also propose to incorporate provisions contained in § 1321.45 (*Transfer between congregate and home-delivered nutrition service allotments*), § 1321.47 (*Statewide non-Federal share requirements*), § 1321.49 (*State agency maintenance of effort*), § 1321.67 (*Service contributions*), and § 1321.73 (*Grant related income under Title III–C*) within this provision to consolidate and streamline applicable requirements.

Section 305 of the Act requires designated State agencies to be ''primarily responsible for the planning, policy development, administration, coordination, priority setting, and evaluation of all State activities related to the objectives of this Act.''[47] Consistent with that obligation, we propose to require State agencies to promulgate policies and procedures related to a range of topics that fall within the State agency's authority to oversee under the State plan in § 1321.9(c)(1) (policies and procedures related to direct service provision) and § 1321.9(c)(2) (policies and procedures related to fiscal requirements).[48] The policy development process includes the establishment of procedures, which set forth the steps to follow to implement policies. Accordingly, we propose minor revisions to clarify that the policy development and implementation process includes the establishment of procedures, as well as policies.

Changes have been proposed to the language at § 1321.9(a) in order to (1) reflect statutory updates (*i.e.,* the LTCOP regulation (45 CFR 1324) which was promulgated in 2015); (2) clarify that the State agency's obligations to develop policies and procedures extend to elder abuse prevention and legal assistance development programs; (3) confirm the ability of the State agency to allow procedures to be developed at the AAA level, except where specifically prohibited; and (4) clarify the State agency's responsibility for monitoring the compliance of activities initiated under Title III with all applicable requirements to ensure that grant awards are used for the authorized purposes and in compliance with Federal law.

The Act contains many programmatic and fiscal requirements of which State agencies must be aware and for which State agencies must have established policies and procedures. For clarity and ease of reference, we propose to combine the areas for which State agencies must have established policies and procedures in this provision. We invite comment as to whether this approach to streamlining State policies and procedures is appropriate. The first area relates to data collection and reporting. Section 307[49] of the Act requires the collection of data and periodic submission of reports to ACL regarding State agency and AAA activities. ACL has implemented a national reporting system and reporting requirements that must be used by all State agencies to ensure timely and consistent reporting. Proposed § 1321.9(b) sets forth the State agency's responsibility to have policies and procedures to ensure that its data collection and reporting align with ACL's requirements.

Proposed § 1321.9(c)(1) describes policies and procedures that State agencies must establish to ensure that services provided under the Act meet the requirements of the Act and are provided equitably and in a consistent manner throughout the State, as appropriate.[50] In response to the RFI, this proposed section addresses comments that requested State agencies provide transparency and clarity on the policies and procedures that AAAs and service providers must follow, including setting requirements for client eligibility, assessment, and person-centered planning; specifying a listing and definitions of services that may be provided; detailing any limitations on the frequency, amount, or type of service provided; defining greatest economic need and greatest social need, and specific actions the State agency will use or require to provide services to those identified populations; how AAAs can provide services directly; how voluntary contributions are to be collected; and the grievance process for older adults and family caregivers who are dissatisfied with or denied services under the Act. As proposed in § 1321.9(a), except for the Ombudsman program and where otherwise indicated, the State agency policies may allow for procedures to implement specific policies to be developed at the AAA level.

[45] 42 U.S.C. 3027(a)(13).

[46] 42 U.S.C. 3058j.

[47] 42 U.S.C. 3025(a).

[48] *Ibid.*

[49] 42 U.S.C. 3027.

[50] 42 U.S.C. 3025(a)(2); 42 U.S.C. 3012(a)(9).

To provide context for our proposals, as set forth in section 306(a)(4)(A)(i)(I)(aa),[51] AAAs are responsible for setting specific objectives, consistent with State policy, for provision of services to older individuals with greatest economic need and greatest social need. Identifying such populations at the State level facilitates consistent messaging and outreach, collaboration with other State level organizations and stakeholders, and development of specific plans for the State agency, AAAs, and service providers to implement, as intended by the Act. Definitions of these populations at the State level are intended to provide Statewide direction, while maintaining the opportunity for additional definition of populations at greatest economic need and greatest social need specific to local circumstances as part of an area plan on aging as further proposed in § 1321.65. For example, a State might choose to define those at greatest economic need to include individuals or households with an income within a specific range (*e.g.,* up to 125 percent of the Federal poverty level), and another State may include older adults experiencing housing instability in their definition of greatest economic need. A State might also choose to define those at greatest social need to include people with low literacy, while another State may include grandparents raising grandchildren due to substance use disorder or loss of parents to COVID in their definition of greatest social need. There are multiple circumstances where State level identification of needs may be further complemented at the AAA level, such as older adults experiencing economic need due to catastrophic flooding in a rural portion of a State, or a AAA including older refugees in the community in their definition of greatest social need.

The Act sets forth at section 307(a)(8)(A)[52] that services will not be directly provided by a State or area agency without the approval of the State agency, subject to certain conditions; we propose here that the State agency communicate how the area agencies may request approval to directly provide services. This proposed section also incorporates the requirement under section 307(a)(5)(B)[53] of the Act that State agencies are required to issue guidelines applicable to grievance processes for any older adult or family caregiver who has a complaint about a service or has been denied a service.

[51] 42 U.S.C. 3026(a)(4)(A)(i)(I)(aa).

[52] 42 U.S.C. 3027(a)(8).

[53] *Ibid.* at (a)(5)(B).

Proposed § 1321.9(c)(2) requires states to establish policies and procedures related to the fiscal requirements associated with being awarded funding for the Nutrition Services Incentive Program,[54] Title III,[55] and Title VII[56] under the Act. Over the years, we have found that some State agencies may be unaware of certain requirements or may not understand their obligations under these requirements. Section 1321.9(c)(2) will provide guidance on the following fiscal requirements: distribution of Title III[57] and Nutrition Services Incentive Program[58] funds; non-Federal share (match) requirements;[59] permitted transfers of service allotments;[60] maximum allocation amounts for State, territory, and area plan administration;[61] minimum funding expenditures for access to services, in-home supportive services, and legal assistance;[62] State agency maintenance of effort obligations;[63] requirements related to Ombudsman program expenditures and fiscal management;[64] minimum expenditures for services for older adults who live in rural areas;[65] reallotment of funds;[66] voluntary contributions, including cost-sharing at the election of the State agency;[67] use of program income;[68] private pay programs;[69] commercial relationships;[70] buildings, alterations or renovations, maintenance, and equipment;[71] prohibition against supplantation;[72] monitoring of State and area plan assurances;[73] and advance funding.[74] We provide further context for these fiscal requirements proposals in the following paragraphs.

§ 1321.9(c)(2)(i). Intrastate Funding Formula (IFF)

The Act sets forth requirements for distribution of Title III funds within the State in section 305(a)(2)(C–D).[75] The Act requires distribution to occur via an intrastate funding formula (IFF) (further defined in proposed § 1321.49) or funds distribution plan (further defined in proposed § 1321.51). The IFF is required for States with multiple planning and service areas, and a funds distribution plan is required for single planning and service area states. Through this provision, we also propose to require that funds be promptly disbursed using the IFF or funds distribution plan and to provide prior approval for fixed amount subawards up to the simplified acquisition threshold, as set forth in 2 CFR 200.353.

§ 1321.9(c)(2)(ii). Non-Federal Share (Match)

The provision contained in § 1321.47 (*Statewide non-Federal share requirements*) of the existing regulation is redesignated here as § 1321.9(c)(2)(ii) and revised. The Act includes requirements for non-Federal share matching funds from State or local sources, as set forth in sections 301(d)(1), 304(c), 304(d)(1)(A), 304(d)(1)(D), 304(d)(2), 309(b), 316(b)(5), and 373(h)(2). We propose to consolidate and streamline the requirements by listing the requirements and considerations that apply to such funds. We have received frequent technical assistance requests concerning the allowability of using funding for services that are means tested for the non-Federal share (match). We propose to clarify that State or local public resources used to fund a program which uses a means test shall not be used to meet the non-Federal share matching requirements. We also propose to clarify that a State agency or AAA may determine a non-Federal share in excess of required amounts, and we clarify the non-Federal share matching requirements that apply to service and administration costs for each type of grant award under Title III of the Act. We also propose to provide prior written approval for unrecovered indirect costs to be used as match and invite comment regarding this approach.

§ 1321.9(c)(2)(iii). Transfers

The provision contained in § 1321.45 of the existing regulation (*Transfer between congregate and home-delivered nutrition service allotments*) is redesignated here as § 1321.9(c)(2)(iii) and revised. The Act allows for transfer of service allotments to provide some flexibility to meet State and local needs. ACL allocates Title III funding to States by part of the Act (for example, the

[54] 42 U.S.C. 3030a(e).

[55] 42 U.S.C. 3023.

[56] 42 U.S.C. 3058a.

[57] 42 U.S.C. 3025(a)(2)(C).

[58] 42 U.S.C. 3030a(d).

[59] 42 U.S.C. 3024(d), 3028(a)(1), 3029(b), 3030s–1(h)(2).

[60] 42 U.S.C. 3028(a)(4), (5).

[61] 42 U.S.C. 3024(d)(1), 3028(a), (b)(1)–(2).

[62] 42 U.S.C. 3026(a)(2).

[63] 42 U.S.C. 3029(c).

[64] 42 U.S.C. 3027(a)(9)(A).

[65] 42 U.S.C. 3027(a)(3)(B)(i).

[66] 42 U.S.C. 3024(b), 3058b(b).

[67] 42 U.S.C. 3030c–2.

[68] 42 U.S.C. 3030c–2(a)(5)(c).

[69] 42 U.S.C. 3020c, 3026(g).

[70] 42 U.S.C. 3026(a)(13)–(14).

[71] 45 CFR 75; 42 U.S.C. 3030b, 3030d(b).

[72] 42 U.S.C. 3026(a)(9)(B), 3030c–2(b)(4)(E), 3030d(d), 3030s–2, 3058d(a)(4).

[73] 42 U.S.C. 3025(a)(1)(A)–(C).

[74] 45 CFR 75.305.

[75] 42 U.S.C. 3025(a)(2)(C–D).

supportive services allocation is designated as part B and the nutrition services allocation is designated as part C, and further by subpart (for example, part C–1 funding is for congregate meals and part C–2 funding is for home-delivered meals)). We propose to list the requirements and considerations that apply if a State elects to make transfers between allotments, including the parts and subparts of Title III which are subject to transfer of allocations, the maximum percentage of an allocation which may be transferred between parts and subparts, and a confirmation that such limitations apply in aggregate to the State. For example, a State may find that older individuals have a need for transportation to congregate meal sites. A State is able to transfer, within allowed limits, allotments from the congregate meal nutrition grant award (part C–1) to the supportive services grant award (part B) to provide transportation to meet State and local service needs.

§ 1321.9(c)(2)(iv). State, Territory, and Area Plan Administration

Section 308 of the Act sets forth limits on the amount of Title III funds which may be used for State, Territory, and area plan administration. We propose to specify the requirements and considerations that apply, including flexibilities that some State agencies of single planning and service States may exercise and how the State agency may calculate the maximum amounts available for AAAs to use. We receive regular requests for technical assistance about use of funds; the proposed specification of requirements is intended to provide clarity to States. For example, States may either receive five percent of their funding allocation or $750,000 ($100,000 for certain Territories) of their total Title III allocation as set forth in the Act to complete the State plan administration activities required by the Act, including planning, coordination, and oversight of direct services provided with the remainder of the Title III allocation. The State, Territory, and Area plan administration allocation amounts may be taken from any same fiscal year Title III award allocation at any time during the grant period and may be allocated to any Part of the same fiscal year Title III grant allocation, with the statutory exception of allocation of area plan administration to Part D (which provides funding for evidence-based disease prevention and health promotion programs). In States with multiple planning and service areas, we propose to clarify section 304(d)(1)(A) of the Act and better streamline implementation of maximum allocation amounts. We propose to specify that the State agency will determine the maximum amount available for area plan administration by deducting the amount of funding to be applied to State plan administration and calculating ten percent of this amount. The ten percent of funding remaining must be made available to AAAs in accordance with the IFF for the purpose of area plan administration, which we further address in proposed § 1321.57(b).

§ 1321.9(c)(2)(v). Minimum Adequate Proportion

The Act sets forth requirements that the State plan must identify a minimum proportion of funds that will be spent on access services, in-home supportive services, and legal assistance. We propose to require the State agency to have policies and procedures to implement these requirements.

§ 1321.9(c)(2)(vi). Maintenance of Effort

The provision contained in § 1321.49 (*State agency maintenance of effort*) of the existing regulation is redesignated here as § 1321.9(c)(2)(vi) and revised. We propose to require State agencies to develop fiscal policies and procedures related to requirements under the Act, corresponding to sections 309(c)[76] and 374.[77] These requirements include expending specific minimum maintenance of effort amounts, which are calculated in a specific manner as required in the Act. In response to technical assistance requests received, we also propose to clarify that excess amounts reported in other reports, such as the Federal financial report (submitted via SF–425), do not become part of the amounts used in calculating the minimum required maintenance of effort expenditures, unless the State agency specifically certifies the excess amounts for such purpose.

§ 1321.9(c)(2)(vii). State Long Term Care Ombudsman Program

We propose to require State agencies to develop fiscal policies and procedures related to requirements under the Act, corresponding to section 307(a)(9).[78] These requirements include that the State agency will expend not less than the amount expended by the State agency under Title III and Title VII of the Act for the Ombudsman program in fiscal year 2019, in accordance with the level set in the Act as amended in 2020. We also propose to clarify that the State agency must provide the Ombudsman with information to complete Ombudsman program requirements and that the fiscal activities relating to the operation of the Office are in compliance with the requirements set forth in § 1324.13(f).

§ 1321.9(c)(2)(viii). Rural Minimum Expenditures

We propose to require State agencies to develop fiscal policies and procedures related to requirements under the Act, corresponding to section 307(a)(3)(B).[79] These requirements include that the State agency must expend not less than the amount expended in fiscal year 2000, in accordance with the level set in the Act, for services for older individuals residing in rural areas, project the cost of providing such services, and specify a plan for meeting the needs for such services. To implement these requirements, we propose that the State agency establish a process and control for determining how rural areas within the State shall be defined.

§ 1321.9(c)(2)(ix). Reallotment

We propose to require State agencies to develop fiscal policies and procedures related to a State's voluntary release of funds (reallotment), corresponding with sections 304(b)[80] and 703(b)[81] of the Act. These policies and procedures include that the State agency must communicate if the State agency has funding that will not be expended in the grant period to be reallotted to the Assistant Secretary for Aging that will then be redistributed to other State agencies who identify as being able to utilize funds within the grant period. Additionally, the State agency should include whether they are able to receive and expend within the grant period any reallotted funds that may become available from the Assistant Secretary for Aging. We also propose to clarify that the State agency must distribute any such reallotted funds it receives in accordance with the IFF or funds distribution plan, as set forth in §§ 1321.49 or 1321.51.

§ 1321.9(c)(2)(x) and § 1321.9(c)(2)(xi), Voluntary Contributions and Cost Sharing

The provision contained in § 1321.67 of the existing regulation (*Service contributions*) is redesignated here as § 1321.9(c)(2)(x) (voluntary contributions) and revised, and we propose to add § 1321.9(c)(2)(xi) (cost sharing) to delineate between the two

[76] 42 U.S.C. 3029.

[77] 42 U.S.C. 3030s–2.

[78] 42 U.S.C. 3027(a)(9).

[79] *Ibid.* at (a)(3)(B).

[80] 42 U.S.C. 3024(b).

[81] 42 U.S.C. 3058b(b).

types of consumer contributions. Section 315 of the Act allows for consumer contributions which may take the form of (1) an individual voluntarily contributing towards the cost of a service (a voluntary contribution) [82] and (2) the State establishing a cost sharing policy, creating a structured system for collecting sliding scale payments from some service participants for some services (cost sharing).[83] For many decades, State and area agencies and service providers have collected voluntary contributions from participants receiving services under the Act. Such voluntary contributions allow service participants to demonstrate their support of these services and for expansion of services to others in the community. For example, in FY 2021 State agencies reported nearly $166 million in program income for Title III-funded services to ACL, the majority of which we estimate was in the form of voluntary contributions.

Cost sharing provisions were added in the 2000 amendments to the OAA. Because the Act includes many restrictions regarding cost sharing, in practice ACL has seen cost sharing implemented for a few limited services such as transportation and respite. For example, a State may wish to pursue cost sharing under the Act as a way of more consistently soliciting contributions or for administrative simplicity to align with services provided under other funding sources that use a cost sharing model. Many States choose not to pursue cost sharing as they find no benefit in comparison to the traditional model of collecting voluntary contributions.

We discuss these two provisions together because ACL has received many questions about how voluntary contributions and cost sharing compare. We discuss voluntary contributions first because, as explained above, States have a long history of requesting voluntary contributions and are less likely to pursue cost sharing arrangements.

We propose to specify in § 1321.9(c)(2)(x) that the Act states that voluntary contributions are allowed and may be solicited for all services, as long as the method of solicitation is non-coercive. In contrast, we also propose to list the services for which the Act prohibits cost sharing, which include information and assistance, outreach, benefits counseling, and case management services; long-term care ombudsman, elder abuse prevention, legal assistance, and other consumer protection services; congregate or home delivered meals; and any services delivered through Tribal organizations.

In § 1321.9(c)(2)(xi) we propose to list applicable requirements to include how suggested contribution levels for cost sharing are established, which individuals are encouraged to contribute, the manner of solicitation of contributions, a prohibition on means testing, provisions that apply to all service recipients, a prohibition on denial of services, procedures that are to be established, that amounts collected are considered to be program income, and further provisions that apply to cost sharing. Both proposed § 1321.9(c)(2)(x) and § 1321.9(c)(2)(xi) are intended to clarify that services may not be denied, even when a State has a cost sharing policy and or a voluntary contribution policy, if someone cannot or chooses not to contribute or to pay a suggested cost sharing amount. In other words, any State cost sharing and consumer contribution policies must be voluntary for OAA program participants, and States must ensure that program participants are aware that they are not required to contribute. We also propose to clarify that State agencies, AAAs, and service providers are prohibited from using means testing to determine eligibility for or to deny services to older people and family caregivers, as set forth in section 315(a)(5)(E) [84] and (b)(3) [85] and to confirm that both voluntary contribution and cost sharing solicitation amounts are to be based on the actual cost of services.

In specifying differences between voluntary contributions and cost sharing, voluntary contributions are encouraged for individuals whose self-declared income is at or above 185 percent of the Federal poverty line, while the Act further restricts the implementation of cost sharing and does not allow it to be imposed on service participants who are at or below the Federal poverty line or are otherwise low-income as specified by the State agency. Cost sharing is also prohibited for services delivered through Tribal organizations.

Additionally, if a State agency chooses to establish a cost sharing policy, it must be implemented statewide at all AAAs in the State, with limited exceptions, where a State agency approves a waiver request from a AAA where the AAA demonstrates that a significant proportion of persons receiving services under the Act have incomes below a certain threshold or that applying the cost sharing policy would place an unreasonable burden upon the AAA, as set forth in section 315(a)(6).[86]

State agencies, AAAs, and others have expressed confusion about the differences between cost sharing and voluntary contributions. We seek comment on whether the proposed rule sufficiently clarifies the statutory requirements for and differences between cost sharing and voluntary contributions.

§ 1321.9(c)(2)(xii). Use of Program Income

The provision contained in § 1321.73 of the existing regulation (*Grant related income under Title III–C*) is redesignated here as § 1321.9(c)(2)(xi) and revised. We propose to clarify the fiscal requirements that apply to program income, which includes voluntary contributions and cost sharing payments. For example, we propose to clarify that States are required to report contributions as program income, and that contributions must be used to expand the service category by part of Title III of the Act for which the income was originally collected. Thus, a contribution for the supportive service of transportation must be reported as income to the supportive services program and used to expand supportive services, such as transportation, multipurpose senior centers and/or transportation. Similarly, if someone pays a portion of the cost of a transportation service under a cost-sharing arrangement, that portion must be reported as income to the supportive services program. A contribution for the nutrition service of home-delivered meals must be reported as income to the nutrition program and used to expand nutrition services, such as home-delivered meals, congregate meals, and/or nutrition education.

§ 1321.9(c)(2)(xiii). Private Pay Programs

We propose to clarify that AAAs and service providers may, in addition to programs supported by funding received under the Act, offer separate private pay programs for which individual consumers agree to pay to receive services. These private pay programs may offer similar or the same services as those funded under Title III. However, funds provided under the Act for direct services may not be used to support private pay programs (or any other services) where a fee is required. We propose to add Paragraph 1321.9(c)(2)(xiii) to this provision to provide guidance as to policies and procedures that should be in place to ensure that private pay programs offered

[82] 42 U.S.C. 3030c-2(b).

[83] 42 U.S.C. 3030c-2(a).

[84] 42 U.S.C. 3030c–2(a)(5)(E).

[85] *Ibid.* at (b)(3).

[86] *Id.* at (a)(6).

by AAAs and service providers do not compromise core responsibilities under the Act. One such core responsibility, for example, is to ensure that individuals who receive information about private pay programs and who are eligible for services provided with Title III funds also are made aware of Title III-funded services. We seek comments on whether the proposed rule clarifies the allowability of private pay programs.

§ 1321.9(c)(2)(xiv). Contracts and Commercial Relationships

AAAs and service providers may receive and administer funding from multiple sources as they seek to provide comprehensive services to older adults. In doing so, they may enter into relationships with various commercial entities to accomplish the delivery of comprehensive services, as authorized in section 212 and 306(a)(13) and (14) of the Act.[87] In response to numerous questions about the appropriate roles, responsibilities, and oversight of such activities, feedback received in response to the RFI, and based on our observations of program activities, we propose to clarify the policies and procedures that State agencies must establish related to all contracts and commercial relationships in subsection 1321.9(c)(2)(xiv). As a component of these policies and procedures, and consistent with their authority under sections 305(a)(1)(C), 306(a), 306(b), and 212(b)(1), State agencies must establish processes for AAAs to receive approval for contracts and commercial relationships. We expect such processes to be flexible and streamlined, reflecting the needs of the older individuals served and the abilities of AAAs and service providers to engage in contracts and commercial relationships. This provision will help ensure the activities in which recipients and subrecipients of funding under the Act engage further the intended benefits of the Act and do not compromise core responsibilities or the statutory mission of State agencies, AAAs, and service providers. We propose to set forth these provisions to promote and expand the ability of the aging network to engage in business activities.

For example, a State agency could establish policies and procedures that outline a tiered approach for approving contracts and commercial relationships, whereby some specific activities with certain entities receive prior approval (for example, as required under section 212), other activities and general categories of activities require a simple notice of intent to receive approval from the State agency, and, because of significant risk or conflict of interest complexities, still other specific activities or types of activities require a more thorough review process by the State agency in determining whether to provide approval. A State agency may include various factors in their decision-making process, such as whether the AAA/service provider is under a corrective action plan or demonstrates concerns in current OAA program operations, the role of the AAA/service provider in the State's long-term services and supports system, and the level of risk the AAA/service provider may assume in the contract or commercial relationship, in setting the tiers of its prior approval process.

Another State agency could have policies and procedures that require the AAA to request approval via the area plan process for the types of contracts or commercial relationships the AAA intends to undertake and/or allow the AAA's service providers to undertake. The State agency could then provide approval to the AAA or request further detail in determining whether to provide approval.

We expect that States might distinguish between contracts and commercial relationships where the AAA, for example, is paying for services or goods; and contracts and commercials relationships where the AAA is receiving payment to provide services or goods. For example, a state might establish de facto approval policies for contracts and commercial relationships related to AAAs paying for Title III services, but establish a more rigorous review process if the AAA is entertaining a contract or commercial relationship to receive payment to provide services to individuals or entities not otherwise receiving services under the Act.

Our proposal responds to numerous concerns from AAAs regarding inconsistent approaches taken by States, as well as concerns from State agencies about the level of oversight and approval that should be exercised. We are trying to take a balanced approach that is consistent with statutory requirements found in section 212 and throughout Title III—one that is not onerous, can be implemented easily, and does not cause undue delays. This approach outlined in the regulation will be supplemented by the provision of technical assistance to States and AAAs. We request comment on whether our proposed approach appropriately balances the need for clear policies and procedures with the need to have a workable approval process.

We propose to specify in the definition of *Area plan administration* at section 1321.3 that use of area plan administration funds for development of contracts or commercial relationships is allowable. We request comments on best practices and examples of existing processes.

The Act has always contemplated an aging network that plans, coordinates, and facilitates comprehensive and coordinated systems for supportive, nutrition, and other services, leveraging resources beyond what the OAA alone can support. The aging network has growing opportunities to braid different sources of government and private funding to serve older adults in need, which has been accomplished through contracts and commercial relationships with organizations such as Medicaid managed care plans and health systems, among others. Congress further strengthened this flexibility in the most recent reauthorization of the OAA. ACL is committed to promoting this flexibility while providing good stewardship of and accountability for public funds. Therefore, we propose in § 1321.9(c)(2)(xiv) to delineate that State agencies, AAAs, and service providers may enter into a variety of contracts and commercial relationships. We further propose that entities establishing contracts and commercial relationships must develop policies and procedures to promote fairness, inclusion, and adherence to the requirements of the Act, including meeting conflict of interest requirements, continuing their role as advocates for older people in accordance with the Act, and meeting financial accountability requirements, as set forth in sections 306(a)(6)(B), (13), (14), and (15) and 307(a)(7).[88] They must also align with any guidance issued by the Assistant Secretary.

For example, AAAs and service providers may use funds for direct services under Title III to support provision of service via contracts and commercial relationships in two ways. The first is by maintaining all requirements for direct service provision using Title III funds. This would mean that Title III direct services funds would not be used for contracts or commercial relationships that required an older individual to make a payment or copayment (see § 1321.9(c)(x). *Voluntary contributions*), used means testing (see 1321.61(c). *Advocacy responsibilities of the area agency*), or served those ineligible for services under the Act (see 1321.81. *Client eligibility for participation*). Second, funds could be used to provide

[87] 42 U.S.C. 3020c; 42 U.S.C. 3026

[88] 42 U.S.C. 3026; 42 U.S.C. 3027.

direct services consistent with the requirements under section 212 of the Act, which among other requirements requires reimbursement of funds initially used to pay part or all of the cost of developing and carrying out the contract or commercial relationship.

We request comments regarding best practices in promoting contracting and commercial relationship activities of the aging network while maintaining fairness and adherence to the requirements of the Act. Many states, whether through formal policies and procedures or otherwise, have been facilitating a range of contracting and commercial relationship activities for years. For example, the area planning process is one example of a policy and procedure that all states use to approve certain contracts and commercial relationships. We do not intend to disrupt the normal course of business where it is currently functioning consistent with the requirements of the Act. We believe that standardizing policies and procedures will streamline these activities nationwide and ensure consistency with the requirements of the Act.

§ 1321.9(c)(2)(xv). Buildings, Alterations or Renovations, Maintenance, and Equipment

ACL has received technical assistance and clarification requests from State agencies and AAAs seeking to apply funding awarded under Title III to costs related to buildings and equipment (such as maintenance and repair). However, the Act provides limited standards regarding this proposed use of funding. We propose to add paragraph 1321.9(c)(2)(xv) to provide clarification to ensure that funding will be used for costs that support allowable activities. In addition, section 312 of the Act provides that funds used for construction or acquisition of multipurpose senior centers are to be repaid to the Federal Government in certain circumstances. To ensure that third parties will be on notice of this requirement, we propose to include in this paragraph a requirement that a Notice of Federal Interest be filed at the time of acquisition of a property or prior to construction, as applicable. We welcome comment on this proposed section, including on the sufficiency of guidance provided to date and potential alternative approaches to achieve the goal of providing services to older adults.

§ 1321.9(c)(2)(xvi). Supplement, Not Supplant

The Act sets forth requirements in sections 306(a)(9)(B),[89] 315(b)(4)(E),[90] 321(d),[91] 374,[92] and 705(a)(4)[93] that OAA funds must supplement, and not supplant existing funds. We have received numerous questions about what these requirements mean and how State agencies can ensure that Federal funding is not used inappropriately to supplant other funds. For example, a State or local government might inappropriately decide to reduce State funding to support services for family caregivers due to an increase in Federal Title III–E funding. The result is that the increased Federal funds supplant, not supplement, the reduced State or local funding, with no increase in revenue available to the entity to provide additional services and in contradiction of section 374. This proposed provision will require a State agency policy and procedure on supplementing, not supplanting existing funds for the programs where specified in the Act.

§ 1321.9(c)(2)(xvii). Monitoring of State and Area Plan Assurances

The Act sets forth many assurances to which States must attest as a part of their State plans and to which AAAs must attest as a part of their area plans. We propose to specify that the State agency must have policies and procedures to monitor compliance regarding the assurances to which the State and area agencies attest.

§ 1321.9(c)(2)(xviii). Advance Funding

In response to comments received at listening sessions and increased requests for technical assistance from State agencies, AAAs, and service providers, ACL proposes to specify that State agencies may advance funding to meet immediate cash needs of AAAs and service providers, and if a State chooses to do so, the State agency must have policies and procedures that comply with Federal requirements and guidance as set forth by the Assistant Secretary for Aging.

§ 1321.9(c)(3). State Plan Process; § 1321.9(c)(4). Area Plan Process

We propose to add paragraphs 1321.9(c)(3) and (4) to ensure the integrity and transparency of the State plan process and, in States with multiple planning and service areas, of the area plan process. We propose to require the State agency to have policies and procedures that align with State and area plan requirements, including establishing and complying with a minimum time period for public review and comment for State and area plans, that are proposed at §§ 1321.29 and 1321.65.

§ 1321.11 Advocacy Responsibilities

Section 1321.13 of the existing regulation (*Advocacy responsibilities*) is redesignated here as § 1321.11. Section 1321.11 sets forth the advocacy responsibilities of State agencies. As proposed, these include advocacy, technical assistance, and training activities. We propose additional minor revisions to these provisions to include activities related to the National Family Caregiver Support Program (NFCSP), which was added to the Act in 2000. Section 305(a)[94] of the Act provides that the State agency should serve as ''an effective and visible advocate'' for older individuals and family caregivers. Accordingly, we propose to revise § 1321.11(a)(3) to clarify that the State agency's obligations to comment on applications to Federal and State agencies for assistance related to the provision of needed services for older adults and family caregivers are not limited to instances in which the State agency receives a request to do so.

§ 1321.13 Designation of and Designation Changes to Planning and Service Areas. [Updated Title and Revised]

Section 1321.29 of the existing regulation (*Designation of planning and service areas*) is redesignated here as § 1321.13 and is retitled to better reflect the content of the proposed provision.

Section 305[95] of the Act requires the State agency to divide the State into distinct planning and service areas and subsequently designate an AAA to serve each planning and service area. The Act allows for exceptions for some States to designate the entire State as a single planning and service area. Single planning and service area states may be geographically small, such as Rhode Island, or may be sparsely populated relative to their geography, such as Alaska. Dividing States into distinct planning and service areas allows for a local approach to the planning, coordination, advocacy, and administration responsibilities as required under the Act. We propose to revise this section to affirm the State agencies' obligations to have policies and procedures in place to ensure that

[89] 42 U.S.C. 3026(a)(9)(B).
[90] 42 U.S.C. 3030c–2(b)(4)(E).
[91] 42 U.S.C. 3030d(d).
[92] 42 U.S.C. 3030s–2.
[93] 42 U.S.C. 3058d(a)(4).
[94] 42 U.S.C. 3025(a).
[95] 42 U.S.C. 3025.

the State agency process of designating and changing planning and service areas will be transparent, will hold the State agency accountable for its decisions, and will afford due process to affected parties. We also propose factors that a State agency should take into account when it considers changing a planning and service area designation, consistent with the aims of the Act. These factors include the geographical distribution of older individuals in the State, the incidence of the need for services under the Act, the distribution of older individuals with greatest economic need or greatest social need, the distribution of older individuals who are Native Americans, the distribution of resources under the Act, the boundaries of existing areas within the State, and the location of units of general purpose local government. Since all States now have designated planning and service areas, we propose to provide greater detail on the requirements for changing planning and service areas, as specified in the Act, based on questions we have received and areas of confusion that have been expressed. For example, we anticipate that our proposal to require State agencies to consider listed factors will resolve confusion over how State agencies should make decisions about whether and how to change planning and service area designations. We also solicit feedback regarding any other relevant factors that should be specified in making decisions on planning and service area designation.

§ 1321.15 Interstate Planning and Service Area

Section 1321.43 of the existing regulation (*Interstate planning and service area*) is redesignated here as § 1321.15. Revisions are proposed to this provision to clarify the nature of an interstate planning and service area (per section 305(b) [96] of the Act), as well as the process for requesting the Assistant Secretary to designate an interstate planning and service area. Minor revisions have also been made to reflect statutory updates, including language reflecting the distribution of family caregiver support services funds under the Act, and updates to cross references to other provisions within the regulation.

§ 1321.17 Appeal to the Departmental Appeals Board on Planning and Service Area Designation. [Updated Title and Revised]

Section 1321.31 (*Appeal to Commissioner*) is redesignated and modified here as § 1321.17 (*Appeal to the Departmental Appeals Board on planning and service area designation*). Section 305(a)(1)(E) [97] of the Act provides State agencies authority to divide the State into distinct planning and service areas to administer the Act's services and benefits. A local government, region, metropolitan area or Indian reservation may appeal a State agency's denial of designation under the provisions of section 305(a)(1)(E) [98] to the Assistant Secretary for Aging who must then afford the entity an opportunity for a hearing pursuant to section 305(b)(4) [99] of the Act. There have historically been very few appeals under section 305(a)(1)(E).[100]

We are proposing appeals of State agency decisions for designation of planning and service areas be delegated to the HHS Departmental Appeals Board (DAB) in accordance with the procedures set forth in 45 CFR part 16. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to issuing a decision. This proposed change aligns with our proposals in §§ 1321.23 and 1321.39. We believe it continues to fulfill the Act's mandate to provide opportunity for a hearing while streamlining administrative functions and providing robust due process protections to appellants. The HHS DAB provides impartial, independent review of disputed decisions under more than 60 statutory provisions. We believe this change will provide clarity and consistency to State agencies, AAAs and is aligned with the intent of the Act.

§ 1321.19 Designation of and Designation Changes to Area Agencies. [Updated Title and Revised]

Section 1321.33 of the existing regulation (*Designation of area agencies*) is redesignated here as § 1321.19 and is retitled to better reflect the content of the proposed provision. section 305(b) [101] of the Act requires State agencies not located in single planning and service area states to designate an AAA to serve each planning and service area. We propose to specify that only one AAA shall be designated to serve each planning and service area and that an organization may be designated as an AAA for more than one planning and service area. The Act intends that the AAA will proactively carry out, under the leadership and direction of the State agency, a wide range of functions designed to lead to the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area. It is essential that each AAA has the capacity to carry out such responsibilities and that each AAA meets the Act's qualification requirements. The existing regulation, however, contains only a few basic procedural requirements under the Act related to the designation of AAAs and provides no direction to State agencies with respect to this important function.

We propose to revise this provision to clarify the State agencies' obligations to have policies and procedures in place to ensure that the process of designating AAAs, as well as the voluntary or involuntary de-designation of an AAA (withdrawal of AAA designation), will be transparent, will hold the State agency accountable for its decisions, and will afford due process to affected parties. We propose to provide greater clarity to assist States in understanding the designation process pursuant to section 305 [102] of the Act and the types of agencies permitted by the Act to serve as AAAs. Consistent with the Act's requirements, we retain the existing restriction against a regional or local State office serving as an AAA, and the provision continues to reference the State agency's obligations under section 305 [103] of the Act to provide a right of first refusal to a unit of general purpose local government for AAA designation and to give preference in such designation to an established office on aging if the unit of general purpose local government elects not to exercise its first refusal right. We request comment on the specifications proposed, especially from State agencies and AAAs who have recent experience with AAA designation processes.

§ 1321.21 Withdrawal of Area Agency Designation

Section 1321.35 of the existing regulation (*Withdrawal of area agency designation*) is redesignated here as § 1321.21 We propose changes to paragraph (a) to clarify the circumstances under which a State agency may withdraw designation to include failure to comply with regulations and guidance as set forth by the Assistant Secretary for Aging, if the State agency changes one or more planning and service area designations, and if the AAA voluntarily requests withdrawal of their designation. In paragraph (b) we propose a clarification that changes to the designation of an

[96] 42 U.S.C. 3025(b).

[97] 42 U.S.C. 3025(a)(1)(E).

[98] 42 U.S.C. 3025(a)(1)(E).

[99] 42 U.S.C. 3025(b)(4).

[100] 42 U.S.C. 3025(a)(1)(E).

[101] 42 U.S.C. 3025(a).

[102] 42 U.S.C. 3025.

[103] 42 U.S.C. 3025.

AAA must be included in the State plan on aging, with appropriate cross-references. In paragraph (d) we propose that a State agency may request an extension of time to perform the responsibilities of an AAA after such designation has been withdrawn if the State agency has made reasonable but unsuccessful attempts to procure another entity to be designated as the AAA.

§ 1321.25 Duration, Format, and Effective Date of the State Plan

Section 1321.15 of the existing regulation (*Duration, format, and effective date of the State plan*) is redesignated here as § 1321.25. Minor changes have been made to update cross-references to other provisions, to reflect updates to statutory language, and to clarify the authority of the Assistant Secretary for Aging to provide instructions to States regarding the formulation, duration, and formatting of State plans.

§ 1321.27 Content of State Plan

Section 1321.17 of the existing regulation (*Content of the State plan*) is redesignated here as § 1321.27. As part of their responsibilities, State agencies must develop and administer a multi-year State plan on aging. The State plan delineates goals and objectives related to assisting older individuals, their families, and caregivers, and serves as a blueprint for achieving the goals and objectives during the plan period. Section 307 [104] of the Act sets forth requirements that State plans must meet and content that must be included. As Stated above, section 307 [105] of the Act authorizes the Assistant Secretary to prescribe criteria for State plan development and content.

In response to the RFI and other requests for clarification, we propose additional required core elements for the State plan, including that the State plan: must provide evidence that it is informed by, and based on, area plans; explain how individuals with greatest economic need and greatest social need are determined and served; include the State agency's intrastate funding formula or funds distribution plan; demonstrate outreach to older Native Americans and coordination with Title VI programs under the Act; certify that program development and coordination activities will meet requirements; specify the minimum proportion of funds that will be expended on certain categories of services; provide information if the State agency allows for Title III–C–1 funds to be used as set forth in proposed § 1321.87(a)(1)(A); describe how the State agency will meet its responsibilities for the Legal Assistance Developer; explain how the State agency will use its elder abuse prevention funding awarded pursuant to Title VII of the Act; and describe how the State agency will conduct monitoring of the assurances to which they attest. The proposed provision also clarifies the Assistant Secretary's authority to establish objectives for State plans, including objectives related to Title VII of the Act.

In response to significant feedback from stakeholders over the years and numerous responses to the RFI, ACL proposes to specify that the State plan must define greatest economic need and greatest social need, including for the following populations: Native American persons; persons who experience cultural, social, or geographical isolation caused by racial or ethnic status; members of religious minorities; lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons; persons living with HIV or AIDS; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality as the State defines it. The Act directs State agencies and AAAs to focus attention, advocacy, and service provision toward those in greatest economic need and greatest social need. The listed populations include those identified in Executive Order 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.* We propose to establish standard expectations for whom States must include in their definitions of greatest economic need and greatest social need, while still allowing for States to flexibly include other populations that are specific to their circumstances. For example, one State may identify a population within their State that has specific dietary requirements that will be included in their definition of greatest social need. When determining the definition of greatest economic need, another State may include persons experiencing housing instability. Another State may not specify any additional populations to be included in their definitions of greatest economic need or greatest social need at the State plan level, but encourage such additions at the area plan level (for which we further propose requirements in § 1321.65). We welcome comment as to whether this approach sufficiently identifies populations that all States must include as part of their definition of greatest economic need and greatest social need and offers flexibility to States to include additional populations.

We also propose to specify that upon identifying the populations of greatest economic need and greatest social need, the State plan must include how the State will target services to these populations, including how funds under the Act may be distributed in accordance with proposed intrastate funding formula or funds distribution plan requirements at §§ 1321.49 or 1321.51, respectively. For example, a State may specify that it will use one factor based on the low-income and rural population of individuals age 60 and older in its intrastate funding formula to meet populations identified as in greatest economic need and greatest social need. Another State may use two separate factors, one for low-income individuals age 60 and older and another for rural individuals age 60 and older.

As a part of their responsibilities under the State plan, State agencies engage in program development and coordination activities to meet the needs of older adults. State agencies also are encouraged to translate activities, data, and outcomes into proven best practices, which can be used to leverage additional funding and to build capacity for long-term care efforts in the State, beyond what the Act alone can support. State agencies also work in conjunction with and support of AAAs who lead such efforts, including integrating health and social services delivery systems. We propose for States to certify as a part of their State plans that they will meet certain requirements, including what funding sources can be used for program development and coordination activities and what conditions apply to use of these funds. We propose to specify that funds for program development and coordination activities may only be expended as a cost of State plan administration, area plan administration, or Title III–B supportive services, under limited circumstances.

We propose to require States to specify the minimum proportion of funds that will be expended on certain categories of services as required by the Act in section 307(a)(2)(C),[106] and include cross reference to the legal assistance section at § 1321.93.

The provision also includes a new requirement for States to provide certain information regarding any permitted use of Title III C–1 funds (funds for meals served in a congregate setting) for shelf-

[104] 42 U.S.C. 3027.

[105] 42 U.S.C. 3027.

[106] 42 U.S.C. 3027.

stable, pick-up, carry-out, drive-through, or similar meals, as permitted by new proposed § 1321.87(a)(1)(A). The congregate meal program is a core Title III program; in addition to a healthy meal, the program provides opportunities for social interaction and health promotion and wellness activities. In response to the COVID–19 pandemic, ACL provided guidance on innovative, permissible service delivery options that grantees could provide meals to older individuals and other eligible recipients of home-delivered meals with Title III C–2 funds. In response to grantee and stakeholder comments on the RFI, ACL proposes in new § 1321.87 to allow these meal delivery methods with respect to Title III C–1 congregate meal funds, subject to certain terms and conditions. As this represents a proposed expansion of the permitted use of congregate meals funds, State agencies must provide information about this use of Title III C–1 funds in their State plans to ensure that the State agencies are aware of, and will comply with, the applicable terms and conditions and so that ACL will be aware of the extent to which State agencies plan to implement this new allowable use of Title III C–1 funds.

We propose to remove redundant provisions in § 1321.27 that are addressed in other more appropriate sections of the proposed revised regulation (such as requirements related to State agency policies, voluntary contributions, and means testing, which are addressed in § 1321.9). Also, minor revisions have been made to the provision to delete references to statutory provisions that have been removed from the Act or to delete language that does not align with current ACL policy (such as the requirement in the existing provision that AAAs compile available information on post-secondary education available to older adults with little or no tuition).

With the increased expectations for information, assistance and referral (I&A/R) systems to offer direct consumer support to a growing population and the need to be responsive to emerging technology solutions that streamline access to services and supports, ACL solicits input on ways ACL and State agencies can support improvements in I&A/R systems, including training of professionals and modernization of information technology systems that are interoperable and streamline access to services through electronic, closed loop referrals.

§ 1321.29 Public Participation

Section 1321.27 of the existing regulation (*Public participation*) is redesignated here as § 1321.29. The Act requires State agencies to periodically solicit the views of older individuals, family caregivers, service providers, and the public regarding the development and administration of the State plan and the implementation of programs and services under the Act. Sections 1321.29(a) and (b) set forth obligations for public input, including that opportunities for public participation should occur periodically and should include the views of family caregivers and service providers, with particular attention to those of greatest economic need and greatest social need. In response to comments to the RFI, we propose that the public be given a reasonable period of time within which to review proposed State plans and that State plan documents be readily available to the public for review. Pursuant to Federal civil rights laws, the State plan document should be available in alternative formats and other languages if requested.

§ 1321.31 Amendments to the State Plan

Section 1321.19 of the existing regulation (*Amendments to the State plan*) is redesignated here as § 1321.31. We propose substantial revisions to this provision to clarify the circumstances under which amendments to the State plan are necessary. The revised provision also clarifies which amendments require prior approval by the Assistant Secretary and which only need to be submitted for purposes of notification. Amendments requiring prior approval are those necessary to reflect new or revised statues or regulations as determined by the Assistant Secretary for Aging; an addition, deletion, or change to a State's goal, assurance, or information requirement Statement; a change in the State's intrastate funding formula or funds distribution plan for Title III funds; a request to waive State plan requirements; or other changes as required by guidance as set forth by the Assistant Secretary for Aging. Amendments for purposes of notification only are those necessary to reflect a change in a State law, organization, policy, or State agency operation; a change in the name or organizational placement of the State agency; a request to distribute State plan administration funds for demonstration projects; a change in a planning and service area designation; a change in AAA designation; a request to use funds set aside to address disasters as we propose to further set forth in § 1321.99; or a request to exercise major disaster declaration flexibilities, as we propose to further set forth in § 1321.101. We also propose minor revisions to reflect statutory updates.

§ 1321.33 Submission of the State Plan or Plan Amendment to the Assistant Secretary for Aging for Approval. [Updated Title and Revised]

Section 1321.21 of the existing regulation (*Submission of the State plan or plan amendment to the Commissioner for approval*) is redesignated here as § 1321.33 and has been retitled to reflect statutory terminology updates. ACL's Regional Offices play a critical role in ACL's administration and oversight of State plans on aging. They provide technical assistance to State agencies regarding the preparation of State plans and amendments and are responsible for reviewing those that are submitted for compliance with the Act. Currently, the regulations require States to submit for approval a plan or amendment, signed by the Governor or the Governor's designee, 45 days prior to its proposed effective date. This 45-day period does not provide adequate time for proper Regional Office review and provision to the State by the Regional Office of appropriate technical assistance, for the State then to make any changes that are required, and for the State to re-submit the plan or amendment for further review and approval. The failure to have a State plan or amendment approved in a timely manner could result in significant ramifications to a State, such as a lapse in funding under the Act. In addition, if a State only submits a final, signed plan or amendment for review, and if changes are needed in order to bring the plan or amendment into compliance with the Act or the Assistant Secretary's guidance, the State agency could find itself in the difficult position of having to arrange for the Governor (or the Governor's designee) to re-execute the document. We propose to improve the State plan and amendment submission and review process by adding to this provision a requirement that the State agency submit a draft of the plan or amendment to its assigned ACL Regional Office at least 120 days prior to the proposed effective date and a requirement that the State agency cooperate with the Regional Office in the review of the plan or amendment for compliance with applicable requirements. We welcome comments suggesting ways to improve the State plan and amendment approval process.

§ 1321.35 Notification of State Plan or State Plan Amendment Approval or Disapproval for Changes Requiring Assistant Secretary for Aging Approval. [Updated Title and Revised]

The provision contained in § 1321.23 of the existing regulation (*Notification of State plan or State plan amendment approval*) is redesignated here as § 1321.35. We also propose changes to § 1321.35(b) for consistency with other related provisions that address appeals to the Assistant Secretary regarding disapproval of State plans or amendments.

§ 1321.39 Appeals to the Departmental Appeals Board Regarding State Plan on Aging. [Updated Title and Revised]

Section 1321.77 of the existing regulation (*Scope*) is redesignated here at § 1321.39, retitled, and modified. Section 305 [107] and 307 [108] of the Act, respectively, require a State to designate a State agency to carry out Title III programs and develop a State plan on aging to be submitted to the Assistant Secretary for Aging for approval. Per section 307(c)(1) [109] the Assistant Secretary shall not make a final determination disapproving any State plan, or any modification thereof, or make a final determination that a State is ineligible under section 305,[110] without first affording the State reasonable notice and opportunity for a hearing.

In the past the Assistant Secretary for Aging would have facilitated the appeals process. We propose, in line with our proposals at revised § 1321.17 and new § 1321.23, that appeals be delegated to the Departmental Appeals Board (DAB) in accordance with the procedures set forth in 45 CFR part 16. The Board will hear the appeal and may refer an appeal to the DAB's Alternative Dispute Resolution Division for mediation prior to issuing a decision.

Delegation of appeals to the DAB will continue to fulfill the statutory mandate to afford a State reasonable notice and opportunity for a hearing, while streamlining administrative functions and providing robust due process protections. The HHS DAB provides impartial, independent review of disputed decisions under more than 60 statutory provisions. We believe this change will provide clarity and consistency to State agencies and is aligned with the intent of the Act.

[107] 42 U.S.C. 3025.

[108] 42 U.S.C. 3027.

[109] *Id.* at (c)(1).

[110] 42 U.S.C. 3025.

§ 1321.41 When a Disapproval Decision Is Effective. [Updated Title and Revised]

In this section, redesignated from existing § 1321.79, retitled, and modified, we propose to delete reference to the ''Assistant Secretary for Aging'' and replace it with ''the Departmental Appeals Board'' to align with changes proposed at § 1321.39.

§ 1321.43 How the State May Appeal the Departmental Appeals Board's Decision. [Updated Title and Revised]

In this section, redesignated from § 1321.81 and retitled, we propose to delete reference to the ''Assistant Secretary for Aging'' and replace it with ''the Departmental Appeals Board'' to align with changes proposed at § 1321.39.

§ 1321.45 How the Assistant Secretary for Aging May Reallot the State's Withheld Payments. [Updated Title and Revised]

The provision contained in § 1321.83 of the existing regulation (*How the Commissioner may reallot the State's withheld payments*) is redesignated here as § 1321.45. The provision has been retitled, and minor, non-substantive changes are proposed to the provision to reflect statutory terminology updates.

§ 1321.49 Intrastate Funding Formula

The provision contained in § 1321.37 of the existing regulation (*Intrastate funding formula*) is redesignated here as § 1321.49. States with multiple planning and service areas provide funding to AAAs through the IFF. Section 305 [111] of the Act sets forth requirements for the IFF while, at the same time, affording States some flexibilities in its development and implementation. The proposed changes to this provision are designed to assist State agencies develop IFFs in compliance with the Act's requirements; to clarify the options available to State agencies; and to aid them in implementation of their IFFs. In paragraph (a), we propose to specify that the State agency must include the IFF in the State plan, in accordance with guidelines issued by the Assistant Secretary and using the best available data; that the formula applies to supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver services provided under Title III of the Act; and that a separate formula for evidence-based disease prevention and health promotion may be used, as provided in section 362 [112] of the Act.

[111] 42 U.S.C. 3025.

[112] 42 U.S.C. 3030n.

In paragraph (b) we propose to clarify the elements of the IFF. The elements include a descriptive Statement and application of the State's definitions of greatest economic need and greatest social need; a Statement that discloses any funds deducted for allowable purposes of State plan administration, Ombudsman program, or disaster set aside funds, as proposed in § 1321.99; whether a separate formula for evidence-based disease prevention and health promotion is used; how the Nutrition Services Incentive Program funds will be distributed; a numerical mathematical Statement that describes each factor for determining how funds will be allotted and the weight used for each factor; a listing for the data to be used for each planning and service area in the State; a Statement of the allocation of funds to each planning and service area in the State; and the source of the best available data used to allocate the funding.

In paragraph (c) we propose to identify prohibitions related to the IFF. Prohibitions include that the State may not: withhold funds from distribution through the formula, except where expressly allowed for State plan administration, disaster set aside funds as proposed at § 1321.99, or the Ombudsman program; exceed State and area plan administration caps as proposed at § 1321.9(c)(2)(iv); use Title III–D funds for area plan administration; distribute funds to any entity other than a designated AAA, except where expressly allowed for State plan administration funds, Title III–B Ombudsman funds, and disaster set-aside funds as proposed in § 1321.99; and use funds in a manner that is in conflict with the Act.

In paragraph (d) we propose to specify other requirements that apply to distribution of Nutrition Services Incentive Program funds, including that cash must be promptly and equitably disbursed to nutrition projects under the Act and provisions relating to election of agricultural commodities. In paragraph (e) we propose that Title VII funds or Title III–B Ombudsman program funds under the Act may be distributed outside the IFF. This subsection also allows the State agency to determine the amount of funding available for area plan administration before deducting funds for Title III–B Ombudsman program and disaster set-aside funds. We propose that a State agency may reallocate funding within the State when the AAA voluntarily or otherwise returns funds, subject to the State agency's policies and procedures.

Proposed revisions to paragraph (f) reflect statutory updates and to cross

reference to other provisions within the regulation.

§ 1321.51 Single Planning and Service Area States. [Updated Title and Revised]

The provision contained in § 1321.41 of the existing regulation (*Single state planning and service area*) is redesignated here as § 1321.51 and retitled. Most of the language of the existing provision relates to confirming the approval of an application of a state which, on or before October 1, 1980, was a single planning and service area, to continue as a single planning and service area if the State agency met certain requirements. Only State agencies currently designated as a single planning and service area state may have such status; accordingly, we propose to delete this language and clarify the specific requirements that apply to operating as a single planning and service area state. Single planning and service area states are addressed elsewhere in our proposed regulations including proposed definitions in § 1321.3 and regarding designation of and changes to planning and service areas in § 1321.13.

Based on questions we have received from such states, we propose clarifications that single planning and service area states must meet requirements for AAAs, unless otherwise specified. In paragraph (b), we propose to clarify that single planning and service area states, as part of their State plan, must include a funds distribution plan that mirrors many of the requirements of the intrastate funding formula for states with multiple planning and service areas, minus distribution to AAAs. The State must also provide justification if it wishes to provide services directly and believes it meets applicable requirements to do so, as set forth in section 307(a)(8)(A). We propose this change to promote transparency and good stewardship of public funds. In paragraph (c) we propose that single planning and service area states may revise their funds distribution plans, subject to their policies and procedures and prior approval of the Assistant Secretary. Revisions also have been made to reflect statutory updates.

Subpart C—Area Agency Responsibilities

§ 1321.55 Mission of the Area Agency

The provision contained in § 1321.53 of the existing regulation (*Mission of the area agency*) is redesignated here as § 1321.55. This provision specifies the AAA's mission, role, and functions as the lead on aging issues in its planning and service area under the Act.

The social services systems in which AAAs and their community partners operate today differs greatly from that which existed in 1988 when the existing regulation was promulgated. For example, in 1988 much of the work of AAAs involved the establishment and maintenance of focal points, which at that time were identified as ''a facility established to encourage the maximum collocation and coordination of services for older individuals.'' The existing language set forth in § 1321.53(c) regarding an AAA's obligations with respect to focal points goes well beyond the requirements with respect to focal points that are set forth in section 306(a)[113] of the Act. Focal points in current § 1321.53(c) are focused on the need for bricks-and-mortar facilities such as multipurpose senior centers. In light of the social service systems climate in which AAAs operate today, the existing language confining these focal points to facilities may impede an AAA's ability to develop and enhance a comprehensive and coordinated community-based systems in, or serving, its planning and service area, as contemplated by the Act. Accordingly, we propose to delete the language from this paragraph related to an AAA's obligations with respect to focal points.

We also propose minor revisions to this provision to align with updates to statutory terminology and requirements resulting from reauthorizations (*e.g.,* adding family caregivers as a service population per the 2000 reauthorization) and to emphasize the Act's aim that priority be given to serving older adults with greatest economic need and greatest social need.

§ 1321.57 Organization and Staffing of the Area Agency

The provision contained in § 1321.55 of the existing regulation (*Organization and staffing of the area agency*) is redesignated here as § 1321.57.

The existing language in paragraph (a)(2) of this provision prohibits a separate organizational unit within a multi-purpose agency which functions as the AAA from having any purpose other than serving as an AAA. The Act promotes AAAs as innovative, collaborative organizations which adapt to ever-evolving social service, health and economic climates. We propose to eliminate this prohibition to provide more flexibility to AAAs to conduct their operations, subject to State agency policies and procedures. Adequate safeguards exist in the Act and in the regulations (such as requirements with respect of conflicts of interest) to render this restriction unnecessary.

We also propose a minor revision to paragraph (a)(1) to take into account the addition of family caregivers as a service population pursuant to the 2000 reauthorization of the Act. We also propose minor revisions to this provision to update cross-references to other sections of the regulation.

§ 1321.61 Advocacy Responsibilities of the Area Agency

We propose minor revisions to this provision for clarity and to take into account the addition of family caregivers as a service population pursuant to the 2000 reauthorization of the Act.

§ 1321.63 Area Agency Advisory Council

The provision contained in § 1321.57 of the existing regulation (A*rea agency advisory council*) is redesignated here as § 1321.63. Section 306[114] of the Act requires AAAs to seek public input with respect to the area plan; accordingly, we propose new language in this section clarifying the AAA's advisory council duties with regards to soliciting and incorporating public input. Minor changes are proposed to the language describing the required composition of the advisory council, in order to clarify (1) that council members should include individuals and representatives of community organizations from or serving the AAA's planning and service area, including those identified as in greatest economic need or greatest social need; (2) that a main focus of the council should be to assist the AAA in targeting individuals of greatest social need and greatest economic need; and (3) that providers of the services provided pursuant to Title III of the Act, as well as Indian Tribes and older relative caregivers, should be represented in the council.

We also propose minor revisions to this provision to take into account the addition of family caregivers as a service population pursuant to the 2000 reauthorization of the Act.

§ 1321.65 Submission of an Area Plan and Plan Amendments to the State for Approval

The provision contained in § 1321.52 (*Evaluation of unmet need*) and § 1321.59 (*Submission of an area plan and plan amendments to the State for approval*) of the existing regulation are combined and redesignated here as § 1321.65. The State agency is

[113] 42 U.S.C. 3026(a).

[114] 42 U.S.C. 3026.

responsible for ensuring that area plans comply with the requirements of section 306 [115] of the Act. We propose revisions to this provision to clarify for State agencies the area plan requirements that should be addressed by State policies and procedures. These include identification of populations in the planning and service area of greatest economic need and greatest social need; evaluation of unmet needs; public participation in the area plan development process; plans for which services will be provided, how services will be provided, and how funding will be distributed; a process for determining if a AAA meets requirements to provide certain direct services pursuant to section 307(a)(8) [116] of the Act; minimum adequate proportion requirements per section 306(a)(2) [117] of the Act; and requirements for program development and coordination activities as proposed to be set forth in § 1321.27(h). States may include other requirements that meet State-specific needs.

We also propose to make an addition to area plan requirements to reflect changes in the nutrition program. The congregate meal program is a core Title III nutrition program, with designated funding and requirements as set forth under Title III C–1 of the Act. In addition to a healthy meal, the program provides opportunities for social interaction and health promotion and wellness activities. In response to the COVID–19 pandemic, ACL provided guidance on innovative service delivery options that grantees could take advantage of to provide meals to older individuals and other eligible recipients of home-delivered meals with Title III C–2 funds.[118] These options included shelf-stable, pick-up, carry-out, drive-through, or similar meals. In response to input received from grantees and stakeholders pursuant to the RFI, ACL proposes in new § 1321.87 to also allow these meal delivery methods with respect to Title III C–1 congregate meal funds, subject to certain terms and conditions. This proposal marks an expansion of the permitted use of congregate meals funds. Therefore, if State agency policies and procedures allow for this service option, AAAs will be required to provide this information in their area plans to ensure AAAs are aware of, and in compliance with, the applicable terms and conditions for use of such funds. It will also provide State agencies and ACL necessary information to determine the extent to which AAAs plan to implement this allowable use of Title III C–1 funds for new service delivery methods.

In paragraphs (c) and (d) we propose additions to reflect statutory updates with respect to inclusion of hunger, food insecurity, malnutrition, social isolation, and physical and mental health conditions and furnishing of services consistent with self-directed care in area plans.

In response to questions received, we propose to clarify in paragraph (e) that area plans must be coordinated with and reflect State plan goals. This provision parallels proposed § 1321.27(c), which requires the State plan to provide evidence the plan is informed by and based on area plans. State and area plans may have cycles that align or vary, based on multiple considerations. With this provision, we wish to clarify that State and area plans processes should be iterative, where each informs the other. We welcome comments regarding this proposed clarification.

Subpart D—Service Requirements

§ 1321.71 Purpose of Services Allotments Under Title III

The provision contained in § 1321.63 of the existing regulation (*Purpose of services allotments under Title III*) is redesignated here as § 1321.71. We propose minor revisions to this provision to reflect statutory updates with respect to services provided under Title III, as well as to provide consistency with other proposed updates to the regulation. For example, we propose minor revisions to this provision to take into account the addition of the National Family Caregiver Support Program and family caregivers as a service population pursuant to the 2000 reauthorization of the Act. Additional minor revisions are proposed for clarity, such as distinctions in the manner in which Title III funds are awarded between single planning and service area states and states with AAAs, with cross references to proposed language on intrastate funding formulas, funds distribution plans, and provision of direct services by State agencies and AAAs.

§ 1321.73 Policies and Procedures. [Updated Title and Revised]

The provisions contained in § 1321.65 of the existing regulation (*Responsibilities of service providers under area plans*) are redesignated and proposed to be revised in part here as § 1321.73 and § 1321.79. Proposed § 1321.73 sets forth requirements to ensure AAAs and local service providers develop and implement policies and procedures to meet requirements as set forth by State agency policies and procedures, in accordance with proposed § 1321.9. Accordingly, we propose to move the requirements currently set forth in (b)–(g) to other sections. We also propose to specify that the State agency and AAAs must develop monitoring processes, which are encouraged to be made available to the public to ensure accountability and stewardship of public funds, as required by the Act.

§ 1321.75 Confidentiality and Disclosure of Information

Proposed § 1321.75 reorganizes and redesignates existing § 1321.51. The revised section proposes updated requirements for State agencies' and AAAs' confidentiality procedures. State agencies and AAAs collect sensitive, legally protected information from older adults and family caregivers during their work. Our proposed revisions will enhance the protections afforded OAA participants. Revised § 1321.75 also adds ''family caregivers''' as a service population under the Act to reflect the 2000 reauthorization of the Act.

We propose to clarify the obligation of State agencies, AAAs, or other contracting, granting, or auditing agencies to protect confidentiality. For example, the provision prohibits providers of Ombudsman program services to reveal any information protected under the provisions in § 1324 Subpart A, State Long-Term Care Ombudsman Program. Similarly, State agencies, AAAs, and others subject to this provision may not require a provider of legal assistance under the Act to reveal any information that is protected by attorney client privilege, including information related to the representation of the client.[119]

The policies and procedures required under this section must ensure that service providers promote the rights of each older individual who receives such services, including the right to confidentiality of their records. We further propose that the policies and procedures must comply with all applicable Federal laws, codes, rules and regulations, including the Health Insurance and Portability and Accountability Act (HIPAA). The State

[115] *Ibid.*

[116] 42 U.S.C. 3027(a)(8).

[117] 42 U.S.C. 3026(a)(2).

[118] ACL, Frequently Asked Questions—Nutrition Services and Emergency Management (March 12, 2020) *https://acl.gov/sites/default/files/COVID19/C19FAQ-NutritionEM_2020-03-12.pdf* (last visited Jan. 18, 2023).

[119] The American Bar Assn., Model Rules of Professional Conduct: Rule 1.6 Confidentiality of Information (last visited Jan. 18, 2023).

agency may also require the application of other laws and guidance for the collection, use, and exchange of both Personal Identifiable Information (PII) and Personal Health Information (PHI).

Proposed § 1321.75 includes exceptions to the requirement for confidentiality of information. PII may be disclosed with the informed consent of the person or of their legal representative, or as required by court order. We also propose to allow disclosure for program monitoring and evaluation by authorized Federal, State, or local monitoring agencies. Under the proposed provision, State agencies' policies and procedures may explain that individual information and records may be shared with other State and local agencies, community-based organizations, and health care providers and payers to provide services, and we encourage agencies to develop memoranda of understanding regarding access to records for such purposes. We further seek comment to ensure we sufficiently set forth this exception to the confidentiality requirement.

§ 1321.79 Responsibilities of Service Providers Under State and Area Plans. [Updated Title and Revised]

The provision contained in § 1321.65 of the existing regulation (*Responsibilities of service providers under area plans*) is redesignated in part here as § 1321.79 and at § 1321.73 and is retitled for clarity. Minor revisions are proposed to this provision to reflect statutory updates with respect to family caregiver services provided under Title III, as well as to emphasize that providers should seek to meet the needs of individuals in greatest economic need and greatest social need. We propose to encourage providers to offer self-directed services to the extent feasible and acknowledge service provider responsibility to comply with local adult protective services requirements, as appropriate. We propose that this provision apply to both State plans, as well as to area plans, as there are circumstances in which a service provider may provide services under a State plan (such as in a single planning and service area state). The language in paragraph (a) of the existing provision (reporting requirements) has been moved to § 1321.73, which addresses accountability requirements applicable to service providers.

§ 1321.83 Client and Service Priority. [Updated Title and Revised]

The provision contained in § 1321.69 of the existing regulation (*Service priority for frail, homebound or isolated elderly*) is redesignated here as § 1321.83 and is retitled for clarity. We received numerous inquiries about how State agencies and AAAs should prioritize providing services to various groups. Questions included whether there was an obligation to serve everyone who sought services and whether services were to be provided on a first-come, first-served basis. Questions about prioritization were particularly prevalent in response to demand for services created by the COVID–19 public health emergency. Entities sought clarification on whether they are permitted to set priorities, who is permitted to set priorities, and the degree to which entities have discretion to set their own priority parameters.

Proposed § 1321.101 clarifies that entities may prioritize services and that they have flexibility to set their own policies in this regard. It also clarifies that States are permitted to set service priorities, but they may delegate that responsibility to the AAA, and the AAA may, in turn, delegate the responsibility to local service providers. We also propose revisions to this provision to take into account the addition of the National Family Caregiver Support Program, family caregivers as a service population, and priorities for serving family caregivers pursuant to the 2000 reauthorization of the Act.

§ 1321.93 Legal Assistance

The provision contained in § 1321.71 of the existing regulation (*Legal assistance*) is redesignated here as § 1321.93. We are proposing modifications to § 1321.93 Legal Assistance, to better reflect the purpose of the Act, and especially the application of section 101 [120] to elder rights and legal assistance and to clarify and simplify implementation of the statutory requirements of State agencies, AAAs and the legal assistance providers with which the AAAs or State agencies, where appropriate, must contract to procure legal assistance for qualifying older adults. Section 101(10),[121] in particular, finds that older people are entitled to ''Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives, full participation in the planning and operation of community-based services and programs provided for their benefit, and protection against abuse, neglect, and exploitation.'' Legal assistance programs funded under Title III–B of the Act play a pivotal role in ensuring that this objective is met. Additionally, legal assistance programs further the mission of the Act as set forth in section 102(23) and (24) [122] by serving the needs of those with greatest economic need or greatest social need, including, historically underrepresented, and underserved populations, such as people of color, LGBTQI+ older adults, those who have LEP, and those who are isolated by virtue of where they live, such as rural elders, those who are homebound and those residing in congregate residential settings.

ACL intends to offer technical assistance, pursuant to section 202(a)(6) [123] of the Act, to States, AAAs, and legal assistance service providers, to enable all parties to understand and most effectively coordinate with each other to carry out the provisions of this section.

We propose to combine all regulatory provisions relevant to legal assistance into one section. The purpose of this revision is to mitigate historic and existing confusion and misconceptions about legal assistance, achieve clarity and consistency, and create greater understanding about legal assistance and elder rights. We further propose a technical correction to change the reference to statutory language in section (a) of the regulation from § 307(a)(15) [124] to § 307(a)(11),[125] which sets forth State plan requirements to legal assistance. Section 307(a)(15) sets forth requirements for serving older people with LEP.

Proposed § 1321.93(a) provides a general definition of legal assistance based on the definition in section 102(33) [126] of the Act. Proposed § 1321.93(b) sets forth the requirements for the State Agency on Aging to add clarity about its responsibilities. The State Agency on Aging is required to address legal assistance in the State plan and to allocate a minimum percentage of funding for legal assistance. The State plan must assure that the State will make reasonable efforts to maintain funding for legal assistance. Funding for legal assistance must supplement and not supplant funding for legal assistance from other sources, such as the grants from the Legal Services Corporation. The State is also obligated to provide advice, training, and technical assistance support for the provision of legal assistance as provided in proposed § 1321.93 and section 420(a)(1) [127] of the Act. As part of its oversight role, the State Agency on Aging must ensure that

[120] 42 U.S.C. 3001.

[121] *Ibid.* at (10).

[122] 42 U.S.C. 3002(23) and (24).

[123] 42 U.S.C. 3012(a)(6).

[124] 42 U.S.C. 3027(a)(15).

[125] *Ibid.* at (a)(11).

[126] 42 U.S.C. 3002(33).

[127] 42 U.S.C. 3032i(a)(1).

the statutorily required contractual awards by AAAs to legal assistance providers meet the requirements of § 1321.93(c).

Proposed § 1321.93(c) sets forth the requirements for the AAA with regard to legal assistance. Similar to the State agency requirement to designate a minimum percentage of Title III–B funds to be directed towards legal assistance, the AAAs must take that minimum percentage from the State agency and expend at least that sum, if not more, in an adequate proportion of funding on legal assistance and enter into a contract to procure legal assistance. The proposed rule reflects the statute and existing regulation in stating requirements for the AAAs to follow when selecting the best qualified provider for legal assistance, including that the selected provider demonstrate expertise in specific areas of law that are given priority in the Act, which are income, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination, and defense against guardianship. Section 1321.93(c) also sets forth standards for contracting between AAAs and legal assistance providers, including requiring the selected provider to assist individuals with LEP, including in oral and written communication. The selected provider must also ensure effective communication for individuals with disabilities, including by providing appropriate auxiliary aids and services. where necessary. We also clarify that the AAA is precluded from requiring a pre-screening of older individuals seeking legal assistance or from acting as the sole and exclusive referral pathway to legal assistance.

We call particular attention to two proposed areas of law given priority in the Act, section 307(a)(11)(E).[128] The first is long-term care, which we interpret to include rights of individuals residing in congregate residential settings and rights to alternatives to institutionalization. Legal assistance staff with the required expertise in alternatives to institutionalization would be knowledgeable about Medicaid programs such as the Money Follows the Person demonstration, which helps individuals transition from an institutional setting to a community setting, as well as Medicaid home and community-based services (HCBS) authorities and implementing regulations, including HCBS settings requirements, that allow individuals to receive Medicaid-funded services in their homes and community. To demonstrate this expertise, staff would exhibit the ability to represent individuals applying for such programs; to appeal denials or reductions in the amount, duration, and scope of such services; and to assist individuals who want to transition to the community. With regard to expertise around institutionalization, ACL expects legal assistance staff to work very closely with the Ombudsman program to protect resident rights, including the right to seek alternatives to institutionalization and the right to remain in their chosen home in a facility by manifesting the knowledge and skills to represent residents and mount an effective defense to involuntary discharge or evictions.

The other proposed area of focus is guardianship and alternatives to guardianship. Section 307(a)(11)(E) [129] of the Act also States: ''area agencies on aging will give priority to legal assistance related to . . . defense of guardianship.'' We interpret this provision to include advice to and representation of proposed protected persons to oppose appointment of a guardian and representation to seek revocation of or limitations of a guardianship. It also includes assistance that diverts individuals from guardianship to less restrictive, more person-directed forms of decision support such as health care and financial powers of attorney, advance directives and supported decision-making, whichever tools the client prefers, whenever possible.

Despite the clear prioritization of legal assistance to defend against imposition of guardianship of an older person, the Act in section 321(a)(6)(B)(ii) [130] also states Title III–B legal services may be used for legal representation ''in guardianship proceedings of older individuals who seek to become guardians, if other adequate representation is unavailable in the proceedings.'' The language in section 321(a)(6)(B)(ii) [131] and the language in section 307(a)(11)(E) [132] have been interpreted by some AAAs and some contracted legal providers as meaning funding under the Act can be used to petition for guardianship of an older adult, rather than defending older adults against guardianship.

Guardianship is a legal determination that infringes upon the rights and self-determination of individuals who are purported to lack capacity for decision-making. Guardianship disproportionately impacts older adults and adults with disabilities. We seek comments on how to reconcile the language in § 321(a)(6)(B)(ii) [133] with the general intent of the Act, as set forth in § 101(10),[134] to provide older people with freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.

Specifically, our goal is to clarify the role of legal assistance providers to promote self-determination and person-directedness and support older individuals to make their own decisions in the event of future diminished decisional capacity. We also want to preclude conflicts of interest or the appearance of conflicts of interest that may arise if a legal assistance program represents petitioners to take away decisional rights of older persons and proposed protected persons or protected persons seeking to oppose or revoke appointment of a guardian. Additionally, public guardianship programs in some States, and private practitioners in all States, are generally more available and willing to represent petitioners to establish guardianship over another adult than they are to represent older adults over whom guardianship is sought. The primary role of legal assistance providers is to represent older adults who are or may be subjected to guardianship to advance their values and wishes in decision-making. Legal assistance resources are scarce and accordingly should be preserved to represent older adults at grave risk of being deprived of the basic human right to make their own decisions. ACL believes that legal assistance should not be used to represent a petitioner for guardianship of an older person except in the rarest of circumstances and seeks comment, as described above.

If we were to include the statutory exception in the regulations, we expect that it would apply in the very limited situation of (1) someone who is eligible for Older Americans Act services, (2) who seeks to become a guardian of another individual when no other alternatives to guardianship are appropriate, and (3) where no other adequate representation is available. The legal assistance provider undertaking such representation would have to establish that the petitioner is over 60, and that no alternatives to guardianship, as discussed above, are available. The provider would also have to establish that no other adequate representation is available through public guardianship programs that

[128] 42 U.S.C. 3027(a)(11)(E).

[129] *Ibid.*

[130] 42 U.S.C. 3030d(a)(6)(B)(ii).

[131] *Id.*

[132] 42 U.S.C. 3027(a)(11)(E).

[133] 42 U.S.C. 3030d(a)(6)(B)(ii).

[134] 42 U.S.C. 3001(10).

many States have established, through bar associations and other pro bono services, or through hospitals, nursing homes, adult protective services, or other entities and practitioners that represent petitioners for guardianship. A legal assistance program that would bring guardianship proceedings as part of its normal course of business, that represents a relative of an older person as petitioner at the request of a hospital or nursing facility to seek the appointment of a guardian to make health care decisions, or that undertakes representation at the behest of adult protective services would not satisfy our interpretation of the limited applicability of the exception. These parties have access to counsel for representation in petitioning for guardianship.

We request comments on whether the proposed regulatory language is consistent with ACL's goal of promoting self-determination and the rights of older people. We also are interested in comments that describe the extent to which legal assistance programs represent an older person who seeks to become a guardian, the circumstances that precipitate the guardianship proceeding, whether alternatives to guardianship have been considered, and the availability of bar association and other pro bono options for representation of the petitioner.

Proposed § 1321.93(d) sets forth the requirements for legal assistance providers. Providers must provide legal assistance to meet complex and evolving legal needs that may arise involving a range of private, public, and governmental entities, programs, and activities that may impact an older adult's independence, choice, or financial security, and the standards AAAs must use to select the legal assistance provider or providers with which to contract. The provider selected as the ''best qualified'' by a AAA must have demonstrated capacity to represent older individuals in both administrative and judicial proceedings. Representation is broader than providing advice and consultation or drafting simple documents; it encompasses the entire range of legal assistance, including administrative and judicial representation, including in appellate forums.

Legal assistance providers must maintain the expertise required to capably handle matters related to all the priority case type areas under the Act, including income, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination and defense against guardianship. Under our proposed rule, a legal assistance provider that focuses only on one area, especially an area not specified by the Act as a priority case type, such as drafting testamentary wills, and that does not provide a broader range of services designated by the Act as priorities or represent individuals in administrative and judicial proceedings, would not meet the requirements of this section and the Act. An AAA that contracted with such a provider would also not meet their obligations under proposed § 1321.93(b) and under the Act.

We propose that, as required by the Act and existing regulation, legal assistance providers must maintain the capacity to collaborate and support the Ombudsman program in their service area. Legal assistance providers must cooperate with the Ombudsman in entering into the Memorandum of Understanding proffered by the Ombudsman as required pursuant to section 712(h)(8) of the Act. Legal assistance programs are required to collaborate with other programs that address and protect elder rights. We encourage coordination and collaboration with Adult Protective Services programs, State Health Insurance Assistance Programs, Protection and Advocacy systems, AAA and Aging and Disabilities Resource Center options counselors and I&A/R specialists, nutrition programs, and similar partners where such coordination and collaboration promote the rights of older adults with the greatest economic need or greatest social need. Similarly, existing statutory and regulatory provisions urge legal assistance providers that are not housed within Legal Services Corporation grantee entities to coordinate their services with existing Legal Services Corporation projects. Such coordination will help ensure that services under the Act are provided to older adults with the greatest economic need or greatest social need and are targeted to the specific legal problems such older adults encounter. We will provide technical assistance on all of these required practices.

As indicated in proposed § 1321.9(c)(2)(xi), cost sharing for legal assistance services is prohibited. This means that a client may not be asked or required to provide a fee to the provider, as is sometimes the practice with some Bar Association referral services. Likewise, the Act prohibits requiring contributions from legal assistance clients before or during the course of representation. Only after the conclusion of representation may a request for a contribution be made. If a client chooses to voluntarily make a contribution, the proceeds must be applied to expanding the service category.

The proposed rule precludes a legal assistance program from asking an individual about their personal or family financial information as a condition of establishing eligibility to receive legal assistance. Such information may be sought when it is relevant to the legal service being provided. Requesting financial information would be appropriate, for example, when an older person is seeking assistance with an appeal of denial of benefits, such as Medicaid and Supplemental Nutrition Assistance Program (SNAP), that have financial eligibility requirements.

The proposed rule requires legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys to adhere to the applicable Rules of Professional Conduct for attorneys. Such non-attorney staff may include law students, paralegals, nurses, social workers, case managers, and peer counselors. Even if such non-attorney staff have their own rules of professional conduct, they must still adhere to the applicable Rules of Professional conduct in their work in a legal assistance program office because their services are under the supervision of attorney staff. Non-disclosure of confidential client information is a critical component of adhering to Rules of Professional Conduct for both attorney and non-attorney staff, even if, for example, the non-lawyer staff may otherwise be subject to mandatory reporting of suspected elder maltreatment.

The proposed rule maintains the prohibition against a legal assistance provider representing an older person in a fee-generating case and includes the limited exceptions to that prohibition. The proposed rule also addresses prohibited activities by legal assistance providers, including prohibiting the use of Older American Act funds for political contributions, activities, and lobbying. The prohibition against lobbying using Title III funds clarifies that lobbying does not include contacting a government agency for information relevant to understanding policies or rules, informing a client about proposed laws or rules relevant to the client's case, engaging with the AAA, or testifying before an agency or legislative body at the request of the agency or legislative body.

B. New Provisions Added To Clarify Responsibilities and Requirements Under Grants to State and Community Programs on Aging

We propose the following new provisions to provide direction in response to inquiries and feedback received from grantees and other stakeholders and changes in the provision of services, and to clarify requirements under the Act. We welcome comment on these proposed changes.

Subpart B—State Agency Responsibilities

§ 1321.23 Appeal to the Departmental Appeals Board on Area Agency on Aging Withdrawal of Designation

Section 305(a)(2)(A) [135] of the Act empowers State agencies to designate eligible entities as AAAs. Sec. 305(b)(5)(C)(i) [136] of the Act affords an AAA the right to appeal a State's decision to revoke its designation including up to the Assistant Secretary. Per section 305(b)(5)(C)(iv) [137] the Assistant Secretary may affirm or set aside the State agency's decision. Historically, appeals of AAA designation to the Assistant Secretary have been extremely rare.

Under proposed § 1321.23, the HHS Departmental Appeals Board (DAB) will preside over appeals under the OAA. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to issuing a decision. We believe this will streamline administrative functions and provide robust due process protections to AAAs. This aligns with our proposed § 1321.17 and § 1321.39. The HHS DAB provides impartial, independent review of disputed decisions under more than 60 statutory provisions. We believe this proposal will provide clarity and consistency to State agencies and AAAs.

§ 1321.37 Notification of State Plan Amendment Receipt for Changes Not Requiring Assistant Secretary for Aging Approval

Sections 1321.19 and 1321.23 of the existing regulation, proposed to be redesignated as § 1321.31 and § 1321.35, address submission of amendments to the State plan and notification of State plan or amendment approval; however, they lack a process of notification of receipt for those State plan amendments that are required to be submitted, but not approved by the Assistant Secretary for Aging. We propose this new section to provide for notification of receipt of State plan amendments that do not require Assistant Secretary approval.

§ 1321.47 Conflicts of Interest Policies and Procedures for State Agencies

Section 307(a)(7)(B) [138] of the Act directs State agencies to include assurances against COI in their State plans. The general definition of COI, included in the proposed definition section at 45 CFR 1321.3, describes two broad categories of conflict: one or more conflicts between the private interests and the official responsibilities of a person in a position of trust; and/or one or more conflicts between competing duties of an individual, or between the competing duties, services, or programs of an organization, and/or portion of an organization.

State agencies may wish to identify other COI based on State law or other requirements. For example, a State agency may have specific COI requirements for providing case management or information and assistance/referral services under the Act. In other instances, a State agency which also oversees Medicaid managed care programs may choose to extend their COI policies in response to relevant Medicaid COI regulations in a similar way for all roles and services within the State, regardless of funding source. Additionally, State agencies may look to other ACL guidance concerning COI. For example, ACL has issued regulations related to the Ombudsman program (including proposed regulation updates at § 1324 Subpart A) and guidance related to Senior Health Insurance Program (SHIP) grantees, many of whom are housed in the State agency and/or in a AAA.[139] In 45 CFR 1321.47 we propose State agencies develop specific policies and procedures on COI given the complexity of the aging network and its various roles and responsibilities. We also propose similar requirements for AAAs, including the service providers to whom they provide funds under the Act in § 1321.67.

These policies and procedures at § 1321.47 must establish mechanisms to avoid both actual and perceived COI and to identify, remove, and remedy any existing COI at organizational and individual levels, including: (1) ensuring that State employees and agents administering Title III programs do not have a financial interest in a Title III program; (2) removing and remedying actual, perceived, or potential conflicts that arise; (3) establishing robust monitoring and oversight, to identify COI; (4) ensuring that no individual or member of the immediate family of an individual involved in administration or provision of a Title III program has or is perceived to have a COI; (5) requiring that other agencies in which a Title III program are operated have policies in place to prohibit the employment or appointment of those with a conflict that cannot be adequately removed or remedied; (6) requiring that a Title III program takes reasonable steps to suspend or remove Title III program responsibilities of an individual who has a COI or who has an immediate family member with a COI that cannot be adequately removed or remedied; (7) ensuring that no organization that provides a Title III service has or is perceived to have a COI; and (8) establishing the actions the State agency will require a Title III program to take in order to remedy or remove such conflicts.

The policies and procedures are intended to provide a mechanism for informing relevant parties of COI responsibilities and identifying and addressing conflicts when they arise. Examples of individual COIs involving a State employee administering Title III programs include a State agency dietitian responsible for Title III programs who owns a catering company that provides meals to Title III-funded programs and a State employee responsible for monitoring AAA programs who recently sold a plot of land to an AAA.

COI policies must also address organizational conflicts. These may arise as conflicts between competing duties, programs, and services or as other conflicts identified by the Assistant Secretary. Examples of organizational COI involving State agencies include operating Title III-funded programs and a public guardianship program or the Ombudsman program and an adult protective services program within the same organization.

If an actual, perceived, or potential COI is identified, State agencies should promptly follow the established procedures they have in place to mitigate the problem. Procedures to mitigate COI could include establishing firewalls between or among individuals, programs or organizations involved in the conflict, removing an individual or organization from a position, or termination of a contract. Whether the potential COI is actual or perceived, it is essential that the State agency pursue

[135] 42 U.S.C. 3025(a)(2)(A).

[136] *Ibid.* at (b)(5)(C)(i).

[137] *Ibid.* at (b)(5)(C)(iv).

[138] 42 U.S.C. 3027(a)(7)(B).

[139] See, *e.g.,* ACL guidance to SHIP grantees, many of which housed in the State agency and/or area agency. Admin. for Cmty. Living, Conflict of Interest: Identification, Remedy, and Removal (2020).

solutions that preserve the integrity of the mission of the Act. We welcome feedback on comprehensive, successful COI policies and procedures at State agency, AAA, and service provider levels, as well as if there are recommended tools used to identify conflicts and strategies used to mitigate or remedy identified conflicts. We also seek feedback concerning any COI under Title III (excluding the Ombudsman program, which has detailed conflicts of interest expectations, as set forth in § 1324 Subpart A) that should be prohibited.

§ 1321.53 State Agency Title III and Title VI Coordination Responsibilities

Proposed § 1321.53 sets forth expectations for coordinating activities and delivery of services under Title III and Title VI, as articulated in sections 306(a)(11)(B),[140] 307(a)(21)(A),[141] 614(a)(11),[142] and 624(a)(3)[143] of the Act. We received inquiries and feedback from grantees and other stakeholders asking for clarification on their obligation to coordinate activities under Title III and Title VI. Questions included whether coordination is required or discretionary, what coordination activities entities must undertake, and which entities are responsible for coordination. We propose to clarify that coordination is required under the Act and that all entities are responsible for coordination, including State agencies, AAAs, and service providers, and that State agencies must have specific policies and procedures to guide coordination efforts within the State.

Subpart C—Area Agency Responsibilities

§ 1321.59 Area Agency Policies and Procedures

Section 306[144] of the Act sets forth the responsibilities of AAAs regarding programs operated under the Act. Section 306,[145] in conjunction with other language throughout the Title III of the Act, establishes the AAA's role with relation to the State and service providers. However, we have received inquiries and feedback from AAAs and others that indicates a lack of clarity as to, for example, the scope of State versus AAA responsibility.

Proposed § 1321.59 States that AAAs shall develop policies and procedures governing all aspects of programs operated under the Act, in compliance with State policies and procedures. It also clarifies that the scope of AAA responsibility includes consulting with other appropriate parties regarding policy and procedure development, monitoring, and enforcing their own policies and procedures. We also propose to incorporate the provision currently set forth at § 1321.25 (*Restriction of delegation of authority to other agencies*) within this new provision.

§ 1321.67 Conflicts of Interest Policies and Procedures for Area Agencies on Aging

Section 307(a)(7)(B)[146] of the Act sets forth prohibitions against COI in AAAs. Our proposals at § 1321.67, specific to the responsibilities of AAAs, are one of several provisions related to COI in this proposed rule, including a general definition at 45 CFR 1321.3 and requirements for State agencies at 45 CFR 1321.47. The landscape of activities undertaken by AAAs since the Act was first passed and our regulations issued has broadened significantly beyond traditional OAA services. With our proposed regulations, we seek to provide AAAs and service providers clarity and specificity such that they can confidently engage in business activities that may generate conflicts while remaining in compliance with the law, carrying out the objectives of the Act in the interest of the older people they serve.

45 CFR 1321.3 describes organizational and individual conflicts of interest. For example, an individual conflict may arise if an AAA director is involved in an award of a new subcontract to a service provider that employs the director's spouse. In this case, his private interest would be in direct conflict with his official responsibilities. Similar examples are an AAA board member who is also the executive director of a service provider to whom the AAA grants funds under the Act or a case manager funded under the Act who also works part-time as an intake coordinator at a local skilled nursing facility.

Examples of an organizational COI may be if a AAA has a contract with an integrated health care system and the AAA provides direct services to the clients that receive services in that health care system. Here, the AAA's financial interest in its contract with the health system is in conflict with its responsibility to serve OAA clients equitably and without preferential treatment. Other examples of organizational COI include a AAA who is asked to join an advocacy effort regarding poor services by a particular organization with whom the AAA is under negotiation to enter into a contract or commercial relationship or a service provider of options counseling under the Act who expects its options counselors to divide their time to take on case management responsibilities supporting a contract or commercial relationship with a specific managed care organization. The proposed language in this section requires COI policies and procedures for AAAs and complements the language proposed at § 1321.47 for State agencies. These policies and procedures must establish mechanisms to avoid both actual and perceived COI and to identify, remove, and remedy any existing COI at organizational and individual levels.

In other words, we propose that AAAs have policies and procedures to identify and prevent COI. The policies must establish the actions and procedures the AAA will require employees, contractors, grantees, volunteers, and others in a position of trust or authority to take to remedy or remove such conflicts.

COI policies address individual conflicts on the part of the AAA, employees, and agents of the AAA who have responsibilities relating to Title III programs, including governing boards, advisory councils, and staff. The conflicts can be actual, perceived, or potential. The policies and procedures provide a mechanism for informing relevant parties of COI responsibilities and identifying and addressing conflicts when they arise. For example, an AAA may institute a policy that staff disclose relevant financial interests prior to assuming a position of oversight or authority over specific programs, functions, or commercial relationships.

COI policies must also address organizational conflicts. These may arise as conflicts between competing duties, programs, and services or as other conflicts identified by the Assistant Secretary. For example, a AAA should maintain a policy that it will not enter into an agreement to provide legal assistance services under Title III of the Act with an entity that serves as the public guardian because the legal assistance provider is required under the Act to represent older people ''in defense of guardianship,'' including revocation of existing guardianships. Defense of guardianship involves representing the person over whom guardianship is sought in the proceeding against them. We welcome feedback regarding if operating a guardianship program or accepting a

[140] 42 U.S.C. 3026(a)(11)(B).
[141] 42 U.S.C. 3027(a)(21)(A).
[142] 42 U.S.C. 3057e(a)(11).
[143] 42 U.S.C. 3057j(a)(3).
[144] 42 U.S.C. 3026.
[145] *Ibid.*
[146] 42 U.S.C. 3027(a)(7)(B).

guardianship appointment of an older person should be a prohibited conflict for AAAs, since the Act requires AAAs to advocate for the rights of older people, including in guardianship arrangements. Our proposed rules require policies and procedures addressing both these scenarios, which may represent actual potential or perceived conflicts.

If an actual, perceived, or potential COI is identified, AAAs should promptly follow the procedures they and State agencies have in place to mitigate the problem. Whether the potential COI is actual or perceived, it is essential that the AAA pursue solutions that preserve the integrity of the mission of the Act.

§ 1321.69 Area Agency on Aging Title III and Title VI Coordination Responsibilities

Consistent with proposed § 1321.53 (State agency Title III and Title VI coordination responsibilities), proposed § 1321.69 sets forth expectations for coordinating activities and delivery of services under Title III and Title VI, as articulated in sections 306(a)(11)(B),[147] 307(a)(21)(A),[148] 614(a)(11),[149] and 624(a)(3) [150] of the Act. We propose to clarify that coordination is required under the Act and that all entities are responsible for coordination, including State agencies, AAAs, and service providers. The proposed section complements the language proposed at § 1321.53 for State agencies, and includes specific considerations for AAAs, such as opportunities to serve on AAA advisory councils, workgroups, and boards and opportunities to receive notice of Title III and other funding opportunities.

Subpart D—Service Requirements

§ 1321.77 Purpose of Services—Person- and Family-Centered, Trauma Informed

New proposed § 1321.77 clarifies that services under the Act should be provided in a manner that is person-centered and trauma informed. Consistent with the direction of amendments to section 101 [151] of the Act as reauthorized in 2020, recipients are entitled to an equal opportunity to the full and free enjoyment of the best possible physical and mental health, which includes access to person-centered and trauma-informed services.

§ 1321.81 Client Eligibility for Participation

To be eligible for services under the Act, recipients must be age 60 or older at the time of service, except in the case of limited services, such as nutrition and family caregiver support services. We received inquiries, requests for technical assistance, and comments demonstrating misunderstandings among State agencies, AAAs, service providers, and others in the aging network about eligibility requirements. For example, we received feedback expressing confusion as to whether any caregivers of adults of any age are eligible to receive Title III program services, which is not allowable under the Act.

Proposed § 1321.81 clarifies eligibility requirements under the Act and explains that States, AAAs, and service providers may adopt additional eligibility requirements, if they do not conflict with the Act, the implementing regulation, or guidance issued by the Assistant Secretary for Aging.

§ 1321.85 Supportive Services

Proposed § 1321.85 clarifies the supportive services set forth in Title III, Part B, section 321 of the Act, which includes in-home supportive services, access services, and legal services. It also clarifies allowable use of funds, including for acquiring, altering or renovating, and constructing multipurpose senior centers and that those funds must be distributed through an approved intrastate funding formula or funds distribution plan, as articulated in the State plan.

§ 1321.87 Nutrition Services

Proposed § 1321.87 clarifies the nutrition services set forth in Title III, Part C of the Act—which includes congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services. Based on experiences during the COVID pandemic and numerous requests for flexibility in provision of meals, we propose that meals provided under Title III C–1 of the Act may be used for shelf-stable, pick-up, carry-out, drive-through or similar meals, if they are done to complement the congregate meal program and comply with certain requirements as set forth.

We also propose to clarify that home-delivered meals may be provided via home delivery, pick-up, carry-out, or drive-through and that eligibility for home-delivered meals is not limited to those who may be identified as ''homebound,'' that eligibility criteria may consider multiple factors, and that meal participants may also be encouraged to attend congregate meals and other activities, as feasible, based on a person-centered approach and local service availability.

We propose to specify that nutrition education, nutrition counseling, and other nutrition services may be provided with funds under Title III C–1 or –2 of the Act. As required by section 331(1),[152] we propose to set forth requirements that State and/or AAA policies shall determine the frequency of meals in areas where five days or more days a week of service is not feasible. This proposed provision clarifies that funds must be distributed through an approved intrastate funding formula or funds distribution plan, as articulated in the State plan.

Finally, this proposed provision sets forth requirements for Nutrition Services Incentive Program allocations. Nutrition Services Incentive Program allocations are based on the number of meals reported by the State agency which meet certain requirements, as specified. States may choose to receive their allocation grants as cash, commodities, or a combination thereof. Nutrition Services Incentive Program funds may only be used to purchase domestically-produced foods (definition included as proposed in § 1321.3) used in a meal, as set forth under the Act. We intend for this provision to answer many questions we have received regarding the proper use of funds under the Nutrition Services Incentive Program.

§ 1321.89 Evidence-Based Disease Prevention and Health Promotion Services

Proposed § 1321.89 clarifies evidence-based disease prevention and health promotion services set forth in Title III, Part D of the Act, and States that programs funded under this provision must be evidence-based, as required in the Act as amended in 2016. It also clarifies allowable use of funds and that those funds must be distributed through an approved intrastate funding formula or funds distribution plan, as articulated in the State plan.

§ 1321.91 Family Caregiver Support Services

During the 2000 reauthorization of the Act, Congress added Title III, Part E to set forth allowable expenses for family caregiver support services. Proposed § 1321.91 clarifies the family caregiver support services available under the Act and eligibility requirements for respite care and supplemental services, as set

[147] 42 U.S.C. 3026(a)(11)(B).
[148] 42 U.S.C. 3027(a)(21)(A).
[149] 42 U.S.C. 3057e(a)(11).
[150] 42 U.S.C. 3057j(a)(3).
[151] 42 U.S.C. 3001.
[152] 42 U.S.C. 3030e(1).

forth in section 373(c)(1)(B).[153] It also clarifies allowable use of funds and that those funds must be distributed through an approved intrastate funding formula or funds distribution plan, as articulated in the State plan.

§ 1321.95 Service Provider Title III and Title VI Coordination Responsibilities

Consistent with proposed § 1321.53 (State agency Title III and Title VI coordination responsibilities) and proposed § 1321.69 (AAA Title III and Title VI coordination responsibilities), proposed § 1321.95 sets forth expectations for coordinating activities and delivery of services under Title III and Title VI, as articulated in sections 306(a)(11)(B),[154] 307(a)(21)(A),[155] 614(a)(11),[156] and 624(a)(3)[157] of the Act. We propose to clarify that coordination is required under the Act and that all entities are responsible for coordination, including State agencies, AAAs, and service providers. The proposed section complements the language proposed at § 1321.53 for State agencies and § 1321.69 for AAAs, and includes those requirements specific to service providers.

Subpart E—Emergency and Disaster Requirements

Based on stakeholder input and our experience, particularly during the COVID–19 pandemic, we propose adding Subpart E—Emergency and Disaster Requirements (§§ 1321.97–1321.105) to explicitly set forth expectations and clarify flexibilities that are available in a disaster situation. The current Subpart E (*Hearing Procedures for State Agencies*) is no longer necessary since we propose that the provisions in Subpart E be redesignated and covered in proposed Subpart B (*State Agency Responsibilities*).

Although the current regulation mentions the responsibilities of service providers in weather-related emergencies (§ 1321.65(e)), existing guidance on emergency and disaster requirements under the Act is limited and does not contemplate the evolution of what may constitute an ''emergency'' or ''disaster'' or how they may uniquely affect older adults.

If a State or Territory receives a major disaster declaration (MDD) by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207, this MDD triggers certain disaster relief authority under section 310[158] of the Act. The COVID–19 pandemic for example, demonstrated the devastating impact of an emergency or disaster on the target population who receive services under the Act. During the COVID–19 pandemic, all States and Territories received a MDD, and we provided guidance on flexibilities available under the Act while a MDD is in effect to meet the needs of older adults, such as those related to meal delivery systems, methods for conducting well-being checks, delivery of pharmacy, grocery, and other supplies, and other vital services.

Throughout the COVID–19 pandemic, we received inquiries and feedback that demonstrated a need for clarity on available flexibilities in an emergency. RFI respondents also provided substantial feedback regarding current limitations and the need for additional guidance and options for serving older adults during emergencies and disasters. Multiple RFI respondents noted that older adults and their service providers may be impacted by a wide range of emergencies and disasters—including natural, human-caused, climate-related, and viral disasters—and that current regulatory guidance does not provide State agencies, area agencies, and service providers the flexibility necessary to adequately plan for emergency situations, as contemplated by the Act. Accordingly, they sought an expansion of the definition of ''emergency'' that better reflected their realities regarding service delivery. RFI respondents also sought guidance on numerous aspects of program and service delivery during an emergency, such as maintaining flexibilities in meal and other service delivery introduced in response to COVID–19 pandemic, increased flexibility in transferring funds, allowable spending on disaster mitigation supplies, and providing mental health services to older adults who experience disaster-related trauma. RFI respondents also asked for regulatory language describing what is expected of State agencies, area agencies, and service providers in an emergency to allow for the development of better emergency preparedness plans at State and local levels.

We considered various approaches in developing this new section. Certain flexibilities, such as allowing the use of Title III C–2 funds which are allocated to home-delivered meals for carry-out or drive through meals, constitute innovative ways to deliver services that could be allowable on a regular basis within the parameters of Title III C–2 and without any special authorization by ACL during an emergency. Those flexibilities have been incorporated where applicable in the proposed revised regulation for clarification purposes, for example in § 1321.87(a)(2), which addresses carry-out and other alternatives to traditional home-delivered meals. We are limited by the Act in the extent to which other flexibilities may be allowed. For example, a MDD is required for a State agency to be permitted, pursuant to section 310(c)[159] of the Act, to use Title III funds to provide disaster relief services, which must consist of allowable services under the Act, for areas of the State where the specific MDD is authorized and where older adults and family caregivers are affected.

We also recognize that during an event which results in a MDD, such as the COVID–19 pandemic, Statewide procurement or other direct expenditures by the State agency may be critical to meeting the mission of the Act. Based on our experience in responding to the COVID–19 pandemic, we propose certain options to be available to State agencies to expedite expenditures of Title III funds while a MDD is in effect, such as allowing a State agency to procure items on a Statewide level, subject to certain terms and conditions.

We have administrative oversight responsibility with respect to the expenditures of Federal funds pursuant to the Act. Accordingly, in addition to the flexibilities we propose to allow in this section, we are compelled to propose requirements with respect to these flexibilities, such as the submission of State plan amendments by State agencies when they intend to exercise any of these flexibilities, as well as reporting requirements. We welcome comment on this new proposed section, including on the sufficiency of guidance provided and potential alternative approaches to achieve the goal of providing services to older adults during emergencies and disasters.

§ 1321.97 Coordination With State, Tribal and Local Emergency Management

Proposed § 1321.97 states that State agencies and AAAs must establish emergency plans, per sections 307(a)(28)[160] and 306(a)(17)[161] of the Act, respectively, and this proposed section specifies requirements under the

[153] 42 U.S.C. 3030s–1(c)(1)(B).
[154] 42 U.S.C. 3026(a)(11)(B).
[155] 42 U.S.C. 3027(a)(21)(A).
[156] 42 U.S.C. 3057e(a)(11).
[157] 42 U.S.C. 3057j(a)(3).
[158] 42 U.S.C. 3030.
[159] 42 U.S.C. 3030(c).
[160] 42 U.S.C. 3027(a)(28).
[161] 42 U.S.C. 3026(a)(17).

Act that these plans must meet. While the Act requires emergency planning by State agencies and AAAs, the Act provides limited guidance regarding emergency planning. We also propose to include in this section additional guidance in connection with the development of sound emergency plans (such as requirements for continuity of operations planning, taking an all-hazards approach to planning, and coordination with Tribal emergency management and other agencies that have responsibility for disaster relief delivery).

§ 1321.99 Setting Aside Funds To Address Disasters

Proposed § 1321.99 describes the parameters under which States may set aside and use funds during a MDD, per section 310 [162] of the Act.

This section also clarifies that State agencies may specify that they are setting aside Title III funds for disaster relief in their intrastate funding formula or funds distribution plan. It provides direction as to the process a State agency must follow in order to award such funds for use within all or part of a planning and service area covered by a specific MDD where Title III services are impacted, as well as requirements with respect to the awarding of such funds. We considered other alternatives to this funding set-aside, such as requiring States to spend funds through their intrastate funding formula for emergency and disaster relief rather than allowing for set asides to address these situations. We seek comment on both the requirement for allowing access to emergency or disaster funding and the method by which States can plan for and award those funds.

§ 1321.101 Flexibilities Under a Major Disaster Declaration

Proposed § 1321.101 describes disaster relief flexibilities available pursuant to Title III under a MDD to provide disaster relief services for affected older adults and family caregivers. Recognizing that there is no required period of advance notice of the end of a MDD incident period, we propose to allow State agencies up to 90 days after the expiration of a MDD to obligate funds for disaster relief services.

We also recognize that during an event which results in a MDD, such as the COVID–19 pandemic, Statewide procurement or other direct expenditures by the State agency may be critical to meeting the mission of the Act. Based on our experience in responding to the COVID–19 pandemic, we propose additional options to be available to State agencies to expedite expenditures of Title III funds while a MDD is in effect, including allowing a State agency to procure items on a Statewide level and allowing a State agency to allocate a portion of its State plan administration funds (not to exceed five percent of the total Title III grant award) to a planning and service area covered under a MDD to be used for direct service provision without having to allocate the funds through the intrastate funding formula. We selected a cap of five percent as State agencies are allowed under section 308(b)(2) [163] of the Act to apply the greater of $750,000 or five percent of the total Title III grant award to State plan administration. For example, at the beginning of the COVID–19 pandemic, we provided flexibilities where State agencies were able to provide some direct services, like food boxes, to areas in the State that were not able to access needed food for older adults and their caregivers. This flexibility allowed State agencies to quickly provide needed access to food for vulnerable populations where access was severely limited at a local level. The terms and conditions that we propose to apply to these flexibilities also are set forth in this section, such as requirements to submit State plan amendments when a State agency intends to exercise such flexibilities (such amendments are to include the specific entities receiving the funds, the amount, the source, the intended use for the funds, and other justification for the use of the funds) and reporting requirements.

We received many comments in response to the RFI asking that various flexibilities allowed during the COVID–19 pandemic remain in place permanently. We are limited by the Act in the extent to which flexibilities may be allowed. For example, a MDD is required in order for a State agency to be permitted, pursuant to section 310(c) [164] of the Act, to use Title III funds to provide disaster relief services (which must consist of allowable services under the Act) for areas of the State where the specific major disaster declaration is authorized and where older adults and family caregivers are affected, and the Act contains limitations on the transfer of Title III funds among the various parts of Title III. Flexibility was provided for 100 percent of transfer of Title III nutrition services funds through separate legislation, the CARES Act, which is limited to the period of the declared PHE for COVID–19.

§ 1321.103 Title III and Title VI Coordination for Emergency Preparedness

Proposed § 1321.53 (State agency Title III and Title VI coordination responsibilities), proposed § 1321.69 (AAA Title III and Title VI coordination responsibilities), and proposed § 1321.95 (service requirements coordination responsibilities), set forth expectations for coordinating activities and delivery of services under Title III and Title VI, as articulated in the Act sections 306(a)(11)(B),[165] 307(a)(21)(A),[166] 614(a)(11),[167] and 624(a)(3).[168] Proposed § 1321.103 clarifies that Title III and Title VI coordination should extend to emergency preparedness planning and response.

§ 1321.105 Modification During Major Disaster Declaration or Public Health Emergency

Proposed § 1321.105 States that the Assistant Secretary for Aging retains the right to modify emergency and disaster-related requirements set forth in the regulation under a major disaster declaration or public health emergency as declared by the U.S. Secretary for Health and Human Services.

C. Deleted Provisions

We propose deleting the following provisions since they are no longer necessary and/or applicable, and to avoid potential confusion or conflicts due to statutory and/or regulatory changes.

§ 1321.5 Applicability of Other Regulations

We propose deleting § 1321.5, which lists other applicable regulations, because the provision is unnecessary and may create confusion or become outdated due to statutory or regulatory changes.

§ 1321.75 Licenses and Safety

We propose deleting § 1321.75, which describes State and AAA responsibilities to ensure that facilities who are awarded funds for multipurpose senior center activities obtain appropriate licensing and follow required safety procedures, and that proposed alterations or renovations of multipurpose senior centers comply with applicable ordinances, laws, or building codes. The provision is no

[162] 42 U.S.C. 3030.

[163] 42 U.S.C. 3028(b)(2).

[164] 42 U.S.C. 3030(c).

[165] 42 U.S.C. 3026(a)(11)(B).

[166] 42 U.S.C. 3027(a)(21)(A).

[167] 42 U.S.C. 3057e(a)(11).

[168] 42 U.S.C. 3057j(a)(3).

longer necessary, since these responsibilities are addressed by other policies and procedures at the State and local levels.

V. Grants to Indian Tribes for Support and Nutrition Services

A. Provisions Revised To Reflect Statutory Changes and/or for Clarity

Subpart A—Introduction

§ 1322.1 Basis and Purpose of This Part

Proposed § 1322.1 sets forth the requirements of Title VI of the Act to provide grants to Indian Tribes and Native Hawaiian grantees. We propose consolidating 45 CFR 1322 and 45 CFR 1323 into 45 CFR 1322 and subsequently retitling this section as ''Grants to Indian Tribes and Native Hawaiian Grantees for Supportive, Nutrition, and Caregiver Services.'' We propose revising language to affirm the sovereign government to government relationship with a Tribal organization, and similar considerations, as appropriate for Hawaiian Native grantees representing elders and family caregivers, and to ensure consistency with statutory terminology and requirements, such as adding reference to caregiver services and specifying family caregivers as a service population, as set forth in Title VI of the Act. We propose to add language to incorporate Native Hawaiians and Native Hawaiian grantees. We also propose to clarify that terms not otherwise defined will have meanings ascribed to them in the Act.

§ 1322.3 Definitions

We propose to update the definitions of significant terms in § 1322.3 to reflect current statutory terminology and operating practice and to provide clarity. We propose to add several definitions and revise several existing definitions. The additions and revisions are intended to reflect changes to the statute, important practices in the administration of programs under the Act, and feedback we have received from a range of stakeholders.

We propose to add definitions of the following terms: ''Access to services,'' ''Act,'' ''Area agency on aging,'' ''Domestically-produced foods,'' ''Eligible organization,'' ''Family caregiver,'' ''Hawaiian Native or Native Hawaiian,'' Hawaiian Native Grantee,'' ''In-home supportive services,'' ''Major disaster declaration,'' ''Multipurpose senior center,'' ''Native American,'' ''Nutrition Services Incentive Program,'' ''Older Native Hawaiian,'' ''Older relative caregiver,'' ''Program income,'' ''Reservation,'' ''State agency,'' ''Title VI director,'' and ''Voluntary contributions.''

We propose to retain and make minor revisions to the terms: ''Acquiring,'' ''Altering or renovating,'' ''Constructing,'' ''Department,'' ''Means test,'' ''Service area,'' ''Service provider,'' and ''Tribal organization.'' We propose to retain with no revisions the terms: ''Budgeting period,'' ''Indian reservation,'' ''Indian tribe,'' ''Older Indians,'' and ''Project period.''

Subpart B—Application

§ 1322.5 Application Requirements

Section 1322.19 of the existing regulation (*Application requirements*) is redesignated here as § 1322.5. We propose minor revisions to align the provision with updates to proposed definitions and statutory terminology and requirements resulting from reauthorizations—such as adding family caregivers as a service population per the 2000 reauthorization of the Act and correcting the title of the Assistant Secretary for Aging—and regulatory references. We also propose minor language revisions for clarity.

To clarify important application components, we propose to specify that application submissions must include program objectives; a map and/or description of the geographic boundaries of the service area proposed by the eligible organization, which may include Bureau of Indian Affairs service area maps; documentation of supportive and nutrition services capability; assurances including that the eligible organizations shall establish and follow policies and procedures as proposed in § 1322.13, complete a needs assessment to include older Native Americans and if applying for funds under Title VI Part C, family caregivers, align with data collection and reporting requirements, and complete program evaluation; a tribal resolution; and signature by a principal official.

§ 1322.7 Application Approval

Section 1322.21 of the existing regulation (*Application approval*) is redesignated here as § 1322.7. We propose minor revisions to align the provision with updates to correct the title of the Assistant Secretary for Aging. We also propose to clarify that no less than annual performance and fiscal reporting is required.

§ 1322.9 Hearing Procedures

Section 1322.23 of the existing regulation (*Hearing procedures*) is redesignated here as § 1322.9. Section 614(d)(3) of the Act provides opportunity for a hearing when an organization's application under Section 614 is denied. We propose to transfer hearings from the Commissioner (now Assistant Secretary for Aging) to the Departmental Appeals Board (DAB). This proposal brings redesignated § 1322.9 into alignment with current § 1336.35 which delegates appeals to the DAB, as well as our proposed regulations on hearing procedures in for Title III of the Act.

The HHS DAB provides impartial, independent review of disputed decisions under more than 60 statutory provisions. We believe this proposed change will streamline administrative functions while preserving due process protections, and it furthers the objectives of the Act.

Subpart C—Service Requirements

§ 1322.13 Policies and Procedures

Sections 1322.9 (*Contributions*), 1322.11 (*Prohibition against supplantation*), and 1322.17 (*Access to information*) of the existing regulation are combined and redesignated here as § 1322.13 (*Policies and procedures*). For clarity and ease of reference, we propose to combine the areas for which a Tribal organization or Hawaiian Native grantee must have established policies and procedures in this provision.

Changes are also proposed to specify the many programmatic and fiscal requirements of which a Tribal organization or Hawaiian Native grantee should have established policies and procedures. The first area relates to identifying an individual to serve as the Title VI director, which is proposed to be defined in § 1322.3 as a single individual who is the key personnel responsible for day-to-day management of the Title VI program and who serves as a contact point for communications regarding the Title VI program. A second proposed requirement regards data collection and reporting. Sections 614(a)(3) and 624(a)(4) of the Act require the collection of data and periodic submission of reports to ACL regarding a Tribal organization's or Hawaiian Native grantee's activities, respectively. ACL has implemented a national reporting system and reporting requirements that must be used by all Tribal organizations or Hawaiian Native grantees to ensure timely and consistent reporting. Proposed § 1322.13(b) sets forth the Tribal organization's or Hawaiian Native grantee's responsibility to have policies and procedures to ensure that its data collection and reporting align with ACL's requirements.

Proposed § 1322.13(c)(1) describes policies and procedures that must be in

place with respect to the direct provision of services, to ensure that services will meet requirements of the Act. In response to requests for technical assistance and feedback from listening sessions, this proposed section addresses comments that requested clarity on the policies and procedures that Tribal organizations and Hawaiian Native grantees must have, including setting requirements for client eligibility, assessment, and person-centered planning, where appropriate; access to information (as proposed to be combined from current § 1322.17) to include working with area agencies on aging and other Title III and VII-funded programs and specifying a listing and definitions of services that may be provided by the Tribal organization or Hawaiian Native grantee; detailing any limitations on the frequency, amount, or type of service provided; and the grievance process for older Native Americans and family caregivers who are dissatisfied with or denied services under the Act.

Various fiscal requirements apply to the funding awarded under the Act. Over the years, we have found that some Tribal organizations or Hawaiian Native grantees may be unaware of certain requirements and/or may not understand their obligations under these requirements. We propose to add § 1322.13(c)(2) in order to provide guidance as to the following fiscal requirements relevant to the Act with respect to which the Tribal organization or Hawaiian Native grantee must have established policies and procedures: voluntary contributions (as proposed to be combined from current § 1322.9); buildings and equipment; and supplantation (as proposed to be combined from current § 1322.11).

We have received questions regarding use of Title VI funds for costs related to buildings and equipment, such as maintenance and repair. However, the Act provides limited guidance regarding this proposed use of funding for these purposes. We propose to add § 1322.13(c)(2)(ii) to provide such guidance to ensure that the funding will be used for allowable costs that support allowable activities; to ensure consistency in the guidance provided by ACL; and to affirm that altering and renovating activities are allowable for facilities providing services under this part. In addition, sections 614(a)(10) and 624(a)(10) of the Act provide that fiscal control and fund accounting procedures be adopted to assure proper disbursement of, and accounting for, Federal funds. To assist a Tribal organization or Hawaiian Native grantee in meeting their obligations, we propose to include a reference to 2 CFR 200 and that construction or acquisition of multipurpose senior centers are to be repaid to the Federal Government in certain circumstances. To ensure that third parties will be on notice of such requirement, we propose to include in this paragraph a requirement that a Notice of Federal Interest be filed. We welcome comment on this proposed section, including on the sufficiency of guidance provided and potential alternative approaches to achieve the goal of providing services to older Native Americans and family caregivers.

§ 1322.15 Confidentiality and Disclosure of Information

Section 1322.17 of the existing regulation (*Confidentiality and disclosure of information*) is redesignated here as § 1322.15. We propose minor revisions to align the provision with updates to proposed definitions and consolidation of § 1323 regarding applicability to a Hawaiian Native grantee. We also propose to specify that a provider of legal assistance shall not be required to reveal any information that is protected by attorney client privilege; policies and procedures are in place to maintain confidentiality of records; and information may be shared with other organizations, as appropriate, in order to provide services. We further propose that the policies and procedures must follow the National Institutes for Standards Cybersecurity and Privacy Frameworks and other applicable Federal laws, including the Health Insurance and Portability and Accountability Act (HIPAA). The Tribal organization of Hawaiian Native grantee may also require the application of other laws and guidance for the collection, use, and exchange of both Personal Identifiable Information (PII) and Personal Health Information (PHI).

§ 1322.25 Supportive Services

Section 1322.13 of the existing regulation (*Supportive services*) is redesignated here as § 1322.25. Proposed § 1322.25 clarifies the supportive services available under Title VI, Parts A and B of the Act are intended to be comparable to such services set forth in Title III of the Act, as set forth in section 601. Supportive services under Title III of the Act include in-home supportive services, access services, and legal services. We propose to clarify allowable use of funds, including for acquiring, altering or renovating, and constructing multipurpose senior centers.

We also propose to clarify that inappropriate duplication of services be avoided for participants receiving service under both Part A or B and Part C and to include minor language revisions for clarity and consistency with proposed definitions.

§ 1322.27 Nutrition Services

Section 1322.15 of the existing regulation (*Nutrition services*) is redesignated here as § 1322.27. Proposed § 1322.27 clarifies the nutrition services available under Title VI, Parts A and B of the Act are intended to be comparable to such services set forth in Title III of the Act, as set forth in section 601. As set forth in section 614(a)(8), nutrition services are to be substantially in compliance with the provisions of Part C of Title III, which includes congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services. Based on experiences during the COVID–19 pandemic and numerous requests for flexibility in provision of meals, we propose to clarify that home-delivered meals may be provided via home delivery, pick-up, carry-out, or drive-through; that eligibility for home-delivered meals is determined by the Tribal organization or Hawaiian Native grantee and not limited to those who may be identified as ''homebound;'' that eligibility criteria may consider multiple factors; and that meal participants may also be encouraged to attend congregate meals and other activities, as feasible, based on a person-centered approach and local service availability.

We propose to specify that the Tribal organization or Hawaiian Native grantee must provide congregate and home-delivered meals, and nutrition education, nutrition counseling, and other nutrition services may be provided, with funds under Title VI Part A or B of the Act. We also propose minor clarifications for consistency.

Finally, this proposed provision sets forth requirements for Nutrition Services Incentive Program allocations. Nutrition Services Incentive Program allocations are based on the number of meals reported by the Tribal organization or Hawaiian Native grantee which meet certain requirements, as specified. A Tribal organization or Hawaiian Native grantee may choose to receive their allocation grants as cash, commodities, or a combination thereof. Nutrition Services Incentive Program funds may only be used to purchase domestically-produced foods (definition included as proposed in § 1322.3) used in a meal, as set forth under the Act. We intend for this provision to answer many questions we have received regarding the proper use of funds under

the Nutrition Services Incentive Program.

B. New Provisions Added To Clarify Responsibilities and Requirements Under Grants to Indian Tribes and Native Hawaiian Grantees for Supportive, Nutrition, and Caregiver Services

We propose the following provisions to provide guidance in response to inquiries and feedback received from grantees and other stakeholders and changes in the provision of services, and to clarify requirements under the Act. We welcome comment on these proposed changes.

Subpart C—Service Requirements

§ 1322.11 Purpose of Services Allotments Under Title VI

Proposed § 1322.11 specifies that services provided under Title VI consist of supportive, nutrition, and family caregiver support program services, and that funds are to assist a Tribal organization or Hawaiian Native grantee to develop or enhance comprehensive and coordinated community-based systems for older Native Americans and family caregivers.

§ 1322.17 Purpose of Services—Person- and Family-Centered, Trauma Informed

Proposed § 1322.17 clarifies that services under the Act should be provided in a manner that is person-centered and trauma informed. Consistent with the direction of amendments to section 101 of the Act as reauthorized in 2020, recipients are entitled to an equal opportunity to the full and free enjoyment of the best possible physical and mental health, which includes access to person-centered and trauma-informed services. Recognizing and respecting the deep family and community connections of Native Americans that may be contrasted with more individualized approaches in non-Native American communities, we especially seek feedback regarding other terminology to use in expressing intended approaches to serving older Native Americans and family caregivers.

§ 1322.19 Responsibilities of Service Providers

Proposed § 1322.19 specifies the responsibilities of service providers to include providing service participants with an opportunity to contribute to the cost of the service; providing self-directed services to the extent feasible; acknowledging service provider responsibility to comply with local adult protective services requirements, as appropriate; arranging for weather-related and other emergencies; assisting participants to benefit from other programs; and coordinating with other appropriate services.

§ 1322.21 Client Eligibility for Participation

To be eligible for services under the Act, participants must have attained the minimum age determined by the Tribal organization or Hawaiian Native grantee, except in the case of limited services, such as nutrition and family caregiver support services. We received inquiries, requests for technical assistance, and comments demonstrating misunderstandings among Tribal organizations and Native Hawaiian grantees, as well as from others in the aging network, about eligibility requirements for Title VI services. For example, we received feedback expressing confusion as to whether younger caregivers of adults of any age are eligible to receive Title VI Part C program services, which is not allowable under the Act, as well as the circumstances under which non-Native Americans who live within a Tribal organization's or Hawaiian Native grantee's approved service area and are considered members of the community by the Tribal organization may be eligible to receive services under this part.

Proposed § 1322.21 clarifies eligibility requirements under the Act and explains that a Tribal organization or Hawaiian Native grantee may adopt additional eligibility requirements, if they do not conflict with the Act, the implementing regulation, or guidance issued by the Assistant Secretary for Aging.

§ 1322.23 Client and Service Priority

We received numerous inquiries about how a Tribal organization or Hawaiian Native grantee should prioritize providing services to various groups. Questions included whether there was an obligation to serve everyone who sought services and whether services were to be provided on a first-come, first-served basis. Questions about prioritization were particularly prevalent in response to demand for services created in the wake of the COVID–19 public health emergency. Entities sought clarification on whether they are permitted to set priorities, who is permitted to set priorities, and the degree to which entities have discretion to set their own priority parameters.

Proposed § 1322.23 clarifies that entities may prioritize services and that they have flexibility to set their own policies based on their assessment of local needs and resources. For clarity and convenience, we propose to list the priorities for serving family caregivers as set forth in the section 631(b) of the Act, pursuant to the 2000 reauthorization of the Act.

§ 1322.29 Family Caregiver Support Services

During the 2000 reauthorization of the Act, Congress added Title VI, Part C to set forth allowable expenses for family caregiver support services. Proposed § 1322.29 clarifies the family caregiver support services available under the Act and eligibility requirements for respite care and supplemental services, as set forth in section 631. It also clarifies allowable use of funds and that this program is intended to serve unpaid family caregivers.

§ 1322.31 Title VI and Title III Coordination

Consistent with proposed § 1321.53 (State agency Title III and Title VI coordination responsibilities), proposed § 1321.69 (area agency Title III and Title VI coordination responsibilities), and proposed § 1321.95 (service requirements for Title III and Title VI coordination), proposed § 1322.31 outlines expectations for coordinating activities and delivery of services under Title VI and Title III, as articulated in the Act sections 306(a)(11)(B), 307(a)(21(A), 614(a)(11), and 624(a)(3). We propose to clarify that coordination is required under the Act and that all entities are responsible for coordination, including a Tribal organization and a Hawaiian Native grantee. The proposed section complements the language proposed at § 1321.53 for State agencies, § 1321.69 for area agencies, and § 1321.95 for service providers under Title III of the Act.

Subpart D—Emergency & Disaster Requirements

The COVID–19 pandemic highlighted the importance of Tribal organizations' and the Hawaiian Native grantees' efforts to maintain the health and wellness of older Native Americans and family caregivers. Existing guidance on emergency and disaster requirements under the Act is limited and does not contemplate the evolution of what may constitute an ''emergency'' or ''disaster'' or how they may uniquely affect older Native Americans and family caregivers.

If a State or Indian Tribe receives a major disaster declaration (MDD) by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207, this MDD triggers certain disaster relief

authority under section 310 of the Act. The COVID–19 pandemic for example, demonstrated the devastating impact of a PHE on the target population of services under the Act. During the COVID–19 PHE, all States and some Indian Tribes received a MDD, and we provided guidance on flexibilities available under the Act while a MDD is in effect to meet the needs of older Native Americans and caregivers, such as those related to meal delivery systems, methods for conducting well-being checks, delivery of pharmacy, grocery, and other supplies, and other vital services.

Throughout the PHE, we received inquiries and feedback that demonstrated a need for clarity on available flexibilities in an emergency. RFI respondents also provided substantial feedback regarding current limitations and the need for additional guidance and options for serving older adults during emergencies. Multiple RFI respondents noted that services under the Act may be impacted by a wide range of emergencies and disasters—including natural, human-caused, climate-related, and viral disasters—and that current regulatory guidance does not provide service providers under the Act the flexibility necessary to adequately plan for emergency situations. Accordingly, the aging network sought an expansion of the definition of ''emergency'' that better reflected their realities regarding service delivery. RFI respondents also sought guidance on numerous aspects of program and service delivery during an emergency, such as maintaining flexibilities in meal and other service delivery introduced in response to the PHE, allowable spending on disaster mitigation supplies, and providing mental health services to older adults who experience disaster-related trauma. RFI respondents also asked for regulatory language outlining what is expected of a grantee under the Act in an emergency to allow for the development of better emergency preparedness plans at all levels.

Based on stakeholder input and our experience, particularly during the PHE, we propose adding Subpart D—Emergency and Disaster Requirements (§§ 1322.33–1322.39) to explicitly outline expectations and clarify flexibilities that are available in a disaster situation. We considered various approaches in developing this section. Certain flexibilities, such as allowing for carry-out or drive through meals, constitute innovative ways to deliver services that could be allowable on a regular basis within the parameters of Title VI Part A or B and without any special authorization by ACL during an emergency. Those flexibilities have been incorporated where applicable in the proposed revised regulation for clarification purposes (see § 1322.27, which addresses carry-out and other alternatives to traditional home-delivered meals). We are limited by the Act in the extent to which other flexibilities may be allowed. For example, a MDD is required in order for a Tribal organization or Hawaiian Native grantee to be permitted, pursuant to section 310(c) of the Act, to use Title VI funds to provide disaster relief services (which must consist of allowable services under the Act) for areas of the service area where the specific major disaster declaration is authorized and where older Native Americans and family caregivers are affected.

We welcome comment on this new proposed section, including on the sufficiency of guidance provided and potential alternative approaches to achieve the goal of providing services to older Native Americans and family caregivers during emergencies and disasters.

§ 1322.33 Coordination With Tribal, State, and Local Emergency Management

Proposed § 1322.33 states that Tribal organizations and Hawaiian Native grantees must establish emergency plans, and this proposed section outlines requirements that these plans must meet. While the Act requires emergency planning by State agencies and area agencies on aging, the Act provides limited guidance regarding emergency planning specific to Title VI grantees. We also propose to include in this section additional guidance in connection with the development of sound emergency plans (such as requirements for continuity of operations planning, taking an all-hazards approach to planning, and coordination among Tribal, State, and local emergency management and other agencies that have responsibility for disaster relief delivery).

§ 1322.35 Flexibilities Under a Major Disaster Declaration

Proposed § 1322.35 outlines disaster relief flexibilities available under a MDD to provide disaster relief services for affected older Native Americans and family caregivers. Recognizing that there is no required period of advance notice of the end of a MDD incident period, we propose to allow a Tribal organization or Hawaiian Native grantee up to 90 days after the expiration of a MDD to obligate funds for disaster relief services.

We received many comments in response to the RFI asking that various flexibilities allowed during the COVID–19 pandemic remain in place following the end of the PHE. We are limited by the Act in the extent to which flexibilities may be allowed. For example, a MDD is required in order for a Title VI grantee to be permitted, pursuant to section 310(c) of the Act, to use Title VI funds to provide disaster relief services (which must consist of allowable services under the Act) for areas of the service area where the specific major disaster declaration is authorized and where older Native Americans and family caregivers are affected.

§ 1322.37 Title VI and Title III Coordination for Emergency Preparedness

Proposed § 1321.57 (State agency Title III and Title VI coordination responsibilities), proposed § 1321.69 (area agency Title III and Title VI coordination responsibilities), and proposed § 1321.95 (service requirements coordination responsibilities), outline expectations for coordinating activities and delivery of services under Title III and Title VI, as articulated in the Act sections 306(a)(11)(B), 307(a)(21(A), 614(a)(11), and 624(a)(3). Proposed § 1322.37 clarifies that Title VI and Title III coordination should extend to emergency preparedness planning and response.

§ 1322.39 Modification During Major Disaster Declaration or Public Health Emergency

Proposed § 1322.39 States that the Assistant Secretary for Aging retains the right to modify emergency and disaster-related requirements set forth in the regulation under a major disaster declaration or public health emergency.

C. Deleted Provisions

§ 1322.5 Applicability of Other Regulations

We propose deleting § 1322.5, which lists other applicable regulations, because the provision is unnecessary and may create confusion or become outdated due to statutory or regulatory changes.

VI. Grants for Supportive and Nutritional Services to Older Hawaiian Natives

A. Deleted Provisions

We propose deleting § 1323, which is specific to Title VI, Part B, which

applies to one Hawaiian Native grantee. We propose to include requirements specific to Title VI, Part B in the proposed § 1322. By so doing we anticipate reducing confusion and improving appropriate consistency in service provision to both older Indians and Native Hawaiians and family caregivers thereof.

VII. Allotments for Vulnerable Elder Rights Protection Activities

A. Provisions Revised to Reflect Statutory Changes and/or for Clarity

Subpart A—State Long-Term Care Ombudsman Program

The regulation for the State Long-Term Care Ombudsman Program (Ombudsman program) was first issued in 2015. In the seven years since, ACL has provided technical assistance to State Long-Term Care Ombudsmen, State agencies, and designated local Ombudsman entities as they work to implement the regulation. The 2016 reauthorization of the Act also made changes specific to the Ombudsman program. Changes to the regulation are needed to ensure consistency with updates to the Act. Additionally, through our technical assistance and RFI processes, ACL has found that clarification is needed in certain aspects of the regulation. For example, there is a lack of clarity as to the responsibilities, and the authority, of the State Long-Term Care Ombudsman (Ombudsman), as well as of the Ombudsman program. Clarification also is needed as to duties owed to residents and confidentiality requirements with respect to a resident's identity and records, and corrections are needed to COI.

§ 1324.1 Definitions

We propose to add a new definition for ''Official duties'' to § 1324.1 for consistency with the Title III regulation, which also contains this defined term. In both the Title III regulation and this regulation, this term is used to define the duties of representatives of the Office Long-Term Care Ombudsman Program. As currently defined at § 1324.1, representatives of the Office of the State Long-Term Care Ombudsman (representatives of the Office) are the employees or volunteers designated by the Ombudsman to conduct the work of the Ombudsman program. The definition of ''Official duties'' is being included to help to clarify the role of representatives of the Office because in the course of providing technical assistance over the last several years, it has come to our attention that this role can be misunderstood by third parties who deal with the program. In addition, minor changes for clarity are proposed to the definition of ''*Resident representative*.''

§ 1324.11 Establishment of the Office of the State Long-Term Care Ombudsman

Section 1324.11 sets forth requirements related to the establishment of the Office of the State Long-Term Care Ombudsman (Office). We propose minor changes to § 1324.11(a) and to the introductory clause of (b), as well as to (e), (e)(1)(i), (e)(1)(v); (e)(4)(i), (ii) and (iii); (e)(5), (e)(6) and (e)(8)(ii), to clarify the purpose of the section. Other proposed changes to this section are discussed in more detail, below.

In fulfilling their responsibilities, representatives of the Office may need access to the medical, social and/or other records of a resident, and section 712(b) of the Act requires State agencies to ensure that representatives of the Office will have such access, as appropriate, including in the circumstance where a resident is unable to communicate consent to the review and has no legal representative. Currently, § 1324.11 does not require policies and procedures to address access to a resident's records in this circumstance by the Ombudsman and the representatives of the Office, and we receive many requests for technical assistance as to how to address this situation. Accordingly, we propose to add language in § 1324.11(e)(2) to require policies and procedures to provide direction for the Ombudsman and representatives of the Office as to how to address a situation where a resident is unable to communicate consent to the review of their records and they have no legal representative who can communicate consent for them. We propose to add the requirement for policies and procedures as § 1324.11(e)(2)(iv)(C) and to renumber subsequent subsections within § 1324.11(e)(2)(iv).

A major tenet of the Ombudsman program is that it is resident-directed. This concept extends to how information about a resident's complaints is disclosed, and section 712(d) of the Act requires State agencies to prohibit the disclosure of the identity of a resident without their consent. We have received many requests for technical assistance as to how to address a situation when the resident is unable to provide consent to disclose; there is no resident representative authorized to act on behalf of the resident; or the resident representative refuses consent and there is reasonable cause to believe the resident's representative has taken an action, failed to act, or otherwise made a decision that may adversely affect the resident. We propose to add language to § 1324.11(e)(3)(iv) to require State agencies to have policies and procedures in place to provide direction for representatives of the Office as to how to address these situations.

States may have laws that require mandatory reporting of abuse, neglect, and exploitation. We have received questions as to the applicability of these requirements to the Ombudsman program, despite the prohibitions in section 712(b) of the Act against disclosure of resident records and identifying information without resident consent. To provide clarity, we propose to add language to § 1324.11(e)(3)(v) to require State agencies to have policies and procedures in place to prohibit mandatory reporting of abuse, neglect, and exploitation by the Ombudsman program. Subsequent subsections within § 1324.11(e)(3) have been re-numbered to reflect the new language.

Section 712 of the Act requires the Ombudsman program to represent the interests of residents before government agencies and to seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents. Section 712 also provides that the Ombudsman, personally or through representatives of the Office, is to: analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State; recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents. To be a strong advocate, the Ombudsman must be able to make determinations and to establish positions of the Office independently and without interference and must not be constrained by determinations or positions of the agency in which the Office is organizationally located.

ACL received input with respect to these obligations of the Ombudsman in response to the RFI, and we have been made aware of instances where State government agencies have attempted to involve themselves in these functions of the Office (*e.g.,* by requiring prior approval of positions of the Office with

respect to governmental laws, regulations, or policies). Such interference is prohibited under section 712 of the Act, and we propose to add language to the introductory portion of § 1324.11(e)(8) to clarify this prohibition. Specifically, we propose to replace the existing phrase ''without necessarily representing the determinations or positions of the State agency or other agency in which the Office is organizationally located'' with ''without interference and shall not be constrained by or necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.''

§ 1324.13 Functions and Responsibilities of the State Long-Term Care Ombudsman

Section 712 of the Act sets forth the functions and roles of the Ombudsman and provides that the Ombudsman has the authority to make independent determinations in connection with these various functions. Through technical assistance inquiries, monitoring activities, and RFI comments, we have been made aware of instances where a State agency does not understand the authority and independence of the Ombudsman, such as with respect to commenting on governmental policy. We propose to clarify § 1324.13 to provide that the Ombudsman has the authority to lead and manage the Office. Specifically, we propose to change the phrase in the first sentence ''responsibility for the leadership'' to ''responsibility and authority for the leadership . . .'' to emphasize the authority of the Ombudsman to carry out the statutory functions.

Section 201(d) of the Act provides for oversight of the Ombudsman program by a Director of the Office of Long-Term Care Ombudsman Programs. Current regulatory § 1324(c)(2) provides that each Ombudsman must ''. . . establish procedures for training for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs within the Administration for Community Living as described in section 201(d) of the Act . . .'' Since the regulation was initially adopted, ACL has issued sub-regulatory training standards for representatives of the Office. Accordingly, we propose to update § 1324.13(c)(2) to require such procedures to be consistent with (as well as based on) the standards established by ACL's Director of the Office of Long-Term Care Ombudsman Programs, as well as with any standards set forth by the Assistant Secretary for Aging by changing the regulation to read, ''[. . .] establish procedures for training for certification and continuing education of the representatives of the Office, based on and consistent with standards established by the Director of the Office of Long-Term Care Ombudsman Programs within the Administration for Community Living as described in section 201(d) of the Act and set forth by the Assistant Secretary for Aging[.]''

Section 712 of the Act contains detailed requirements with which representatives of the Office must comply, such as requirements as to confidentiality of resident records, as well as limitations on disclosure of such records and on the disclosure of the identity of residents. Section 712 also requires that representatives receive adequate training with respect to program requirements. We have been made aware of instances where staff of the Ombudsman program have had access to resident records without training or certification as a representative of the Office. We propose to add language to § 1324.13(c)(2(iii) and (d) to require that all staff and volunteers of the Ombudsman program who will have access to resident records, as well as other files, records, and information subject to disclosure requirements, be trained and certified as designated representatives of the Office, so that individuals with access to confidential information will be accountable to the Ombudsman for their actions. The subsequent subsection in § 1324.13(c)(2) is re-numbered accordingly.

The Act affords the Ombudsman discretion in determining whether to disclose the files, records, or other information of the Office. ACL often receives requests for technical assistance regarding criteria for such determinations and received RFI comments on this topic. In response, we propose to add to § 1324.13(e)(2) the following criteria to assist the Ombudsman in making this determination: whether the disclosure has the potential to cause retaliation, to undermine the working relationships between the Ombudsman program and other entities, or to undermine other official duties of the Ombudsman program.

We are aware of an apparent conflict between provisions of the Developmental Disabilities Act, which provides for protection and advocacy agencies' access to resident records, and provisions of the OAA which prohibit the Ombudsman from disclosing resident-identifying information and afford the Ombudsman discretion in determining whether to disclose the files, records, or other information of the Office.[169] Consistent with our authority to interpret these two statutes, we have taken a thoughtful and deliberative approach to resolving any potential conflicts in interpretation of them. To that end, we considered comments received in response to the development of the Ombudsman program regulation (45 CFR 1324). In addition, since the enactment of the Final Rule for the Ombudsman program, representatives of ACL's Administration on Aging and Administration on Disabilities have engaged in diligent efforts to work together toward addressing this potential conflict including, but not limited to, outreach to the National Ombudsman Resource Center (NORC) and the National Disability Rights Network (NDRN) in order to collect additional information on the experiences and circumstances of grantees related to this issue. As a result of these efforts, ACL has offered technical assistance to individual States as issues arise in order to assist protection and advocacy agencies and Ombudsman programs to come to an agreement on how to handle these questions.

For example, as follow-up to a report by NORC, NDRN, and the National Association of State Ombudsman Programs, NORC and NDRN co-branded a toolkit on collaboration between Ombudsman programs and protection and advocacy agencies.[170] We encourage such collaboration, and we welcome comment regarding best practices in such collaboration, as well as if any more specific protocols are recommended.

Section 712(h) of the Act provides that the State agency must require the Ombudsman program to submit an annual report that, among other things, describes the activities carried out by the Office, evaluates problems experienced by residents, analyzes the success of the Ombudsman program, and makes recommendations to improve the quality of life of residents. The information required to be included in this annual report is in addition to the data reporting that is required by ACL to be submitted annually through the national data reporting system known as the National Ombudsman Reporting System. We have found that some Ombudsman programs do not

[169] 42 U.S.C. 15043.

[170] The National Consumer Voice, Long-Term Care Ombudsman Programs and Protection & Advocacy Agencies Collaboration Toolkit, *https://ltcombudsman.org/omb_support/pm/collaboration/ltcop-protection-and-advocacy-agencies-collaboration-toolkit* (last visited Jan. 18, 2023).

understand that the annual report required by section 712 differs from the annual National Ombudsman Reporting System reporting. We propose to add language at the start of § 1324.13(g) to clarify the distinction between these two reports.

The Ombudsman program's effectiveness in advocacy relies on relationships with other entities that can assist residents. Section 712 of the Act contemplates that the Ombudsman program will coordinate services with legal assistance providers and others, as appropriate, and requires the Ombudsman program to enter into memoranda of understanding with legal assistance providers. The current regulation lacks clarity regarding memoranda of understanding that are required. Accordingly, we propose to revise § 1324.13(h)(i) to require the adoption of memoranda of understanding with legal assistance programs provided under section 306(a)(2)(C) of the Act. The proposed language would minimally require such memoranda of understanding to address referral processes and strategies to be used when the Ombudsman program and a legal assistance program are both providing services to a resident.

Further, we propose to require memoranda of understanding with facility and long-term care provider licensing and certification programs to address communication protocols and procedures to share information, including procedures for access to copies of licensing and certification records maintained by the State. Federal nursing home regulations require interaction between Ombudsman programs and licensing and certification programs. The goal of this requirement is to foster consistency in the relationships among Ombudsman programs and regulators across the country and support communication about all types of long-term care providers regulated by the State. Language proposing this requirement is set forth in § 1324.13(h)(1)(ii).

Consistent with the rule as promulgated in 2015, we also propose to clarify that memoranda of understanding are recommended with other organizations, programs and systems as set forth in § 1324.13(h)(2). We invite comments regarding other organizations that may be considered for inclusion, such as Centers for Independent Living. Elements of § 1324.13(h) have been re-numbered in connection with these changes. We also propose minor changes to § 1324.13(a)(7)(viii), and (h) for clarity.

§ 1324.15 State Agency Responsibilities Related to the Ombudsman Program

Section 712 [171] of the Act sets forth State agency responsibilities for the Ombudsman program. Section 712(g) of the Act requires the State agency to ensure that adequate legal counsel is available with respect to the program, and § 1324.15(j) explains those requirements. We propose minor changes to this section for clarity. For example, the requirements and detail about the scope of responsibility of legal counsel are reorganized to clarify that legal counsel is to be available for consultation on program matters, as well as consultation to the program on the legal needs of residents. The provision for attorney-client privilege is modified to specify that the privilege applies to communications between the Ombudsman and ''their'' legal counsel, not between the Ombudsman and counsel for the resident.

We receive many requests for technical assistance with respect to the requirement in section 712 of the Act that the Ombudsman be responsible for fiscal management of the Office. Proposed § 1324.15(k) provides direction to assist State agencies with specific components of fiscal management and codifies several best practices that we have observed. Specifically, we propose that the State agency shall notify the Ombudsman of all sources of funds for the program and requirements for those funds, and that the State agency ensure that the Ombudsman has full authority to determine the use of fiscal resources for the Office and to approve allocation to designated local Ombudsman entities prior to distribution of funds. In addition, the proposed section requires the Ombudsman to determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program. ACL anticipates providing training and technical assistance for the implementation of these requirements. The section immediately following new § 1324(k) is re-numbered accordingly.

We also propose to replace the word ''of'' with ''for'' in the last sentence of § 1324.15(e) in order to correct a typographical error relating to reasonable requests ''for'' reports by the State agency as it conducts its monitoring responsibilities.

[171] 42 U.S.C. 3058g.

§ 1324.19 Duties of the Representatives of the Office

This section provides direction as to the duties of the representatives of the Office and provides detailed instructions as to the processing of complaints by representatives of the Office. Minor revisions are proposed to § 1324.19(b)(2)(ii) and (5) for clarity.

§ 1324.21 Conflicts of Interest

It is crucial to the credibility and effectiveness of the Ombudsman program that the Ombudsman be aware of, and address, potential and actual conflicts of interest. Accordingly, section 712(f) of the Act contains requirements related to individual and organizational conflicts of interest which were revised in the 2016 reauthorization of the Act, and § 1324.21 provides direction to Ombudsman programs in identifying and remedying these conflicts of interest. We propose several changes to the existing provision for clarity and consistency with the Act.

We propose to revise § 1324.21(a)(1) to be consistent with section 712(f)(2)(A)(i) of the Act. Our prior regulations held that placing the Ombudsman program in an organization responsible for licensing, surveying, or certifying long-term care facilities represents an organizational conflict of interest. We now clarify that in addition, placing the Ombudsman program in an organization that licenses, surveys, or certifies long-term care services represents an organizational conflict of interest, more accurately reflecting section 712(f)(2)(A)(i).

We propose to insert a new § 1324.21(a)(6) stating that placement of a program in an organization that provides long-term care services and supports under a Medicaid waiver or a Medicaid State plan amendment creates an organizational conflict of interest, consistent with section 712(f)(2)(A)(iii) of the Act.

We propose to change the following phrase in current § 1324.21(a)(10): ''Conducts preadmission screening for long-term care facility placements'' to ''Conducts preadmission screening for long-term care facility admissions'' in order to reflect person-centered language.

We also propose to clarify the following in current § 1324.21(a): that placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that provides long-term care coordination or case management services in settings that

include long-term care facilities creates an organizational conflict of interest, consistent with section 712(f)(2)(A)(iv) of the Act, by revising current § 1324.21(a)(6) and re-numbering it as § 1324.21(a)(7); that to place the Ombudsman program in an organization that sets reimbursement rates for long-term care services creates an organizational conflict of interest, consistent with section 712(f)(2)(A)(v) of the Act, by inserting a new § 1324.21(a)(9); and that to place the program in an organization that is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act creates an organizational conflict of interest, consistent with section 712(f)(2)(A)(vii) of the Act, by inserting a new § 1324.21(a)(11). Subsequent subsections within § 1324.21(a) have been re-numbered to reflect the addition of this new language.

We propose minor changes to § 1324.21(b)(3) for clarity. We propose to delete the last sentence of § 1324.21(b)(5), which provides that the ''State agency shall not enter into such contract or other arrangement with an agency or organization which is responsible for licensing or certifying long-term care facilities in the State or is an association (or affiliate of such an association) of long-term care facilities;'' this requirement is set forth in § 1324.21(b)(3) and is unnecessary to repeat here.

We propose to clarify the following in § 1324.21(c): that direct involvement in the licensing, or certification of a provider of long-term care services, in addition to long-term care facilities, creates an individual conflict of interest, consistent with section 712(f)(1)(C)(i) of the Act, by revising current § 1324.21(c)(2)(i); that ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care service, in addition to a long-term care facility, creates an individual conflict of interest, consistent with section 712(f)(1)(C)(ii) of the Act, by revising current § 1324.21(c)(2)(ii); that employment of an individual by, or participation in the management of, an organization related to a long-term care facility creates an individual conflict of interest, consistent with section 712(f)(1)(C)(iii) of the Act, by revising current § 1324.21(c)(2)(iii); that management responsibility for, or operating under the supervision of an individual with management responsibility for, adult protective services creates an individual conflict of interest, consistent with section 712(f)(1)(C)(v) of the Act, by inserting a new § 1324.21(c)(2)(ix); and that serving as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity) creates an individual conflict of interest, consistent with section 712(f)(1)(C)(vi) of the Act, by inserting a new § 1324.21(c)(2)(x).

B. New Provisions Added To Clarify Responsibilities and Requirements Under Vulnerable Elder Rights Protection Activities

Subpart B—Programs for Prevention of Elder Abuse, Neglect, and Exploitation

§ 1324.201 Purpose of Services Allotments Under Title VII—Chapter 3. [New]

The purpose of Title VII, Chapter 3 of the Act is to set forth requirements that State agencies must meet with respect to the development and enhancement of programs to address elder abuse, neglect, and exploitation. We propose to include a new § 1324.201 in the regulation in order to clarify this purpose. The proposed language also clarifies that the Federal funds awarded to the State agency under this Chapter are provided to assist with carrying out this purpose, and that a condition to the receipt of these funds is that State agencies must comply with all applicable provisions of the Act, including those of section 721(c), (d), (e), as well as with applicable guidance set forth by the Assistant Secretary for Aging.

Subpart C—State Legal Assistance Development Program [New]

§ 1324.301 Definitions

Proposed § 1324.301 states definitions set forth in § 1321.3 apply to Subpart C, and terms used in Subpart C but not otherwise defined will have the meanings ascribed to them in the Act.

§ 1324.303 Legal Assistance Developer

We propose to add a new regulation under Title VII, § 1321.303 to implement § 731 [172] of the Act regarding the position of Legal Assistance Developer. The proposed regulation is intended to provide clear guidance on the purpose, role, and responsibilities of the Legal Assistance Developer as described in the Act. It is the responsibility of the State agency to designate the Legal Assistance Developer and describe the office and its duties and activities in the State plan. The proposed regulation sets forth what the Legal Assistance Developer may do in accordance with their statutory appointment and the provisions of the Act, including training and technical assistance to legal assistance providers and coordination with the Ombudsman program. Additionally, the proposed rule includes conflict of interest prohibitions. ACL recognizes that Legal Assistance Developers often ''wear many hats.'' We are proposing that the Legal Assistance Developer should not undertake responsibilities other than or in addition to those the Act expressly prescribes for Legal Assistance Developers if these other activities might compromise the performance of duties as Legal Assistance Developer or the duties in other assignments. Accordingly, the Legal Assistance Developer should not undertake to be the director of Adult Protective Services, legal counsel to the Ombudsman program, or counsel or a party to administrative appeals related to long-term care settings, for example. Conflicts of interest may arise, for example, if the Legal Assistance Developer also serves as the administrator of a public guardianship program; hearing officer in Medicaid appeals related to Medicaid waiver programs, Medicaid state plan long-term services and supports, and/or nursing home eligibility; or serves as the Ombudsman.

The State must provide advice, training, and technical assistance support for the provision of legal assistance. It is the role of the Legal Assistance Developer to oversee the advice, training, and technical assistance with regard to all activities of legal assistance. The role should be broader than aligning with the Ombudsman program functions in Title VII of the Act and encompass all legal assistance and representation for all priority areas described in the Act. In fulfilling these obligations, the Legal Assistance Developer should make maximal use of the resource center established pursuant to section 420 [173] of the Act.

VIII. Required Regulatory Analyses

A. Regulatory Impact Analysis (Executive Orders 12866 and 13563)

Executive Orders 13563 and 12866 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

[172] 42 U.S.C. 3058j.

[173] 42 U.S.C. 3032i.

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs reviewed and determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866 Section 3(f).

1. Summary of Costs and Transfers

This analysis describes costs and transfers under this proposed rule and quantifies several categories of costs to grantees (State agencies under Title III and Title VII and Tribal organizations and Hawaiian Native grantees under Title VI) and subgrantees (area agencies on aging and service providers under Title III and where applicable, Title VII). Specifically, we quantify costs associated with grantees and subgrantees revising policies and procedures, conducting staff training, and revising State plan documentation accessibility practices. As discussed in greater detail in this analysis, we estimate that the proposed rule would result in one-time costs of approximately $14.9 million, including costs associated with covered entities revising policies and procedures, and costs associated with training.

The analysis also includes a discussion of costs we do not quantify, and a discussion of the potential benefits under the rule that we similarly do not quantify. We request comments on our estimates of the impacts of this proposed rule, including the impacts that are not quantified in this analysis.

Baseline Conditions and Changes Due to Reauthorization

The most recent reauthorization of the OAA was enacted during Federal Fiscal Year (FFY) 2020; therefore, the baseline used for the analysis is FFY 2019. A main impact of the 2020 reauthorization of the OAA was to increase the authorized appropriations available to be distributed to the States for the implementation of programs and services under Titles III, VI, and VII. A limited number of substantive changes were made by the 2020 reauthorization to the implementation of programs by State agencies and area agencies on aging, including: requiring outreach efforts to Asian-Pacific American, Native American, Hispanic, and African-American older individuals, and older sexual and gender minority populations and the collection of data with respect thereto; requiring State agencies to simplify the process for transferring funds for nutrition services to reduce administrative barriers and direct resources to where the greatest need is for such services; broadening allowable services under Title III–B, such as screening for traumatic brain injury and the negative effects of social isolation; clarifying that a purpose of the Title III–C program is to reduce malnutrition; clarifying the allowability of reimbursing volunteer Ombudsman representatives under Title VII for costs incurred; and expanding the examples of allowable elder justice activities under section 721 to include community outreach and education and the support and implementation of innovative practices, programs, and materials in communities to develop partnerships for the prevention, investigation, and prosecution of abuse, neglect, and exploitation.

The OAA initially was passed in 1965. The current regulations for programs authorized under the OAA are from 1988 and have not been substantially altered since that time (other than portions of 45 CFR part 1321 and 45 CFR 1324 regarding the State Long-Term Care Ombudsman Program, which were promulgated in 2015). Following its initial passage, the OAA has been reauthorized and amended sixteen times prior to the 2020 reauthorization, including five times since the regulations were promulgated in 1988.

Many changes have been made in the implementation of the OAA since 1988 as a result of these reauthorizations. State agencies, area agencies, and Title VI grantees should already be aware of programmatic and fiscal requirements in the reauthorizations and should have established policies and procedures to implement them. Accordingly, substantially all of the proposed changes to 45 CFR parts 1321, 1322, and 1324 would modernize the OAA regulations to bring them into conformity with reauthorizations of the OAA that were enacted prior to the 2020 reauthorization and would provide clarity of administration for ACL and its grantees with respect to aspects of the OAA that were enacted under previous reauthorizations.

In addition to areas where we propose to better align regulation with statute, we propose modifications to regulatory text that would modernize our rules to provide greater flexibility to State agencies and area agencies and to reflect ongoing stakeholder feedback and responses to our RFI in areas where our current regulations do not address the evolving needs of Title III, VI, and VII grantees and the older adults and family caregivers they serve. For example, we propose to modernize our nutrition rules to better support grantees' efforts to meet the needs of older adults. Our previous sub-regulatory guidance has indicated that meals are either consumed on-site at a congregate meal setting or delivered to a participant's home. This previous guidance does not take into account those who may leave their homes to pick up a meal but are not able to consume the meal in the congregate setting for various reasons, including safety concerns such as those experienced during the COVID–19 pandemic. The COVID–19 pandemic brought to light limitations in our current nutrition regulations, which we have sought to address in proposed § 1321.87 to allow for ''grab and go'' meals where a participant would be able to collect their meal from a congregate site and return to the community off-site to enjoy it. Our proposal is a direct response to stakeholder feedback, including as gathered from the RFI, and appropriately reflects the evolving needs of both grantees and OAA participants.

Another example of a proposed modification to regulatory text that would modernize our rules is the new proposed definition of ''greatest economic need.'' Focusing OAA services towards individuals who have the greatest economic need is one of the basic tenets of the OAA. The definition of ''greatest economic need'' in the OAA incorporates income and poverty status. However, the definition in the OAA is not intended to preclude State agencies from taking into consideration populations that experience economic need due to other causes. A variety of local conditions and individual situations, other than income, could factor into an individual's level of economic need. State agencies and AAAs are in the best position to understand the conditions and factors in their State and local areas that contribute to individuals falling within this category. Accordingly, this definition would allow State agencies and AAAs to make these determinations.

A detailed discussion of costs and transfers associated with the rule follows.

i. 2020 Reauthorization

a. New Requirements for State Agencies and Area Agencies

The 2020 reauthorization imposed the following new requirements on grantees: required outreach efforts to Asian-Pacific American, Native American, Hispanic, and African-

American older individuals, and older lesbian, gay, bisexual, and transgender (LGBT) populations and the collection of data with respect thereto; requiring State agencies to simplify the process for transferring funds for nutrition services to reduce administrative barriers and direct resources to where the greatest need is for such services; and clarifying that reducing malnutrition is a purpose of the OAA Title III–C program.

We do not associate any additional costs for the agencies with respect to these requirements. The agencies were required to conduct outreach to minority populations prior to the 2020 reauthorization, and State agencies already have been reaching out to the LGBTQI+ population.[174] For those agencies that have not been reaching out to LGBTQI+ communities, we believe any additional cost to conduct outreach to this population would be de minimis, as they already have processes in place to reach out to underserved populations. The data collection cost likewise would be minimal as agencies already have data collection systems and practices in place.

The cost to State agencies to comply with the requirement that they simplify the process for transferring funds for nutrition services to reduce administrative barriers and direct resources to where the greatest need is for such services is not quantifiable. Each State agency must comply with its State-level procurement requirements, and it is not possible for us to determine what any State agency may be able to change in this regard or at what cost. It is in each State's interest to improve this process for transferring nutrition services funds, and we believe that State agencies engage in ongoing efforts to improve their fiscal management processes generally, within allowable parameters. Accordingly, we anticipate that any costs to a State agency associated with this requirement would be de minimis, and we request comments on our analysis of such costs to a State agency.

We do not associate any costs to State agencies, area agencies or Title VI grantees with respect to the clarification that a purpose of the Title III–C program is to reduce malnutrition. Grantees already were screening for older adults who are at high nutrition risk and have been offering nutrition counseling and nutrition education, as appropriate, and this clarification is not expected to impose additional costs on OAA grantees or subgrantees.

ii. Proposed Rule

a. Revising Policies and Procedures

This analysis anticipates that the proposed rule would result in one-time costs to State agencies, area agencies, service providers, and Title VI grantees to revise policies and procedures. The obligations of State agencies and area agencies under the OAA are more extensive than are those of Title VI grantees under the OAA. Accordingly, the Title III rule is considerably more extensive than is the Title VI rule, and we address State agencies, area agencies separately from Title VI grantees. We also address service providers separately, as we anticipate that the scope of the review needed for service providers would be narrower than that needed for State agencies and area agencies.

In addition to changes to the existing regulations, we propose to add several new provisions to the regulations, in the following areas: 45 CFR part 1321 (Title III): State Agency Responsibilities, Area Agency Responsibilities, Service Requirements, Emergency & Disaster Requirements; 45 CFR part 1322 (Title VI): Service Requirements, Emergency & Disaster Requirements; and 45 CFR part 1324 (Title VII): Programs for Prevention of Elder Abuse, Neglect, and Exploitation and Legal Assistance Developer. However, substantially all of these proposed new provisions would update the OAA regulations to bring them into conformity with reauthorizations of the OAA that were enacted prior to the 2020 reauthorization and would provide clarity of administration for ACL and its grantees with respect to aspects of the OAA that were enacted under previous reauthorizations. We associate one-time costs to State agencies, area agencies, service providers, and Title VI grantees to update their policies and procedures and to train employees on the updated policies and procedures, as discussed below. State agencies, area agencies, service providers, and Title VI grantees already should be aware of these requirements and already should have established policies and procedures in place. Accordingly, we otherwise associate no cost to them as a result of these new provisions.

State Agencies and Area Agencies

In clarifying requirements for State agency and area agency policies and procedures under the OAA, ACL anticipates that all 56 State agencies and 615 area agencies (671 aggregate State and area agencies) would revise their policies and procedures under the proposed rule, with half of these State or area agencies requiring fewer revisions. We estimate that State or area agencies with more extensive revisions would spend forty-five (45) total hours on revisions per agency. Of these, forty (40) hours in the aggregate would be spent by one or more mid-level manager(s) equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011), at a cost of $48.07 per hour after adjusting for non-wage benefits and indirect costs, while an average of five (5) hours would be spent by executive staff equivalent to a general and operations manager (BLS Occupation code 11–1021), at a cost of $120.32 per hour after adjusting for non-wage benefits and indirect costs. For State or area agencies with less extensive revisions, we assume that twenty-five (25) total hours would be spent on revisions per agency. Of these, twenty (20) hours would be spent by one or more mid-level manager(s), and five (5) hours would be spent by executive staff.

We monetize the time that would be spent by State agencies and area agencies on revising policies and procedures by estimating a total cost per entity of $2,524.40 or $1,563.00, depending on the extent of the revisions. For the approximately 336 State or area agencies with more extensive revisions, we estimate a cost of approximately $848,198.40. For the 335 State or area agencies with less extensive revisions, we estimate a cost of approximately $523,605.00. We estimate the total cost associated with revisions with respect to the proposed rule for State agencies and area agencies of $1,371,803.40.

Service Providers

According to data submitted to ACL by the State agencies, there were 17,438 service providers during FFY 2021, and we use that figure for this analysis. We anticipate that all 17,438 service providers would review their existing policies and procedures to confirm that they are in compliance with the rule and would update their policies and procedures, as needed, in order to bring them into compliance. We estimate that the scope of the review needed for service providers would be narrower than that needed for State agencies and

[174] For example, in its plan on aging that was effective as of October 1, 2018, the CA State agency noted a focus on developing strategies to better serve LGBTQI+ populations; the OH State agency sought input regarding the needs of LGBTQI+ populations in connection with the preparation of its state plan on aging for FFY 2019–2022; and the NY State agency's plan on aging for FFY 2019–2023 references ongoing efforts to work with area agencies on aging to conduct outreach to the LGBTQI+ community.

area agencies and would be limited to areas related to their provision of direct services, such as person-centered and trauma-informed services, eligibility for services, client prioritization, and client contributions. Like State agencies, area agencies and Title VI grantees, service providers already should be aware of the fiscal and programmatic changes that have been made to the OAA since 1988, and to the extent required, they already should have established policies and procedures with respect to the OAA requirements that apply to them.

We estimate that service providers would spend seven (7) total hours on revisions per agency. Of these, five (5) hours in the aggregate would be spent by one or more mid-level manager(s) equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011), at a cost of $48.07 per hour after adjusting for non-wage benefits and indirect costs, while an average of two (2) hours would be spent by executive staff equivalent to a general and operations manager (BLS Occupation code 11–1021), at a cost of $120.32 per hour after adjusting for non-wage benefits and indirect costs.

We monetize the time spent by service providers on revising policies and procedures by estimating a total cost per entity of $480.99. We estimate the total cost associated with revisions with respect to the proposed rule for 17,438 service providers of $8,387,503.60.

Title VI Grantees

This analysis anticipates that the proposed rule also would result in one-time costs to Title VI grantees to revise policies and procedures. In clarifying requirements for Title VI grantee policies and procedures under the OAA, ACL anticipates that all 282 Title VI grantees would revise their policies and procedures under the proposed rule, with one-third of these Title VI grantees requiring fewer revisions. We estimate that Title VI grantees with more extensive revisions would spend thirty (30) total hours on revisions per agency. All of these 30 hours would be spent by a mid-level manager equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011), at a cost of $48.07 per hour after adjusting for non-wage benefits and the indirect costs. For Title VI grantees with less extensive revisions, we assume fifteen (15) total hours spent on revisions per agency. All of these hours would be spent by a mid-level manager equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011), at a cost of $48.07 per hour after adjusting for non-wage benefits and the indirect costs.

We monetize the time spent by Title VI grantees on revising policies and procedures by estimating a total cost per entity of $1,442.10 or $721.05, depending on the extent of the revisions. For the approximately 188 Title VI grantees with more extensive revisions, we estimate a cost of approximately $271,114.80. For the 94 Title VI grantees with less extensive revisions, we estimate a cost of approximately $67,778.70. We estimate the total cost associated with revisions of policies and procedures for Title VI grantees with respect to the proposed rule of $338,893.50.

The above estimates of time and number of State agencies, area agencies and Title VI grantees that would revise their policies under the regulation are approximate estimates based on ACL's extensive experience working with the agencies, including providing technical assistance, and feedback and inquiries that we have received from States, area agencies, and Title VI grantees. Due to variation in the types and sizes of State agencies, area agencies, and Title VI grantees, the above estimates of time and number of entities that would revise their policies under the regulation is difficult to calculate precisely. We seek comment on the accuracy of the estimates provided above.

b. Training

ACL estimates that State agencies, area agencies, service providers and Title VI grantees would incur one-time costs with respect to training or re-training employees under the proposed revised rule. For reasons similar to the discussion above with respect to revisions to policies and procedures, we address State agencies and area agencies separately from Title VI grantees. We also address service providers separately, as we anticipate that the training needed for service providers would be less extensive than that needed for State agencies and area agencies.

State Agencies and Area Agencies

Costs to prepare and conduct trainings of their own staff. Consistent with our estimates relating to the number of agencies that would require extensive revision of their policies, we estimate that 50 percent of the State agencies and area agencies program management staff would require more extensive staff training regarding the rule. Based on our experience working with State agencies and area agencies, we estimate that, for State and area agencies that need more extensive trainings, one (1) employee per agency, equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011) would spend three (3) total hours to prepare the training, and five (5) hours to provide the training, at a cost of $48.07 per hour after adjusting for non-wage benefits and indirect costs, and that for those needing less extensive trainings one (1) employee per agency, equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011) would spend two (2) total hours to prepare the training, and two (2) hours to provide the training, at a cost of $48.07 per hour after adjusting for non-wage benefits and indirect costs.

We monetize the time spent by State agencies and area agencies to prepare and conduct trainings for their own employees by estimating a total cost per entity of $384.56 or $192.28, depending on the extent of the training needed. For the approximately 336 State or area agencies with more extensive needed training, we estimate a cost of approximately $129,212.16. For the 335 State or area agencies with less extensive training needs, we estimate a cost of approximately $64,413.80. We estimate the total cost associated with the preparation and conduct of trainings with respect to the proposed rule for State agencies and area agencies of $193,625.96.

Costs to receive trainings by their own staff. As noted above, we estimate that 50 percent of the State agencies and area agencies program management staff would require more extensive staff training regarding the rule. Based on our experience working with State agencies and area agencies, we estimate that State and area agencies with more extensive trainings would spend five (5) total hours on trainings per agency, and that those with less extensive trainings would spend two (2) hours on trainings per agency. We estimate that five (5) employees per agency, equivalent to social and community service managers (BLS Occupation code 11–9151), would receive training at a cost of $48.00 per hour per employee after adjusting for non-wage benefits and indirect costs, and that one (1) employee per agency, equivalent to a business operations specialist (BLC Occupation code 13–1199), would receive at a cost of $49.53 per hour after adjusting for non-wage benefits and indirect costs.

We monetize the time spent in the receipt of trainings by estimating a total cost per entity of $1,447.65 or $579.06, depending on the extent of the trainings. For the approximately 336 State or area agencies with more extensive trainings, we estimate a cost of approximately

$486,410.40. For the 335 State or area agencies with less extensive trainings, we estimate a cost of approximately $193,985.10. We estimate the total cost associated with receipt of training by employees with respect to revisions to policies and procedures under the proposed rule of $680,395.50.

Costs to conduct trainings of area agencies by State agencies. We estimate that each of the forty-seven (47) State agencies that have area agencies would conduct one (1) training for their area agencies. We estimate that two (2) State agency employees per agency, each equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011), would spend three (3) total hours to conduct the training, at a cost per employee of $48.07 per hour after adjusting for non-wage benefits and indirect costs. As the State agencies already would have created trainings for their own employees, we do not associate any costs with the creation of trainings for the area agencies. We monetize the time spent by the 47 State agencies to train area agencies by estimating a cost per agency of $288.42. We estimate the total cost to the State agencies to train area agencies to be $13,555.74.

We estimate that each of the 615 area agencies would arrange for two (2) area agency employees, each equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011), to attend the three (3) hour trainings conducted by the State agency, at a cost per employee of $48.07 per hour after adjusting for non-wage benefits and indirect costs. We monetize the time spent by the 615 area agencies to attend the State agency trainings by estimating a cost per agency of $288.42. We estimate the total cost associated to the area agencies to receive training from the State agencies to be $177,378.30. We estimate the total costs associated with the training by State agencies of area agencies to be $190,934.04.

Service Providers

Cost to conduct trainings. We estimate that the 615 area agencies, as well as the 9 State agencies in single planning and service area states that do not have area agencies, would provide training to their service providers with respect to revisions to policies and procedures under the proposed rule. We estimate that two (2) area agency or State agency employees per agency, as applicable, each equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011), would spend two (2) total hours to conduct one (1) training, at a cost of $48.07 per hour after adjusting for non-wage benefits and indirect costs. As the State agencies and area agencies already would have created trainings for their own employees, we do not associate any costs with the creation of trainings for the service providers. We monetize the time spent by the 615 area agencies and the 9 State agencies to train service providers by estimating a cost per agency of $192.28. We estimate the total cost associated with the conduct of trainings of service providers to be $119,982.72.

Cost to receive training. We estimate that all 17,438 service providers would receive training regarding revised policies and procedures in connection with the proposed rule. We estimate that two (2) employees per agency, equivalent to social and community service managers (BLS Occupation code 11–9151), would receive two (2) hours of training at a cost per employee of $48.00 per hour after adjusting for non-wage benefits and indirect costs.

We monetize the time spent by service providers to receive training with respect to revised policies and procedures by estimating a total cost per entity of $192.00. We estimate the total cost associated with receipt of training with respect to the proposed rule for 17,438 service providers of $3,348,096.00.

Title VI Grantees

Costs to prepare and conduct trainings of their own staff. Consistent with our estimates relating to the number of Title VI grantees that would require extensive revision of their policies, we estimate that two thirds of the Title VI grantees' program management staff would require more extensive staff training regarding the rule. Based on our experience working with Title VI grantees, we estimate that, for Title VI grantees that need more extensive trainings, one (1) employee per agency, equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011) would spend three (3) total hours to prepare the training, and five (5) hours to provide the training, at a cost of $48.07 per hour after adjusting for non-wage benefits and indirect costs, and that for those needing less extensive trainings one (1) employee per agency, equivalent to a first-line supervisor (U.S. Bureau of Labor Statistics (BLS) Occupation code 43–1011) would spend two (2) total hours to prepare the training, and two (2) hours to provide the training, at a cost of $48.07 per hour after adjusting for non-wage benefits and indirect costs.

We monetize the time spent by Title VI grantees to prepare and conduct trainings for their own employees by estimating a total cost per entity of $384.56 or $192.28, depending on the extent of the training needed. For the approximately 188 Title VI grantees with more extensive needed training, we estimate a cost of approximately $72,297.28. For the 94 Title VI grantees with less extensive training needs, we estimate a cost of approximately $18,074.32. We estimate the total cost associated with the preparation and conduct of trainings with respect to the proposed rule for Title VI grantees of $90,371.60.

Cost to receive trainings by their own staff. As noted above, we estimate that two thirds of the Title VI grantees' program management staff would require more extensive staff training regarding the rule. Based on our experience working with Title VI grantees, we estimate that those grantees with more extensive trainings would spend five (5) total hours on the receipt of training per agency, and that those with less extensive trainings would spend two (2) hours on the receipt of trainings per agency. We estimate that three (3) employees per agency, equivalent to social and community service managers (BLS Occupation code 11–9151), would receive training at a cost per employee of $48.00 per hour after adjusting for non-wage benefits and indirect costs, and that one (1) employee per agency, equivalent to a business operations specialist (BLC Occupation code 13–1199), would receive training at a cost of $49.53 per hour after adjusting for non-wage benefits and indirect costs.

We monetize the time spent on receipt of training by estimating a total cost per entity of $967.65 or $387.06, depending on the extent of the training. For the approximately 188 Title VI grantees agencies with more extensive trainings, we estimate a cost of approximately $181,918.20. For the 94 Title VI grantees with less extensive trainings, we estimate a cost of approximately $36,383.64. We estimate the total cost associated with receipt of training of employees with respect to revisions to policies and procedures under the proposed rule of $218,301.84.

The above estimates of the time needed by State agencies, area agencies and Title VI grantees for training of employees with respect to the updated rule, as well as the number of employees to be trained, are approximate estimates based on ACL's extensive experience working with the agencies, including providing technical assistance. Due to variation in the types

and sizes of State agencies, area agencies, and Title VI grantees, the above estimates of time needed for training and the number of employees to be trained with respect to the updated rule is difficult to calculate precisely. We seek comment on the estimates provided above.

c. Making State Plan Documentation Available

Section 305(a)(2) of the OAA, together with existing 45 CFR 1321.27, require State agencies, in the development and administration of the State plan, to obtain and consider the input of older adults, the public, and recipients of services under the OAA. Section 1321.29 of the proposed regulation requires State agencies to ensure that documents which are to be available for public review in connection with State plans and State plan amendments, as well as final State plans and State plan amendments, be available in a public location, as well as available in print by request.

Based on ACL's extensive experience working with State agencies in their development of State plans and State plan amendments, we estimate that most State agencies are in compliance with the requirements to make such documentation accessible in a public place. It is common practice for State agencies post the documents on their public websites.[175] For those that do not already post the documents on their websites, we estimate that it would take less than one hour of time spent by a computer and information system employee to post the documents on their websites. Accordingly, we believe this cost would be minimal and do not quantify it.

Occasionally, a member of the public may request a print copy of a State plan. State plan documents can vary widely in length; based on our experience, we estimate that on average each State plan contains 75 pages, including exhibits. At an estimated cost of $.50 per page for copies, each paper copy would cost approximately $37.50. Today, documents typically are shared electronically, rather than via print copies, and we estimate that each State agency would receive few requests for print copies of their State plans. In addition, all States have established laws that allow access to public records.[176] Therefore, we also believe this cost would be minimal and do not quantify it.

d. State Plan Amendments and Disaster Flexibilities

Based on stakeholder input and our experience, particularly during the COVID–19 pandemic, we propose adding Subpart E—Emergency and Disaster Requirements (§§ 1321.97–1321.105) to set forth expectations and clarify flexibilities that are available in certain disaster situations. Similarly, § 1322.35 would provide for flexibilities to be available to Title VI grantees during certain emergencies and would require Title VI grantees to report separately on expenditures of funds when exercising such flexibilities. ACL estimates that some State agencies, area agencies and Title VI grantees would incur costs to comply with the proposed new provision. For reasons similar to the discussion above with respect to revisions to policies and procedures, we address State agencies and area agencies separately from Title VI grantees.

State Agencies and Area Agencies

ACL has administrative oversight responsibility with respect to the expenditures of Federal funds pursuant to the OAA, and these flexibilities involve exceptions to certain programmatic and fiscal requirements under the OAA. Accordingly, in addition to the flexibilities we propose to allow in this section, we are compelled to propose that State agencies be required to submit State plan amendments when they intend to exercise any of these flexibilities, as well to comply with reporting requirements. We believe the cost to a State agency to prepare and submit a State plan amendment would be quite minimal, in particular in comparison to the benefits to older adults in emergency situations as a result of these flexibilities. We, therefore, do not quantify the cost to a State agency to prepare and submit such a State plan amendment. We likewise do not quantify the cost to a State agency to comply with reporting requirements, as sound fiscal and data tracking policies and principles, outside of the OAA, should be in place for all State agency expenditures of Federal funds, regardless of the source.

Title VI Grantees

Similarly, § 1322.35 would provide for flexibilities to be available to Title VI grantees during certain emergencies and would require Title VI grantees to report separately on expenditures of funds when exercising such flexibilities. Again, we do not quantify the cost to a Title VI grantee to comply with reporting requirements, as sound fiscal and data tracking policies and principles, outside of the OAA, should be in place for all Title VI grantee expenditures of Federal funds, regardless of the source.

iii. Total Quantified Costs of the Proposed Rule

The table below sets forth the total estimated cost of the proposed rule:

Item of cost	State agencies and area agencies ($)	Service providers ($)	Title VI grantees ($)
2020 OAA Reauthorization	0.00	0.00	0.00
Revise Policies and Procedures	1,371,803.40	8,387,503.60	338,893.50
Prepare/Conduct Training for Own Staff	193,625.96	N/A	90,371.60
Receipt of Training for Own Staff	680,395.50	3,348,096	218,301.84
SUA Training of Area Agencies	190,934.04	N/A	N/A
SUA/Area Agency Training of Service Providers	119,982.72	N/A	N/A
Available Documentation	.....	.....	.....
State Plan Amendments for Disaster Flexibilities	.....	.....	.....
Total	2,556,741.62	11,735,599.60	647,566.94

[175] For example, the State agencies from AL, AZ, CA, FL, GA, IL, MA, MT, ND, NY, and OH, in addition to others, post their plans on aging on their websites.

[176] National Association of Attorneys General (n.d.). *Public Records.* Retrieved April 18, 2023 from *https://www.naag.org/issues/civil-law/public-records/;* FOIAdvocates (n.d.). *State Public Records Laws.* Retrieved April 18, 2023 from *http://www.foiadvocates.com/records.html.* States may charge fees in order to provide copies of public records; *e.g.,* New Jersey's Open Public records Law, N.J.S.A. 47:1A–1 *et seq.*

As the table above indicates, we estimate quantified costs attributable to the proposed rule of $2.56 million for State agencies and area agencies (at an average cost of $3,635 per State agency in states that have area agencies, $3,539 per State agency in states with no area agencies, and $3,827 per area agency), $11.7 million for service providers (at an average cost of $673 per service provider), and $0.6 million for Title VI grantees (at an average cost of $2,296 per Title VI grantee). Accordingly, the costs attributable to the proposed rule, in the aggregate amount are estimated at $14,939,908.20.

2. Discussion of Benefits

The benefits from this proposed rule are difficult to quantify. We anticipate that the rule would provide clarity of administration for State agencies, area agencies and Title VI grantees with respect to aspects of the OAA that were enacted under previous reauthorizations. This clarity likely would reduce time spent by grantees in implementing and managing OAA programs and services and result in improved program and fiscal management.

Additional benefits are anticipated from our proposed modifications to regulatory text that would modernize our rules to provide greater flexibility to State agencies and AAAs, as well as to reflect ongoing stakeholder feedback and responses to our RFI in areas where our current regulations do not address the evolving needs of Title III, VI, and VII grantees and the older adults and family caregivers they serve. Our proposal to allow for ''grab and go'' meals, where a participant would be able to collect their meal from a congregate site and return to the community off-site to enjoy it, is a direct response to stakeholder feedback, including as gathered from the RFI, and appropriately reflects the evolving needs of both grantees and OAA participants. We anticipate increased participation in the Title III nutrition programs, which in turn would lead to better nutritional health for a new group of older adults that does not currently participate in the program.

Another example of a proposed modification to regulatory text that would modernize our rules is the new proposed definition of ''greatest economic need,'' which would allow State agencies and area agencies to take into consideration populations that experience economic need due to a variety of local conditions and individual situations, other than income, that could factor into an individual's level of economic need. State agencies and area agencies are in the best position to understand the conditions and factors in their State and local areas that contribute to individuals falling within this category. Accordingly, this definition would allow State agencies and area agencies to make these determinations.

The proposed flexibilities to be afforded to State agencies and Title VI grantees in certain emergency and disaster situations would allow funding to be directed more efficiently where it is needed most to better assist older adults in need.

We have determined that the many anticipated benefits of the proposed Rule are not quantifiable, given the variation in the types and sizes of State agencies, area agencies, and Title VI grantees, as well as the variation in conditions and situations at the State and local level throughout the U.S. We invite comment as to other benefits of this proposed rule.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 601 *et seq.*), agencies must consider the impact of regulations on small entities and analyze regulatory options that would minimize a rule's impacts on these entities. Alternatively, the agency head may certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. ACL estimates the costs that would result from the proposed rule to be $3,635 per State agency in states that have area agencies, $3,539 per State agency in states with no area agencies, $3,827 per area agency, $673 per service provider, and $2,296 per Title VI grantee. These costs would consist of staff time to revise policies and procedures and to create, provide and receive trainings. Assuming annual productive time per full time employee (FTE) of 1,650 hours (based on average weekly hours worked of 33 hours per week [177] and 50 weeks worked per annum), these estimated costs would equate to approximately four percent of one (1) FTE's annual time for each State agency and area agency, three percent of one (1) FTE's annual time for each Title VI grantee, and .7 percent of one (1) FTE's annual time for each service provider. HHS proposes to certify that this NPRM, if finalized, would not have a significant economic impact on a substantial number of small businesses and other small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132 prohibits an agency from publishing any rule that has Federalism implications if the rule either, imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have Federalism impact as defined in the Executive Order.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

ACL will fulfill its responsibilities under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to establish procedures for meaningful consultation and coordination with tribal officials in the development of Federal policies that have Tribal implications. ACL conducted a listening session at the National Title VI Conference on April 18, 2022. We also promoted the RFI with Title VI grantees and Indian Tribes. A Tribal consultation meeting took place at the National Title VI Conference April 12, 2023. ACL will continue to solicit input from affected Federally recognized Indian Tribes as we develop these updated regulations. ACL will conduct a Tribal consultation meeting on Thursday June 22, 2023 from 2:00 p.m. to 4:00 p.m. eastern time. Additional details will be made available at *https://olderindians.acl.gov/events/.*

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact Statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact Statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that

[177] Average weekly hours worked information per U.S. Bureau Labor of Labor's *Labor Productivity and Cost Measures—Major Sectors nonfarm business, business, nonfinancial corporate, and manufacturing—February 2, 2023,* retrieved February 16, 2023 from *https://www.bls.gov/productivity/tables/home.htm.*

may be significantly or uniquely impacted by the rule. We have determined that this rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact Statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

F. Plain Language in Government Writing

Pursuant to Executive Order 13563 of January 18, 2011, and Executive Order 12866 of September 30, 1993, Executive Departments and Agencies are directed to use plain language in all proposed and final rules. ACL believes it has used plain language in drafting of the proposed rule and would welcome any comment from the public in this regard.

G. Paperwork Reduction Act (PRA)

The proposed rule contains an information collection in the form of State plans on aging under Title III and Title VII of the Act and applications for funding by eligible organizations to serve older Native Americans and family caregivers under Title VI of the Act. ACL intends to update guidance regarding State plans on aging and applications for funding under Title VI of the Act when the Final Rule is published.

The requirement for each State agency to submit a multi-year State plan on aging, for a two, three, or four-year period, is a core function of State agencies and a long-standing requirement to receive funding under the Act. State agencies use funds provided under the Act to prepare State plans on aging. In preparing and submitting State plans on aging, State agencies compile information and obtain public input. They coordinate with State, Tribal, AAA, service providers, local government, and other stakeholders.

ACL will submit a PRA request to the Office of Management and Budget for the development of the State plans on aging. Respondents include 55 State agencies located in each of the 50 states as well as the District of Columbia, Guam, Puerto Rico, American Samoa, and the Mariana Islands. ACL estimates 40 burden hours per response. Due to the multi-year nature of the plans, ACL estimates a total of 683 hours in the aggregate to meet State plan requirements by State agencies each year. Based on our years of experience, we anticipate for each state 171 hours of executive staff time equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $55.41 per hour unadjusted adjusted hourly wage, $110.82 adjusted for non-wage benefits and indirect costs, and 512 hours of a first-line supervisor time (Occupation code 43- 1011), at a cost of $30.47 per hour unadjusted hourly wage, $60.94 adjusting for non-wage benefits and indirect costs. We monetize the cost of meeting State plan requirements at $50,151.50 per year.

This proposed rule contains an information collection under OMB control number 0985–0064 Application for Older Americans Act, Title VI Parts A/B and C Grants with an expiration date of November 30, 2025. The OAA requires the Department to promote the delivery of supportive services and nutrition services to Native Americans. ACL is responsible for administering the Title VI Part A/B (Nutrition and Supportive Service) and Part C (Caregiver) grants. This information collection (0985–0064) gathers information on the ability of Federally recognized American Indian, Alaskan Native and Native Hawaiian organizations to provide nutrition, supportive, and caregiver services to elders within their service area. Title VI grant applications are required once every three (3) years, with 545 respondents taking 4.25 hours per response. ACL estimates the burden associated with this collection of information as 395.4 annual burden hours.

At final stage of rulemaking ACL intends to update guidance regarding State plans on aging and applications for funding under Title VI of the Act. In accordance with the regulations implementing the PRA, sections § 1320.11 and § 1320.12, ACL will submit any material or substantive revisions under 0985–0064 and 0985-New to the Office of Management and Budget for review, comment, and approval.

List of Subjects in 45 CFR Parts 1321, 1322, and 1324

Area agencies on aging, Elder rights, Family caregivers, Grant programs to States, Tribal organizations and a Native Hawaiian grantee, Native American elders, Native Hawaiian programs, Older adults, Indian Tribes and Tribal organizations.

For the reasons discussed in the preamble, ACL proposes to revise 45 CFR chapter XIII to read as follows:

■ 1. Revise part 1321 to read as follows:

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

Sec.

Authority: 42 U.S.C. 3001 *et seq.*

Subpart A—Introduction

§ 1321.1 Basis and purpose of this part.

(a) The purpose of this part is to implement Title III of the Older Americans Act, as amended. This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of the following services: supportive, nutrition, evidence-based disease prevention and health promotion, caregiver, legal, and, where appropriate, other services. These services are provided via States, territories, area agencies on aging, and local service providers under Title III of the Older Americans Act, as amended (the Act). These requirements include:

(1) Responsibilities of State agencies;

(2) Responsibilities of area agencies on aging;

(3) Service requirements; and

(4) Emergency and disaster requirements.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans described in § 1321.27, to develop or enhance comprehensive and coordinated community-based systems resulting in a continuum of person-centered services to older persons and family caregivers, with special emphasis on older individuals with the greatest economic need or greatest social need, with particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation, and delivery of a comprehensive array of services and opportunities for all older adults in the community. Title III funds are intended to be used as a catalyst to bring together public and private resources in the community to assure the provision of a full range of efficient, well-coordinated, and accessible person-centered services for older persons and family caregivers.

(c) Each State designates one State agency to:

(1) Develop and submit a State plan on aging, as set forth in § 1321.33;

(2) Administer Title III and VII funds under the State plan and the Act;

(3) Be responsible for planning, policy development, administration, coordination, priority setting, monitoring, and evaluation of all State activities related to the Act;

(4) Serve as an advocate for older individuals;

(5) Designate planning and service areas;

(6) Designate an area agency on aging to serve each planning and service area, except in single planning and service area states; and

(7) Provide funds as set forth in the Act to either:

(i) Area agencies on aging under approved area plans on aging, in States with multiple planning and service areas, for their use in fulfilling requirements under the Act and distribution to local service providers to provide direct services, or

(ii) Local service providers, in single planning and service area states, to provide direct services.

(d) Terms used, but not otherwise defined, in this part will have the meanings ascribed to them in the Act.

§ 1321.3 Definitions.

Access to services or access services, as used in this part and sections 306 (42 U.S.C. 3026) and 307 (42 U.S.C. 3027) of the Act, means services which may facilitate connection to or receipt of other direct services, including transportation, outreach, information and assistance, and case management services.

Acquiring, as used in the Act, means obtaining ownership of an existing facility.

Act, means the Older Americans Act of 1965 as amended.

Altering or renovating, as used in this part, means making modifications to or in connection with an existing facility which are necessary for its effective use. Such modifications may include alterations, improvements, replacements, rearrangements, installations, renovations, repairs, expansions, upgrades or additions, which are not in excess of double the square footage of the original facility and all physical improvements.

Area agency on aging, as used in this part, means a single agency designated by the State agency to perform the functions specified in the Act for a planning and service area.

Area plan administration, as used in this part, means funds used to carry out activities as set forth in section 306 of the Act (42 U.S.C. 3026) and other activities to fulfill the mission of the area agency as set forth in § 1321.55, including development of private pay programs or other commercial relationships.

Best available data, as used in section 305(a)(2)(C) (42 U.S.C. 3025(a)(2)) of the Act with respect to the development of the intrastate funding formula, means the most current reliable data or population estimates available from the U.S. Decennial Census, American Community Survey, or other high-quality, representative data available to the State.

Constructing, as used in this part, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Conflicts of interest, as used in this part, means: (a) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust; (b) One or more conflicts between competing duties of an individual, or between the competing duties, services, or programs of an organization, and/or portion of an organization; and/or (c) Other conflicts of interest as identified in guidance as set forth by the Assistant Secretary for Aging and/or by State agency policies.

Cost sharing, as used in section 315(a) (42 U.S.C. 3030c–2(a)) of the Act, means requesting payment using a sliding scale, based only on an individual's income and the cost of delivering the service, in a manner consistent with the exceptions, prohibitions, and other conditions laid out in the Act.

Department, means the U.S. Department of Health and Human Services.

Direct services, as used in this part, means any activity performed to provide services directly to an older person or family caregiver, groups of older persons or family caregivers, or to the general public by the staff or volunteers of a service provider, an area agency on aging, or a State agency whether provided in-person or virtually. Direct services exclude State or area plan administration and program development and coordination activities.

Domestically-produced foods, as used in this part, means Agricultural foods, beverages and other food ingredients which are a product of the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (the United States for purposes of this definition), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

Family caregiver, as used in this part, means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual; an adult family member, or another individual, who is an informal provider of in-home and community care to an individual of any age with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction; or an older relative caregiver.

Fiscal year, as used in this part, means the Federal fiscal year.

Governor, as used in this part, means the chief elected officer of each State and the mayor of the District of Columbia.

Greatest economic need, as used in this part, means the need resulting from an income level at or below the Federal poverty line and as further defined by State and area plans based on local and individual factors, including geography and expenses.

Greatest social need, as used in this part, means the need caused by noneconomic factors, which include:

(1) Physical and mental disabilities;

(2) Language barriers;

(3) Minority religious affiliation;

(4) Sexual orientation, gender identity, or sex characteristics;

(5) HIV status;

(6) Chronic conditions;

(7) Housing instability, food insecurity, lack of transportation, or utility assistance needs;

(8) Interpersonal safety concerns;

(9) Rural location or other cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that

(i) Restricts the ability of an individual to perform normal daily tasks; or

(ii) Threatens the capacity of the individual to live independently;

(10) Other needs as further defined by State and area plans based on local and individual factors; and

(11) As specified in guidance as set forth by the Assistant Secretary for Aging.

Immediate family, as used in this part pertaining to conflicts of interest, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

In-home supportive services, as used in this part, references those supportive services provided in the home as set forth in the Act, to include:

(1) Homemaker and home health aides;

(2) Visiting and telephone or virtual reassurance;

(3) Chore maintenance;

(4) In-home respite care for families, including adult day care as a respite service for families; and

(5) Minor modification of homes that is necessary to facilitate the independence and health of older individuals and that is not available under another program.

Local sources, as used in the Act and local public sources, as used in section 309(b)(1) (42 U.S.C. 3029(b)(1)) of the Act, means tax-levy money or any other non-Federal resource, such as State or local public funding, funds from fundraising activities, reserve funds, bequests, or cash or third-party in-kind contributions from non-client community members or organizations.

Major disaster declaration, as used in this part and section 310 of the Act (42 U.S.C. 3030), means a Presidentially-declared disaster under the Robert T. Stafford Relief and Emergency Assistance Act.

Means test, as used in the Act, means the use of the income, assets, or other resources of an older person, family caregiver, or the households thereof to deny or limit that person's eligibility to receive services under this part.

Multipurpose senior center, as used in the Act, means a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental and behavioral health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals, as practicable, including as provided via virtual facilities.

Native American, as used in the Act, means a person who is a member of any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92–203; 85 Stat. 688)) who

(1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians or

(2) Is located on, or in proximity to, a Federal or State reservation or rancheria; or is a person who is a Native Hawaiian, who is any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Nutrition Services Incentive Program, as used in the Act, means grant funding to States and eligible Tribal organizations to support congregate and home-delivered nutrition programs by providing an incentive to serve more meals.

Official duties, as used in section 712 of the Act (42 U.S.C. 3058g) with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act, 45 CFR part 1324 subpart A, and/or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

Older relative caregiver, as used in section 372(a)(4) of the Act (42 U.S.C. 3030s(a)(4)), means a caregiver who is age 55 or older and lives with, is the informal provider of in-home and community care to, and is the primary caregiver for, a child or an individual with a disability;

(1) In the case of a caregiver for a child is:

(i) The grandparent, step-grandparent, or other relative (other than the parent) by blood, marriage, or adoption, of the child;

(ii) Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers of the child; and

(iii) Has a legal relationship to the child, such as legal custody, adoption, or guardianship, or is raising the child informally; and

(2) In the case of a caregiver for an individual with a disability, is the parent, grandparent, step-grandparent,

or other relative by blood, marriage, or adoption of the individual with a disability.

Periodic, as used in this part to refer to the frequency of client assessment and data collection, means, at a minimum, once each fiscal year, and as used in section 307(a)(4) (42 U.S.C. 3027(a)(4)) of the Act to refer to the frequency of evaluations of, and public hearings on, activities and projects carried out under State and area plans, means, at a minimum once each State or area plan cycle.

Planning and service area, as used in section 305 of the Act (42 U.S.C. 3025), means an area designated by a State agency under section 305(a)(1)(E) (42 U.S.C. 3025(a)(1)(E)), for the purposes of local planning and coordination and awarding of funds under Title III of the Act, including a single planning and service area.

Private pay programs, as used in section 306(g) of the Act (42 U.S.C. 3026(g)), are a type of commercial relationship and are programs, separate and apart from programs funded under the Act, for which the individual consumer agrees to pay to receive services under the programs.

Program development and coordination activities, as used in this part, means those actions to plan, develop, provide training, and coordinate at a systemic level those programs and activities which primarily benefit and target older adult and family caregiver populations who have the greatest social needs and greatest economic needs, including development of commercial relationships or private pay programs.

Program income, as defined in 2 CFR 200.80 means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in 2 CFR 200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also 2 CFR 200.407, and 35 U.S.C. 200–212 (which applies to inventions made under Federal awards).

Reservation, as used in section 305(b)(2) (42 U.S.C. 3025(b)(2)) of the Act with respect to the designation of planning and service areas, means any Federally or State recognized American Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

Service provider, means an entity that is awarded funds, including via a grant, subgrant, contract, or subcontract, to provide direct services under the State or area plan.

Single planning and service area state, means a State which was approved on or before October 1, 1980 as such and continues to operate as a single planning and service area.

State, as used in this part, means one or more of the 50 States, the District of Columbia, and the territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

State agency, as used in this part, means the designated State unit on aging for each of the 50 States, the District of Columbia, and the territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

State plan administration, as used in this part, means funds used to carry out activities as set forth in section 307 of the Act (42 U.S.C. 3027) and other activities to fulfill the mission of the State agency as set forth in § 1321.7.

Supplemental foods, as used in this part, means foods that assist with maintaining health, but do not alone constitute a meal. Supplemental foods include liquid nutrition supplements or enhancements to a meal, such as additional beverage or food items and may be specified by State agency policies and procedures. Supplemental foods may be provided with a meal, or separately, to older adults who participate in either congregate or home-delivered meal services.

Voluntary contributions, as used in section 315(b) of the Act (42 U.S.C. 3030c–2(b)), means non-coerced donations of money or other personal resources by individuals receiving services under the Act.

Subpart B—State Agency Responsibilities

§ 1321.5 Mission of the State agency.

(a) The Act intends that the State agency shall be the lead on all aging issues on behalf of all older persons and family caregivers in the State. The State agency shall proactively carry out a wide range of functions, including advocacy, planning, coordination, interagency collaboration, information sharing, training, monitoring, and evaluation. The State agency shall lead the development or enhancement of comprehensive and coordinated community-based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons and family caregivers in leading independent, meaningful, and dignified lives in their own homes and communities.

(b) In States with multiple planning and service areas, the State agency shall designate area agencies on aging to assist in carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as area agencies on aging only those non-State agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.55.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Act are used to carry out the mission described for area agencies in § 1321.55.

§ 1321.7 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and part 1324 of this chapter and to serve as the effective and visible advocate for older adults within the State.

(b) The State agency shall have an adequate number of qualified staff to fulfill the functions prescribed in this part.

(c) The State agency shall establish, or shall contract or otherwise arrange with another agency or organization as permitted by section 307(a)(9)(A) of the Act (42 U.S.C. 3027(a)(9)(A)), an Office of the State Long-Term Care Ombudsman. Such Office must be headed by a full-time State Ombudsman and consist of other staff as appropriate to fulfill responsibilities as set forth in part 1324, subpart A, of this chapter.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(9) of the Act (42 U.S.C.

3027(a)(9)(A)), the State agency continues to be responsible for assuring that the requirements of this program under the Act and as set forth in part 1324, subpart A, of this chapter, are met, notwithstanding any additional requirements or funding related to State law. In such cases where State law may conflict with the Act, the Governor shall confirm understanding of the State's continuing obligations under the Act through an assurance in the State plan.

(e) The State agency shall have as set forth in section 307(a)(13) (42 U.S.C. 3027(a)(13)) and section 731 of the Act (42 U.S.C. 3058j) and 45 CFR part 1324, subpart C, a Legal Assistance Developer and such other personnel as appropriate to provide State leadership in developing legal assistance programs for older individuals throughout the State.

§ 1321.9 State agency policies and procedures.

(a) The State agency on aging shall develop policies and procedures governing all aspects of programs operated as set forth in this part and part 1324 of this chapter. These policies and procedures shall be developed in consultation with area agencies on aging, program participants, and other appropriate parties in the State. Except for the Ombudsman program as set forth in 45 CFR part 1324, subpart A and where otherwise indicated, the State agency policies may allow for such policies and procedures to be developed at the area agency on aging level. The State agency is responsible for implementing, monitoring, and enforcing policies and procedures, where:

(1) The policies and procedures developed by the State agency shall address how the State agency will monitor the programmatic and fiscal performance of all programs and activities initiated under this part for compliance with all requirements, and for quality and effectiveness. As set forth in sections 305(a)(2)(A) (42 U.S.C. 3025(a)(2)(A)) and 306(a) (42 U.S.C. 3026(a)) of the Act, and consistent with section 305(a)(1)(C) (42 U.S.C. 3025(a)(1)(C)), the State agency shall be responsible for monitoring the program and financial activities of subrecipients and subgrantees to ensure that grant awards are used for the authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of the grant award, including:

(i) Evaluating each subrecipient's risk of noncompliance to ensure proper accountability and compliance with program requirements and achievement of performance goals;

(ii) Reviewing subrecipient policies and procedures; and

(iii) Ensuring that all subrecipients and subgrantees complete audits as required in 2 CFR 200 subpart F.

(2) The State agency may not delegate to another agency the authority to award or administer funds under this part.

(3) The State Long-Term Care Ombudsman shall be responsible for monitoring the files, records, and other information maintained by the Ombudsman program, as set forth in § 1324 subpart A. Such monitoring may be conducted by a designee of the Ombudsman. Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in § 1324.11(e)(3) of this chapter.

(b) The State agency shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging.

(c) Policies and procedures developed and implemented by the State agency shall address:

(1) Direct service provision for services as set forth in § 1321.85 (Supportive services), § 1321.87 (Nutrition services), § 1321.89 (Evidence-based disease prevention and health promotion services), § 1321.91 (Family caregiver support services), and § 1321.93 (Legal assistance), including:

(i) Requirements for client eligibility, periodic assessment, and person-centered planning, where appropriate;

(ii) A listing and definitions of services that may be provided in the State with funds received under the Act;

(iii) Limitations on the frequency, amount, or type of service provided;

(iv) Definition of those within the State in greatest social need and greatest economic need;

(v) Specific actions the State agency will use or require the area agency to use to target services to meet the needs of those in greatest social need and greatest economic need;

(vi) How area agencies on aging may request to provide direct services under provisions of § 1321.65(b)(7), where appropriate;

(vii) Actions to be taken by area agencies and direct service providers to implement requirements as set forth in § 1321.9(c)(2)(x); and

(viii) The grievance process for older individuals and family caregivers who are dissatisfied with or denied services under the Act;

(2) Fiscal requirements including:

(i) *Intrastate Funding Formula (IFF).* Distribution of Title III funds via the intrastate funding formula and of Nutrition Services Incentive Program funds as set forth in § 1321.49 or § 1321.51 shall be maintained by the State agency where:

(A) Funds must be promptly disbursed; and

(B) As set forth in 2 CFR 200.353, prior written approval is hereby granted for a pass-through entity to provide subawards based on fixed amounts up to the simplified acquisition threshold, provided that the subawards meet the requirements for fixed amount awards in § 75.201.

(ii) *Non-Federal Share (Match).* As set forth in sections 301(d)(1) (42 U.S.C. 3021(d)(1)), 304(c) (42 U.S.C. 3024(c)), 304(d)(1)(A) (42 U.S.C. 3024(d)(1)(A)), 304(d)(1)(D) (42 U.S.C. 3024(d)(1)(D)), 304(d)(2) (42 U.S.C. 3024(d)(2)), 309(b) (42 U.S.C. 3029(b)), 316(b)(5) (42 U.S.C. 3030c–3(b)(5), and 373(h)(2) (42 U.S.C. 3030s–2(h)(2)), the State agency shall maintain statewide match requirements, where:

(A) The match may be made by State and/or local public sources except as set forth in § 1321.9(c)(2)(B)(x)(b)(1).

(B) Non-Federal shared costs or match funds and all contributions, including cash and third-party in-kind contributions must be accepted if the funds meet the specified criteria for match. A State may not require only cash as a match requirement.

(C) State or local public resources used to fund a program which uses a means test shall not be used to meet the match.

(D) Proceeds from fundraising activities may be used to meet the match as long as no Federal funds were used in the fundraising activity. Fundraising activities are unallowable costs without prior written approval, as set forth in 2 CFR 200.442.

(E) A State may use State and local funds expended for a non-Title III funded program to meet the match requirement for Title III expenditures when the non-Title III funded program:

(*1*) Is directly administered by the State or area agency;

(*2*) Does not conflict with requirements of the Act;

(*3*) Is used to match only the Title III program and not any other Federal program; and

(*4*) Includes procedures to track and account expenditures used as match for a Title III program or service.

(F) Match requirements for area agencies are determined by the State agency;

(G) Match requirements for direct service providers are determined by the State and/or area agency;

(H) A State or area agency may determine a Match in excess of required amounts;

(I) Other Federal funds may not be used to meet required match unless there is specific statutory authority;

(J) The required Statewide match for grants awarded under Title III of the Act is as follows:

(*1*) *Administration.* Federal funding for State, area agency on aging, and Territory plan administration may not account for more than 75 percent of the total funding expended and requires a 25 percent match. As set forth in 2 CFR 200.306(C), prior written approval is hereby granted for unrecovered indirect costs to be used as match.

(*2*) *Supportive services and nutrition services.* (*i*) Federal funding for services funded under supportive services as set forth in § 1321.85, less the portion of funds used for the Ombudsman program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(*ii*) Federal funding for services funded under nutrition services as set forth in § 1321.87, less funds provided under the Nutrition Services Incentive Program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(*iii*) One third (⅓) of the 15 percent match must be met from State resources, and the remaining two thirds (⅔) match may be met by State or local resources;

(*iv*) The match for supportive services and nutrition services may be pooled;

(*3*) *Family caregiver support services.* The Federal funding for services funded under family caregiver support services as set forth in § 1321.91, may not account for more than 75 percent of the total dollars expended and requires a 25 percent match.

(*4*) *Services not requiring match.* Services for which no match is required include:

(*i*) Evidence-based disease prevention and health promotion services as set forth in § 1321.89;

(*ii*) The Nutrition Services Incentive Program; and

(*iii*) The portion of funds from supportive services used for the Ombudsman program.

(iii*) Transfers.* Transfer of service allotments elected by the State agency which must meet the following requirements:

(A) A State agency must provide notification of the transfer amounts elected pursuant to guidance as set forth by the Assistant Secretary for Aging;

(B) A State agency shall not delegate to an area agency on aging or any other entity the authority to make a transfer;

(C) A State agency may only elect to transfer between the Title III Part B Supportive Services and Senior Centers, Part C–1 Congregate Nutrition Services, and Part C–2 Home Delivered Nutrition Services grant awards.

(*1*) The State agency may elect to transfer up to 40 percent between the Title III Part C–1 and Part C–2 grant awards, per section 308(b)(4)(A) (42 U.S.C. 3028(b)(4)(A)).

(*i*) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 40 percent transfer limit.

(*ii*) The State agency may request up to an additional 10 percent between the Title III Part C–1 and Part C–2 grant awards, per section 308(b)(4)(B) (42 U.S.C. 3028(b)(4)(B)).

(*2*) The State agency may elect to transfer up to 30 percent between Title III Parts B and C, per section 308(b)(5)(A) (42 U.S.C. 3028(b)(5)(A)); and

(*3*) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 30 percent limitation between Parts B and C, per section 316(b)(4) (42 U.S.C. 3030c–3(b)(4)).

(D) Percentages subject to transfer are calculated based on the total original Title III award allotted;

(E) Transfer limitations apply to the State in aggregate; and

(F) State agencies do not have to apply equal limitations on transfers to each area agency on aging.

(iv) *State, Territory, and area plan administration.* State and Territory plan administration maximum allocation requirements must align with the approved intrastate funding formula or funds allocation plan as set forth in § 1321.49 or § 1321.51, as applicable. In addition:

(A) *State and Territory plan administration maximum allocation amounts.* State and Territory plan administration maximum allocation amounts may be taken from any part of the overall allotment to a State agency under Title III of the Act. Maximum allocation amounts are determined by the State agency's status as set forth in this paragraph (c)(2)(iv)(A) and paragraph (c)(2)(iv)(B) of this section:

(*1*) A State agency which serves a State with multiple planning and service areas may use the greater of $750,000, per section 308(b)(2)(A) of the Act (42 U.S.C. 3028(b)(2)(A)), or five percent of the total Title III Award.

(*2*) A State agency which serves a single planning and service area state and is not listed in (i) below may elect to be subject to paragraph (c)(2)(iv)(A)(*1*) of this section or to the area plan administration limit of ten percent of the overall allotment to a State under Title III, as specified in section 308(a)(3) (42 U.S.C. 3028(a)(3)) of the Act.

(*3*) Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall have available the greater of $100,000 or five percent of the total final Title III Award, as set forth in section 308(b)(2)(B) (42 U.S.C. 3028(b)(2)(B)) of the Act.

(B) *Area plan administration maximum allocation amounts.* Area plan administration maximum allocation amounts may be allocated to any part of the overall allotment to the State agency under Title III, with the exception of Part D, for use by area agencies on aging for activities as set forth in sections 304(d)(1)(A) (42 U.S.C. 3024(d)(1)(A)) and 308 (42 U.S.C. 3028) of the Act and in § 1321.57(b). Single planning and service area states may elect amounts for either State plan administration or area plan administration, as set forth in the Act and paragraph (c)(2)(iv)(A)(*2*) of this section.

(*1*) The State agency will determine the maximum amount of funding available for area plan administration from the total Title III allocation after deducting the amount of funding allocated for State plan administration and calculating a maximum of ten percent of this amount;

(*2*) The State agency may make no more than the amount calculated in paragraph (c)(2)(iv)(B)(*1*) of this section available to area agencies on aging for distribution in accordance with the intrastate funding formula as set forth in § 1321.49; and

(*3*) Any amounts available to the State for State plan administration which the State determines are not needed for that purpose may be used to supplement the amount available for area plan administration (42 U.S.C. 3028(a)(2)).

(v) *Minimum Adequate Proportion.* The minimum adequate proportion that will be expended by each area agency on aging and State agency to provide the categories of services of access services, in-home supportive services, and legal assistance, as identified in the approved State plan as set forth in § 1321.27(i);

(vi) *Maintenance of Effort.* The State agency will meet expectations regarding maintenance of effort, where:

(A) The State agency must expend for both services and administration at least the average amount of State funds reported and certified as expended under the State plan for these activities for the three previous fiscal years for Title III;

(B) The amount certified must at least meet minimum match requirements from State resources;

(C) Any amount of State resources included in the Title III maintenance of effort certification that exceeds the minimum amount mandated becomes part of the permanent maintenance of effort; and

(D) Excess State match reported on the Federal financial report does not become part of the maintenance of effort unless the State agency certifies the excess.

(vii) *Funding the State Long Term Care Ombudsman Program.* The State agency shall maintain State Long-Term Care Ombudsman program funding requirements, where:

(A) *Minimum Certification of Expenditures.* The State agency must expend not less than the amount expended by the State agency under Title III and Title VII of the Act for the Ombudsman program in fiscal year 2019, as required by the Act;

(B) *Expenditure Information.* The State agency must provide the Ombudsman with verifiable expenditure information for the annual certification of minimum expenditures and for completion of annual reports; and

(C) *Fiscal management and determination of resources.* Fiscal management and determination of resources appropriated or otherwise available for the operation of the Office are in compliance as set forth at § 1324.13(f) of this chapter;

(viii) *Rural Minimum Expenditures.* The State agency shall maintain minimum expenditures for services for older individuals residing in rural areas, where:

(A) The State agency shall establish a process and control for determining the definition of ''rural areas'' within their State;

(B) For each fiscal year, the State agency must spend on services for older individuals residing in rural areas the minimum annual amount that is not less than the amount expended for such services for fiscal year 2000, as required by the Act; and

(C) The State agency must project the cost of providing such services for each fiscal year (including the cost of providing access to such services) and must specify a plan for meeting the needs for such services for each fiscal year;

(ix) *Reallotment.* The Stage agency shall maintain requirements for reallotment of funds, where:

(A) The State agency must annually review and notify the Assistant Secretary for Aging prior to the end of the fiscal year in which grant funds were awarded if there is funding that will not be expended within the grant period for Title III or VII that the State will release to the Assistant Secretary for Aging.

(B) The State agency must annually review and notify the Assistant Secretary for Aging of the amount of any released Title III or VII funding from other State agencies that the State agency would like to receive and expend within the grant period from the Assistant Secretary for Aging.

(C) The State agency must use its intrastate funding formula or funds distribution plan, as set forth in § 1321.49 or § 1321.51, to distribute any Title III funds that the Assistant Secretary for Aging reallots pursuant to the State agency's notification under paragraph (c)(2)(ix)(B) of this section.

(x) *Voluntary Contributions.* Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act, consistent with 42 U.S.C. 3030c–2(b). Policies and procedures related to voluntary contributions shall address these requirements:

(A) Suggested contribution levels. The suggested contribution levels shall be based on the actual cost of services;

(B) Individuals encouraged to contribute. Voluntary contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the Federal poverty line. Assets, savings, or other property owned by an older individual or family caregiver may not be considered when seeking voluntary contributions from any older individual or family caregiver;

(C) Solicitation. The method of solicitation must be noncoercive, and the solicitation:

(*1*) Must meet all the requirements of this provision; and

(*2*) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution;

(D) Provisions to all service recipients. All recipients of services shall be provided:

(*1*) An opportunity to voluntarily contribute to the cost of the service;

(*2*) Clear information, including information in alternative formats and in languages other than English in compliance with Federal civil rights laws, explaining there is no obligation to contribute and the contribution is voluntary.

(*3*) Protection of privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(E) Prohibition on means testing. Means testing, as defined in § 1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a voluntary contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all contributions are established; and

(H) Collection of program income. Amounts collected are considered program income and are subject to the requirements in 2 CFR 200.307 and in § 1321.9(c)(2)(xii).

(xi) *Cost Sharing.* A state is permitted under section 315(a) of the Act (42 U.S.C. 3030c–2(a)), to implement cost sharing for services funded by the Act by recipients of the services, except as provided for in § 1321.9(c)(2)(xi)(D). If the State agency allows for cost sharing, the State agency shall address these requirements:

(A) Policies and procedures. The State agency shall develop policies and procedures to be implemented statewide, including how an area agency on aging may request and receive a waiver of cost sharing policies, if the area agency on aging adequately demonstrates:

(*1*) a significant proportion of persons receiving services under the Act have incomes below the threshold established in State agency policies and procedures; or

(*2*) that cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging;

(B) Sliding contribution scale. The State agency shall establish a sliding contribution scale and a description of the criteria to participate in cost sharing to be implemented statewide, which shall:

(*1*) Meet all the requirements of this provision;

(*2*) Be based solely on individual income and the cost of delivering services;

(*3*) Be communicated including in written materials and in alternative formats upon request;

(*4*) Explain there is no obligation to contribute and the contribution is voluntary;

(*5*) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution;

(*6*) Protect the privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution;

(C) Individuals eligible to cost share. Individuals shall be determined eligible to cost share based solely on a confidential declaration of income and with no requirement for verification;

(D) Prohibitions on cost sharing. Cost sharing is prohibited as follows:

(*1*) By a low-income older individual if the income of such individual is at or below the Federal poverty line is prohibited;

(*2*) If State agency policies and procedures specify other low-income individuals within the State excluded from cost sharing;

(*3*) For the following services:

(*i*) Information and assistance, outreach, benefits counseling, or case management services;

(*ii*) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services;

(*iii*) Congregate and home delivered meals; and

(*iv*) Any services delivered through Tribal organizations.

(E) Prohibition on means testing. Means testing, as defined in § 1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a cost sharing contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all cost sharing contributions are established; and

(H) Collection of program income. All cost sharing contributions collected are considered program income and are subject to the requirements of 2 CFR 200.307 and in § 1321.9(xii).

(xii) *Use of Program Income.* Program income is subject to the requirements in 2 CFR 200.307 and as follows:

(A) Voluntary contributions and cost sharing payments are considered program income;

(B) Program income collected must be used to expand the service category by part of Title III of the Act, defined in § 1321.71, for which the income was originally collected;

(C) The State must use the addition alternative as set forth in 2 CFR 200.307(e)(2) when reporting program income, and prior approval of the addition alternative from the Assistant Secretary for Aging is not required;

(D) Program income must be expended or disbursed prior to requesting additional Federal funds; and

(E) Program income may not be used to match grant awards funded by the Act without prior approval.

(xiii) *Private Pay Programs.* The State agency shall maintain requirements for private pay programs, where:

(A) State agencies, area agencies on aging, and service providers may provide private pay programs, subject to State and/or area agency policies and procedures;

(B) The State agency requires area agencies and service providers under the Act that establish private pay programs to develop policies and procedures to:

(*1*) Promote equity, fairness, inclusion, and adherence to the requirements of the Act, including:

(*i*) Meeting conflict of interest requirements;

(*ii*) Meeting financial accountability requirements;

(*iii*) Prohibiting use of funds for direct services under Title III to support provision of service via private pay programs, except as a part of routine information and assistance or case management referrals; and

(*2*) Require that persons who receive information about private pay programs and who are eligible for services provided with Title III funds in the planning and service area be made aware of Title III-funded and any similar voluntary contributions-based service options, even if there is a waiting list for those services, on an initial and periodic basis to allow individuals to determine whether they will select voluntary contributions-based services or private pay programs.

(xiv) *Contracts and Commercial Relationships.* The State agency shall maintain requirements for contracts and commercial relationships, where:

(A) State agencies, area agencies on aging, and service providers may enter into contracts and commercial relationships, subject to State and/or area agency policies and procedures and guidance as set forth by the Assistant Secretary for Aging, including through:

(*1*) Contracts with health care payers;

(*2*) Private pay programs; or

(*3*) Other arrangements with entities or individuals that increase the availability of home- and community-based services and supports;

(B) The State agency shall require area agencies and service providers under the Act that establish contracts and commercial relationships to develop policies and procedures to:

(*1*) Promote fairness, inclusion, and adherence to the requirements of the Act, including:

(*i*) Meeting conflict of interest requirements;

(*ii*) Meeting financial accountability requirements; and

(*iii*) Aligning with guidance as set forth by the Assistant Secretary for Aging.

(*2*) With the approval of the State and/or area agency, allow use of funds for direct services under Title III to support provision of service via contracts and commercial relationships when:

(*i*) All requirements for direct services provision are maintained, as set forth in this part and the Act, or

(*ii*) In compliance with the requirements of the Act, as set forth in section 212 (42 U.S.C. 3020c), and in guidance as set forth by the Assistant Secretary for Aging.

(C) The State agency shall, through the area plan or other process, develop policies and procedures for area agencies on aging and service providers to receive approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships;

(xv) *Buildings, Alterations or Renovations, Maintenance, and Equipment.* Buildings and equipment, where costs incurred for altering or renovating, utilities, insurance, security, necessary maintenance, janitorial services, repair, and upkeep (including Federal property unless otherwise provided for) to keep buildings and equipment in an efficient operating condition, may be an allowable use of funds and the following apply:

(A) Costs are only allowable to the extent not payable by third parties through rental or other agreements;

(B) Costs must be allocated proportionally to the benefiting grant program; and

(C) Construction and acquisition activities are only allowable for multipurpose senior centers. In addition to complying with the requirements of the Act, as set forth in section 312, as well as with all other applicable Federal laws, the grantee or subgrantee as applicable must file a Notice of Federal Interest in the appropriate official records of the jurisdiction where the property is located at the time of acquisition or prior to commencement of construction, as applicable. The Notice of Federal Interest must indicate that the acquisition or construction, as applicable, has been funded with an award under Title III of the Act, that the requirements set forth in section 312 of the Act (42 U.S.C. 3030b) apply to the property, and that inquiries regarding the Federal Government's interest in the property should be directed in writing to the Assistant Secretary for Aging.

(D) Altering and renovating activities are allowable for facilities providing direct services with funds provided as set forth in §§ 1321.85, 105, 107, and 109, subject to Federal grant requirements under 2 CFR 200.

(E) Altering and renovating activities are allowable for facilities used to conduct area plan administration activities with funds provided as set forth in paragraph (c)(2)(iv)(B), subject to Federal grant requirements under 2 CFR 200.

(xvi) *Supplement, Not Supplant.* Funds awarded under the Act for services provided under sections 306(a)(9)(B) (42 U.S.C. 3026(a)(9)(B)), 315(b)(4)(E) (42 U.S.C. 3030c–2(b)(4)(E)), 321(d) (42 U.S.C. 3030d(d)), 374 (42 U.S.C. 3030s–2), and 705(a)(4) (42 U.S.C. 3058(d)(a)(4)), must be used to supplement, not supplant existing Federal, State, and local funds expended to support those activities.

(xvii) *Monitoring of State and Area Plan Assurances.* Monitoring for compliance for assurances identified in the approved State plan as set forth in § 1321.27.

(xviii) *Advance Funding.* If the State agency permits the advance of funding to meet immediate cash needs of Area Agencies on Aging and service providers, the State agency shall have policies and procedures which comply with Federal requirements and guidance as set forth by the Assistant Secretary for Aging, including regarding timeframes and amount limitations that may apply.

(3) The State plan process, including compliance with requirements as set forth in § 1321.29.

(4) In States with multiple planning and service areas, the area plan process, including compliance with requirements as set forth in § 1321.65.

§ 1321.11 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate, and comment on Federal, State, and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals or family caregivers, and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance and training to agencies, organizations, associations, or individuals representing older persons and family caregivers; and

(3) Review and comment on applications to State and Federal agencies for assistance relating to meeting the needs of older persons and family caregivers.

(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby.

§ 1321.13 Designation of and designation changes to planning and service areas.

(a) The State agency is responsible for designating distinct planning and service areas within the State.

(b) No State may designate the entire State as a single planning and service area, except for States designated as such on or before October 1, 1980.

(c) States must have policies and procedures regarding designation of and changes to planning and service areas in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency. Such policies and procedures must address the following:

(1) The application process to change a planning and service area, if initiated outside of the State agency,

(2) How notice to interested parties will be provided,

(3) How need for the action will be documented,

(4) Provisions for conducting a public hearing,

(5) Provisions for involving area agencies on aging, service providers, and older individuals in the action or proceeding, such as offering other opportunities for stakeholder feedback,

(6) The appeals process for affected parties, and

(7) Timeframes that apply to each of the items under (c).

(d) States that seek to change one or more planning and service area designations must consider the following:

(1) The geographical distribution of older individuals in the State;

(2) The incidence of the need for services under the Act;

(3) The distribution of older individuals who have greatest economic need or greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such areas;

(4) The distribution of older individuals who are Native Americans residing in such areas;

(5) The distribution of resources available to provide such services under the Act;

(6) The boundaries of existing areas within the State which were drawn for the planning or administration of services under the Act;

(7) The location of units of general purpose local government, as defined in section 302(4) of the Act, within the State; and,

(8) Any other relevant factors.

(e) When the State agency issues a decision to change planning and service areas, it shall provide an explanation of its consideration of the factors in § 1321.15(d). Such explanations must be included in the State plan amendment submitted as set forth in § 1321.31(b) or State plan submitted as set forth in § 1321.33.

§ 1321.15 Interstate planning and service area.

(a) An interstate planning and service area is an agreement between the States that have responsibility for administering the programs within the interstate area, in which the agreement increases the allotment of the State(s) with lead responsibility and decreases the allotment of the State(s) without the lead responsibility. The Governor of any State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Assistant Secretary to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Assistant Secretary approves such an application, the Assistant Secretary shall adjust the State allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate planning and service area not within the State.

(b) Before requesting permission of the Assistant Secretary for Aging to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(c) The lead State shall request permission of the Assistant Secretary for Aging to designate an interstate planning and service area by submitting the request, together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Assistant Secretary for Aging's approval for States to designate an interstate planning and service area, the Assistant Secretary for Aging shall determine that all applicable requirements and procedures in

§ 1321.27 and § 1321.29 of this part, are met.

(e) If the request is approved, the Assistant Secretary for Aging, based on the agreement between the States, will increase the allocation of the State with lead responsibility for administering the programs within the interstate area and will reduce the allocation(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallocation of funds in proportion to the number of individuals age 60 and over for funding provided under Title III–B, C, and D and in proportion to the number of individuals age 70 and over for funding provided under Title III–E for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallocation of funds based on the intrastate funding formula of the State(s) without lead responsibility.

(f) Each State agency that is a party to an interstate planning and service area agreement shall review and confirm their agreement as a part of their State plan on aging as set forth in § 1321.27.

§ 1321.17 Appeal to the Departmental Appeals Board on planning and service area designation.

(a) This section sets forth the procedures for providing hearings to applicants for designation as a planning and service area, under § 1321.13, whose application is denied by the State agency.

(b) Any applicant for designation as a planning and service area whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Departmental Appeals Board (DAB) in writing following receipt of the State's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§ 1321.19 Designation of and designation changes to area agencies.

(a) The State agency is responsible for designating an area agency on aging to serve each planning and service area. Only one area agency on aging shall be designated to serve each planning and service area. An area agency on aging may serve more than one planning and service area. States shall have policies and procedures regarding designation of area agencies on aging and changes to an agency's designation as an area agency on aging in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency and must address the following:

(1) Provisions for designating an area agency on aging, including:

(i) The application process;

(ii) How notice to interested parties will be provided;

(iii) How views offered by the unit(s) of general purpose local government in such area will be obtained and considered;

(iv) How the State agency will provide the right of first refusal to a unit of general purpose local government if:

(A) Such unit demonstrates ability to meet the requirements as set forth by the State agency, in accordance with the Act; and

(B) The boundaries of such a unit and the boundaries of the area are reasonably contiguous.

(v) How the State shall then give preference to an established office on aging if the unit of general purpose local government chooses not to exercise the right of first refusal;

(vi) How the State will assume area agency on aging responsibilities in the event there are no successful applicants in the State's application process; and

(vii) The appeals process for affected parties.

(2) Provisions for an area agency on aging that voluntarily relinquishes their area agency on aging designation, including that the State agency's written acceptance of the voluntary relinquishment of area agency on aging designation will be considered as the State agency's withdrawal of area agency on aging designation, and requirements under § 1321.21(b) will apply;

(3) Provisions for when the State agency takes action to withdraw an area agency on aging's designation, in accordance with § 1321.21;

(4) Provisions for when the State agency administers area agency on aging programs as provided for in section 306(f) (42 U.S.C. 3026(f)), where the Assistant Secretary for Aging may extend the 90-day period if the State agency requests an extension and demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension; and

(5) If a State previously designated the entire State as a single planning and service area, provisions for when the State agency designates one or more additional planning and service areas.

(b) For any of the actions listed in (a), the State agency must submit a State plan amendment as set forth in § 1321.31(b) or State plan as set forth in § 1321.33;

(c) An area agency may be any of the following types of agencies:

(1) An established office of aging which is operating within a planning and service area;

(2) Any office or agency of a unit of general purpose local government, which is designated to function for the purpose of serving as an area agency on aging by the chief elected official of such unit;

(3) Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of such combination for such purpose; or

(4) Any non-State, local public or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of the designated State agency and which demonstrates the ability to and will engage in the planning or provision of a broad range of services under the Act within such planning and service area.

(d) A State may not designate any regional or local office of the State as an area agency.

§ 1321.21 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act, regulations and other guidance as set forth by the Assistant Secretary for Aging, terms and conditions of Federal grant awards under the Act, or policies and procedures established and published by the State agency on aging;

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act;

(5) The State agency changes one or more planning and service area designations; or

(6) The area agency voluntarily requests the State withdraw its designation.

(b) If a State agency withdraws an area agency's designation under this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area;

(2) Submit a State plan amendment as set forth in § 1321.31(b) or State plan as set forth in § 1321.33; and

(3) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Assistant Secretary for Aging may extend the 180-day period if a State agency:

(1) Notifies the Assistant Secretary for Aging in writing of its action under of this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension. Need for the extension may include the State agency's reasonable but unsuccessful attempts to procure an applicant to serve as the area agency. Reasonable attempts include conducting a procurement for an applicant to serve as an area agency no less than once per State plan on aging period.

§ 1321.23 Appeal to the Departmental Appeals Board on area agency on aging withdrawal of designation.

(a) This section sets forth hearing procedures afforded to affected parties if the State agency initiates an action or proceeding to withdraw designation of an area agency on aging.

(b) Any area agency on aging that has appealed a State's decision to withdraw area agency on aging designation, and that has been provided a hearing and a written decision, may appeal the decision to the Departmental Appeals Board in writing following receipt of the State's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency and include a certificate of service with its initial filing. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§ 1321.25 Duration, format, and effective date of the State plan.

(a) A State will follow the guidance issued by the Assistant Secretary for Aging regarding duration and formatting of the State Plan. Unless otherwise indicated, a State may determine the format, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment identified in § 1321.31(a) becomes effective on the date designated by the Assistant Secretary for Aging.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval as identified in until it is approved.

§ 1321.27 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act (42 U.S.C. 3026). In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification of the sole State agency that the State has designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III and Title VII of the Act and any objectives established by the Assistant Secretary for Aging.

(c) Evidence that the State plan is informed by and based on area plans.

(d) A description of how greatest economic need and greatest social need are determined and addressed by specifying:

(1) How the State defines greatest economic need and greatest social need, which shall include the following populations:

(i) Persons with physical and mental disabilities;

(ii) Persons with language barriers;

(iii) Members of religious minorities;

(iv) Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons;

(v) Persons living with HIV or AIDS;

(vi) Persons living with chronic conditions;

(vii) Persons living with housing instability, food insecurity, lack of transportation, or utility assistance needs;

(viii) Persons with interpersonal safety concerns;

(ix) Persons who live in rural areas;

(x) Persons who experience cultural, social, or geographical isolation caused by racial or ethnic status;

(xi) Native American persons;

(xii) Persons otherwise adversely affected by persistent poverty or inequality as defined by the State that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently; and

(xiii) As specified in guidance as set forth by the Assistant Secretary for Aging.

(2) How the State will target services to the populations identified in § 1321.27(d)(1), including in how funds under the Act are distributed in accordance with requirements as set forth in § 1321.49 or § 1321.51, as appropriate.

(e) An intrastate funding formula or funds distribution plan indicating the proposed use of all Title III funds administered by a State agency, and the distribution of Title III funds to each planning and service area, in accordance with § 1321.49 or § 1321.51, as appropriate.

(f) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if applicable.

(g) Demonstration that the services provided under this part will be coordinated, where applicable, with the services provided under Title VI of the Act and that the State agency shall require area agencies to provide outreach where there are older Native Americans in any planning and service area.

(h) Certification that any program development and coordination activities shall meet the following requirements:

(1) The State agency shall not fund program development and coordination activities as a cost of supportive services under area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

(2) Program development and coordination activities must only be expended as a cost of State plan administration, area plan administration, and/or Title III–B supportive services;

(3) State agencies and area agencies on aging shall, consistent with the area plan and budgeting cycles, submit the details of proposals to pay for program development and coordination as a cost of Title III–B supportive services to the general public for review and comment; and

(4) Expenditure by the State agency and area agency on program development and coordination activities are intended to have a direct and positive impact on the enhancement of services for older persons and family caregivers in the planning and service area.

(i) Specification of the minimum proportion of funds that will be expended by each area agency on aging and the State agency to provide each of the following categories of services:

(1) Access to services;

(2) In-home supportive services; and

(3) Legal assistance, as set forth in § 1321.93.

(j) If the State agency allows for Title III–C–1 funds to be used as set forth in § 1321.87(a)(1)(A):

(1) Evidence, using participation projections based on existing data, that provision of such meals will enhance and not diminish the congregate meals program, and a commitment to monitor the impact on congregate meals program participation;

(2) Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need;

(3) Description of the eligibility criteria for service provision;

(4) Evidence of consultation with area agencies on aging, nutrition and other direct services providers, other stakeholders, and the general public regarding the provision of such meals; and

(5) Description of how provision of such meals will be coordinated with area agencies on aging, nutrition and other direct services providers, and other stakeholders.

(k) How the State agency will use funds for prevention of elder abuse, neglect, and exploitation as set forth in 45 CFR part 1324, subpart B.

(l) How the State agency will meet responsibilities for the Legal Assistance Developer, as set forth in § 1324 Subpart C.

(m) Description of how the State agency will conduct monitoring that the assurances to which they attest are being met.

§ 1321.29 Public participation.

The State agency shall:

(a) Have mechanisms and varied methods to obtain the views of older persons, family caregivers, service providers, and the public on a periodic basis, with a focus on those in greatest economic need and greatest social need;

(b) Consider those views in developing and administering the State plan and policies and procedures regarding services provided under the plan;

(c) Establish and comply with a minimum time period for public review and comment on new State plans as set forth in § 1321.27 and State plans requiring approval of the Assistant Secretary for Aging as set forth in § 1321.31(a);

(d) Ensure the documents noted in (c) and final State plans and amendments are available to the public for review, as well as available in alternative formats and other languages if requested.

§ 1321.31 Amendments to the State plan.

(a) Subject to prior approval by the Assistant Secretary for Aging, a State agency shall amend the State plan whenever necessary to reflect:

(1) New or revised statutes or regulations as determined by the Assistant Secretary for Aging;

(2) An addition, deletion, or change to a State's goal, assurance, or information requirement Statement;

(3) A change in the State's intrastate funding formula or funds distribution plan for Title III funds;

(4) A request to waive State plan requirements as set forth in section 316 of the Act, or as required by guidance as set forth by the Assistant Secretary for Aging; or

(5) Other changes as required by guidance as set forth by the Assistant Secretary for Aging.

(b) A State agency shall amend the State plan and notify the Assistant Secretary for Aging of an amendment not requiring prior approval whenever necessary to reflect:

(1) A significant change in a State law, organization, policy, or State agency operation;

(2) A change in the name or organizational placement of the State agency;

(3) A request to distribute State plan administration funds for demonstration projects;

(4) A change in planning and service area designation, as set forth in § 1321.13;

(5) A change in area agency on aging designation, as set forth in § 1321.19;

(6) A request to use funds set aside to address disasters set forth in § 1321.99; or

(7) A request to exercise major disaster declaration flexibilities as set forth in § 1321.101;

(c) Information required by this section shall be submitted according to guidelines prescribed by the Assistant Secretary for Aging.

§ 1321.33 Submission of the State plan or plan amendment to the Assistant Secretary for Aging for approval.

(a) Each State plan, or plan amendment which requires approval of the Assistant Secretary for Aging as set forth at § 1321.31(a), shall be signed by the Governor or the Governor's designee and submitted to the Assistant Secretary for Aging to be considered for approval before the proposed effective date of the plan or plan amendment according to guidance as set forth by the Assistant Secretary for Aging.

(b) In advance of the submission to the Assistant Secretary for Aging to be considered for approval, the State agency shall submit a draft of the plan or amendment to the appropriate ACL Regional Office at least 120 calendar days before the proposed effective date of the plan or plan amendment, except in the case of a waiver request or as otherwise provided in guidance as set forth by the Assistant Secretary for Aging. The State agency shall work with the ACL Regional Office in reviewing the plan or plan amendment for compliance.

§ 1321.35 Notification of State plan or State plan amendment approval or disapproval for changes requiring Assistant Secretary for Aging approval.

(a) The Assistant Secretary for Aging shall approve a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Assistant Secretary for Aging proposes to disapprove a State plan or amendment, the Assistant Secretary for Aging shall notify the Governor in writing, giving the reasons for the proposed disapproval, and inform the State agency that it may request a hearing on the proposed disapproval following the procedures specified in and in accordance with guidance as set forth by the Assistant Secretary for Aging.

§ 1321.37 Notification of State plan amendment receipt for changes not requiring Assistant Secretary for Aging approval.

The State agency shall submit an amendment not requiring Assistant Secretary for Aging approval as set forth at § 1321.31(b) to the appropriate ACL Regional Office. The ACL Regional Office shall review the amendment to confirm the contents do not require approval of the Assistant Secretary for Aging and will acknowledge receipt of the State plan amendment by notifying the head of the State agency in writing.

§ 1321.39 Appeals to the Departmental Appeal Board regarding State Plan on Aging.

If the Assistant Secretary for Aging intends to disapprove a State plan or State plan amendment, the Assistant Secretary for Aging shall first afford the State notice and an opportunity for a hearing. Administrative reviews of State plan disapprovals, as provided for in section 307(c) and section 307(d) (42 U.S.C. 3026(d)) of the Act are performed by the Department Appeals Board in accordance with the procedures set

forth in 45 CFR part 16. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§ 1321.41 When a disapproval decision is effective.

(a) The Assistant Secretary for Aging shall specify the effective date for reduction and withholding of the State's grant upon a disapproval decision from the Departmental Appeals Board. This effective date may not be earlier than the date of the Departmental Appeal Board's decision or later than the first day of the next calendar quarter.

(b) A disapproval decision issued by the DAB represents the final determination of the Assistant Secretary for Aging and shall remain in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Assistant Secretary for Aging may modify or set aside the decision before the record of the proceedings under this subpart is filed in court.

§ 1321.43 How the State may appeal the Departmental Appeal Board's decision.

A State may appeal the final decision of the Departmental Appeals Board disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State shall file the appeal within 30 days of the Departmental Appeal Board's final decision.

§ 1321.45 How the Assistant Secretary for Aging may reallot the State's withheld payments.

The Assistant Secretary for Aging may disburse funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-Federal share requirements.

§ 1321.47 Conflicts of interest policies and procedures for State agencies.

(a) State agencies must have policies and procedures regarding conflicts of interest, in accordance with the Act and guidance as set forth by the Assistant Secretary for Aging. These policies and procedures must safeguard against conflicts of interest on the part of the State, employees, and agents of the State who have responsibilities relating to Title III programs, including area agencies on aging, governing boards, advisory councils, staff, and volunteers. Conflicts of interest policies and procedures must establish mechanisms to identify, avoid, remove, and remedy conflicts of interest in a Title III program at organizational and individual levels, including:

(1) Ensuring that State employees and agents administering Title III programs do not have a financial interest in a Title III program;

(2) Removing and remedying actual, perceived, or potential conflicts that arise due to an employee or agent's financial interest in a Title III program;

(3) Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in a Title III program;

(4) Ensuring that no individual, or member of the immediate family of an individual, involved in administration or provision of a Title III program has a conflict of interest;

(5) Requiring that other agencies that operate a Title III program have policies in place to prohibit the employment or appointment of Title III program decision-makers, staff, or volunteers with a conflict that cannot be adequately removed or remedied;

(6) Requiring that a Title III program takes reasonable steps to suspend or remove Title III program responsibilities of an individual who has a conflict of interest, or who has an immediate family member with a conflict of interest, which cannot be adequately removed or remedied;

(7) Ensuring that no organization which provides a Title III service is subject to a conflict of interest;

(8) Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or subrecipients, except where policies and procedures allow for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value; and

(9) Establishing the actions the State agency will require a Title III program to take in order to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program.

(b) Individual conflicts include:

(1) An employee, or immediate member of an employee's family, maintaining ownership, employment, consultancy, or fiduciary interest in a Title III program organization or awardee when that employee or immediate family member is in a position to derive personal benefit from actions or decisions made in their official capacity.

(2) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust;

(3) One or more conflicts between competing duties; and

(4) Other conflicts of interest as identified in guidance as set forth by the Assistant Secretary for Aging and/or by State agency policies.

(c) Organizational conflicts include:

(1) One or more conflicts between competing duties, programs, and/or services; and

(2) Other conflicts of interest as identified in guidance as set forth by the Assistant Secretary for Aging and/or by State agency policies.

§ 1321.49 Intrastate funding formula.

(a) The State agency of a State with multiple planning and service areas, as part of its State plan, in accordance with guidelines issued by the Assistant Secretary for Aging, using the best available data, and after consultation with all area agencies on aging in the State, shall develop and publish for review and comment by older persons, family caregivers, other appropriate agencies and organizations, and the general public, an intrastate funding formula for the allocation of funds to area agencies on aging under Title III for supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver services prior to taking the steps as set forth in § 1321.33. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic need or greatest social need with particular attention to low-income minority individuals. A separate formula may be provided for the evidence-based disease prevention and health promotion allocation to target areas that are medically underserved and in which there are large numbers of older individuals who have the greatest economic need or greatest social need for such services. The State agency shall review, update, and submit for approval to the Assistant Secretary for Aging its formula as needed.

(b) The publication for review and comment required by the preceding paragraph shall include:

(1) A descriptive Statement of the formula's assumptions and goals, and the application of the definitions of greatest economic need or greatest social need, including addressing the populations identified pursuant to

§ 1321.27(d)(1), which includes the following components:

(i) A Statement that discloses if and how, prior to distribution under the intrastate funding formula to the area agencies on aging, funds are deducted from Title III funds for State plan administration, disaster set-aside funds as set forth in § 1321.99, and/or Long-Term Care Ombudsman allocations;

(ii) A Statement that describes if a separate formula will be used for evidence-based disease prevention and health promotion allocation; and

(iii) A Statement of how the State's Nutrition Services Incentive Program award will be distributed.

(2) A numerical mathematical Statement of the actual funding formula to be used for all supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver allocations of Title III funds, including the separate numerical mathematical Statement that may be provided for the evidence-based disease prevention and health promotion allocation, which includes:

(i) A descriptive Statement of each factor and the weight or percentage used for each factor; and

(ii) Definitions of the terms used in the numerical mathematical statement;

(3) A listing of the population, economic, and social data to be used for each planning and service area in the State;

(4) A demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State by Part of Title III; and

(5) The source of the best available data used to allocate funding through the intrastate funding formula, which may include:

(i) The most current U.S. Decennial Census results.

(ii) The most current and reliable American Community Survey results; and/or

(iii) other high-quality data available to the State.

(c) In meeting the requirement in paragraph (a) of this section, the intrastate funding formula may not allow for:

(1) The State to hold funds at the State level except as outlined in § 1321.49(b)(1)(i) above;

(2) Exceeding the State plan and area plan administration caps set in the Act, as set forth at § 1321.9(c)(2)(iv);

(3) Use of Title III–D funds for area plan administration;

(4) A State agency to directly provide Title III funds to any entity other than a designated area agency on aging, with the exception of State plan administration funds, Title III–B Ombudsman funds, and disaster set-aside funds as described in § 1321.99; or

(5) Any other use in conflict with the Act.

(d) In meeting the requirement in paragraph (b)(1)(iii) of this section, the following apply:

(1) Cash must be promptly and equitably disbursed to recipients of grants or contracts for nutrition projects under the Act;

(2) The Statement of distribution of grant funds and procedures for determining any commodities election amount must be followed;

(3) States have the option to receive grant as cash and/or agricultural commodities; and

(4) States may consult with the area agencies on aging to determine the amount of the commodities election.

(e) In meeting the requirements in this section, the following apply:

(1) Title VII funds are not required to be subject to the intrastate funding formula;

(2) Any funds allocated for the Long-Term Care Ombudsman program under Title III–B are not required to be subject to the intrastate funding formula;

(3) The intrastate funding formula may provide for a separate allocation of funds received under Title III–D for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(i) Which are medically underserved; and

(ii) In which there are large numbers of individuals who have the greatest economic need and greatest social need for such services, including the populations the State agency identifies pursuant to § 1321.27(d)(1).

(4) The State agency may determine the amount of funds available for area plan administration prior to deducting Title III–B Ombudsman funds and disaster set-aside funds as described in § 1321.99.

(5) After deducting any State plan administration funds, Title III–B Ombudsman funds, and disaster set-aside funds as described in § 1321.99, the State agency must allocate all other Title III funding to area agencies on aging designated to serve each planning and service area.

(6) States may reallocate funding within the State when an area agency on aging voluntarily or otherwise returns funds, subject to the State agency's policies and procedures which must include the following:

(i) If an area agency voluntarily returns funds, the area agency on aging must provide evidence that its governing board or chief elected official approves the return of funds;

(ii) Funds must be made available to all area agencies on aging who request funds available for reallocation;

(iii) The intrastate funding formula shall be proportionally adjusted based on area agencies on aging that request redistributed allocations; and

(iv) Title III funds subject to reallocation may only be reallocated to area agencies on aging via the proportionally adjusted intrastate funding formula described in paragraph (a) of this section.

(f) The State agency shall submit its proposed intrastate funding formula to the Assistant Secretary for Aging for prior approval as part of a State plan or State plan amendment as set forth in § 1321.33.

§ 1321.51 Single planning and service area states.

(a) Unless otherwise specified, the State agency in single planning and service States must meet the requirements in the Act and subpart C of this part, including maintaining an advisory council as set forth in § 1321.63.

(b) As part of their State plan submission, single planning and service area states must provide a funds distribution plan which includes:

(1) A descriptive Statement as to how the State determines the geographical distribution of the Title III and Nutrition Services Incentive Program funding;

(2) How the State targets the funding to reach individuals with greatest economic need and greatest social need, with particular attention to low-income minority older individuals;

(3) At the option of the State agency, a numerical/mathematical Statement as a part of their funds distribution plan; and

(4) Justification if the State agency determines it meets requirements to provide services directly where:

(i) As set forth in section 307(a)(8)(A) (42 U.S.C. 3026(a)(8)(A)), no supportive services, except as set forth in paragraph (b)(4)(i)(B) of this section, nutrition services, disease prevention and health promotion, or family caregiver services will be directly provided by the State agency, unless, in the judgment of the State agency:

(A) Provision of such services by the State agency is necessary to assure an adequate supply of such services;

(B) Such services are directly related to such State agency's administrative functions; or

(C) Such services may be provided more economically, and with comparable quality, by such State agency.

(ii) The State agency may directly provide case management, information and assistance services, and outreach.

(iii) Approval of the State agency to provide direct services may only be granted for a maximum of the State plan period. For each time that approval is granted to a State agency to provide direct services, the State agency must demonstrate the State agency's efforts to identify service providers prior to being granted a subsequent approval.

(c) Single planning and service area states must adhere to use of the funds distribution plan for Title III and Nutrition Services Incentive Program funds within the State. If a single planning and service area state revises their Title III funds distribution plan, they may do so by:

(1) Following their policies and procedures to publish the updated funds distribution plan for public review and comment; and

(2) Submitting the revised funds distribution plan for Assistant Secretary for Aging approval prior to implementing the changes as noted at § 1321.33.

§ 1321.53 State agency Title III and Title VI coordination responsibilities.

States must have policies and procedures that explain how they will coordinate with any Title VI funded Tribal organization providing services to eligible tribal elders and family caregivers. State agencies may meet these requirements through a tribal consultation policy that includes Title VI-funded aging services and programs. Policies and procedures shall address:

(a) How the State's aging network, including area agencies on aging and service providers, will provide outreach to tribal elders and family caregivers regarding services for which they may be eligible under Title III; and

(b) How the State's aging network, including area agencies on aging and service providers, will coordinate with Title VI programs including:

(1) Communication opportunities States will make available to Title VI programs, such as meetings, email distribution lists, and public hearings;

(2) Methods for collaboration on and sharing of program information, including coordinating with area agencies if applicable; and

(3) Processes for how Title VI programs may refer individuals who are eligible for Title III services.

Subpart C—Area Agency Responsibilities

§ 1321.55 Mission of the area agency.

(a) The Act intends that the area agency on aging shall be the lead on all aging issues on behalf of all older persons and family caregivers in the planning and service area. The area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions including advocacy, planning, coordination, inter-agency collaboration, information sharing, monitoring, and evaluation. The area agency shall lead the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons and family caregivers in leading independent, meaningful, healthy, and dignified lives in their own homes and communities.

(b) A comprehensive and coordinated community-based system described in of this section shall:

(1) Have a point of contact where anyone may go or contact for help, information or referral on any aging issue;

(2) Provide information on a range of available public and private long-term care services and support options;

(3) Assure that these options are readily accessible to all older persons and family caregivers, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, faith-based, civic, and fraternal organizations, including trusted leaders of communities in greatest economic need or greatest social need, and older persons and family caregivers in the community;

(6) Offer special help or targeted resources for the most vulnerable older persons, family caregivers, and those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information and/or assistance is provided, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for vulnerable older persons or family caregivers;

(9) Be tailored to the specific nature of the community and the needs of older adults in the community; and

(10) Have a board of directors comprised of leaders in the community, including leaders from groups identified as in greatest economic need and greatest social need, who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change, and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Act shall be used consistent with the definition of area plan administration as set forth in § 1321.3 to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section and consistent with the requirements for provision of direct services as set forth in §§ 1321.85 through 1321.93.

(d) The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.9.

§ 1321.57 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons and family caregivers; or

(2) A separate organizational unit within a multi-purpose agency which functions as the area agency on aging. Where the State agency designates a separate organizational unit of a multipurpose agency that has previously been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act (42 U.S.C. 3025(b)(5)(B)).

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to facilitate the performance of the functions as set forth in this part. Such functions, except for provision of direct services, are considered to be area plan administration functions.

(c) The designated area agency shall continue to function in that capacity until either:

(1) The State agency withdraws the designation of the area agency as provided in § 1321.21(a)(1) through (5); or

(2) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency as provided in § 1321.21(a)(6).

§ 1321.59 Area agency policies and procedures.

(a) The area agency on aging shall develop policies and procedures in compliance with State policies and procedures, including those required under § 1321.9, governing all aspects of programs operated under this part, including those related to conflict of interest, and be in alignment with the Act and guidance as set forth by the

Assistant Secretary for Aging. These policies and procedures shall be developed in consultation with other appropriate parties in the planning and service area.

(b) The policies and procedures developed by the area agency shall address the manner in which the area agency will monitor the programmatic and fiscal performance of all programs, direct service providers, and activities initiated under this part for quality and effectiveness. Quality monitoring and measurement results are encouraged to be publicly available in a format that may be understood by older persons, family caregivers, and their families.

(c) The area agency is responsible for enforcement of these policies and procedures.

(d) The area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on policies, programs, hearings, levies, and community actions which affect older persons and family caregivers;

(2) Solicit comments from the public on the needs of older persons and family caregivers;

(3) Represent the interests of older persons and family caregivers to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Coordinate with public and private organizations, including units of general purpose local government to promote new or expanded benefits and opportunities for older persons and family caregivers.

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons and family caregivers with greatest economic need or greatest social need, with particular attention to low-income minority individuals. Such activities may include location of services and specialization in the types of services most needed by these groups to meet this requirement. However, the area agency shall not permit a grantee or contractor under this part to employ a means test for services funded under this part.

(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A–122.

§ 1321.63 Area agency advisory council.

(a) Functions of council. The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons and family and older relative caregivers in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Ensuring the plan is available to older individuals, family caregivers, service providers, and the general public;

(3) Conducting public hearings;

(4) Representing the interest of older persons and family caregivers; and

(5) Reviewing and commenting on community policies, programs and actions which affect older persons and family caregivers with the intent of assuring maximum coordination and responsiveness to older persons and family caregivers.

(b) Composition of council. The council shall include individuals and representatives of community organizations from or serving the planning and service area who will help to enhance the leadership role of the area agency in developing community-based systems of services targeting those in greatest economic need and greatest social need. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part, with efforts to include those identified as in greatest economic need or greatest social need in § 1321.65(b)(2);

(2) Representatives of older persons;

(3) Family caregivers, including older relative caregivers;

(4) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(5) Representatives of service providers, which may include legal assistance, nutrition, evidence-based disease prevention and health promotion, caregiver, long-term care ombudsman, and other service providers;

(6) Persons with leadership experience in the private and voluntary sectors;

(7) Local elected officials;

(8) The general public; and

(9) As available:

(i) Representatives from Indian Tribes, Pueblos, or tribal aging programs; and

(ii) Older relative caregivers, including kin and grandparent caregivers of children or adults age 18 to 59 with a disability.

(c) Review by advisory council. The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.65 Submission of an area plan and plan amendments to the State for approval.

(a) The area agency shall submit the area plan on aging and amendments to the State agency for approval following procedures specified by the State agency in the State policies prescribed by § 1321.9.

(b) State policies and procedures regarding area plan requirements will at a minimum address the following:

(1) Content, duration, and format;

(2) That the area agency shall identify populations within the planning and service area at greatest economic need and greatest social need, which shall include the following populations:

(i) Persons with physical and mental disabilities;

(ii) Persons with language barriers;

(iii) Members of religious minorities;

(iv) Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons;

(v) Persons living with HIV or AIDS;

(vi) Persons living with chronic conditions;

(vii) Persons living with housing instability, food insecurity, lack of transportation, or utility assistance needs;

(viii) Persons with interpersonal safety concerns;

(ix) Persons who live in rural areas;

(x) Persons who experience cultural, social, or geographical isolation caused by racial or ethnic status;

(xi) Native American persons;

(xii) Persons otherwise adversely affected by persistent poverty or inequality as defined by the State agency and/or area agency on aging that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently; and

(xiii) As specified in guidance as set forth by the Assistant Secretary for Aging.

(3) Assessment and evaluation of unmet need, such that each area agency shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, evidence-based disease prevention and health promotion, family caregiver support, and multipurpose senior centers. The evaluations for each area agency shall consider all services in these categories regardless of the source of funding for the services;

(4) Public participation specifying mechanisms to obtain the periodic views of older persons, family caregivers, service providers, and the public with a focus on those on those in greatest economic need and greatest social need, including:

(i) A minimum time period for public review and comment on area plans and area plan amendments; and

(ii) Ensuring the documents noted in (i) and final area plans and amendments are accessible in a public location, as well as available in print by request.

(5) The services, including a definition of each type of service; the number of individuals to be served; the type and number of units to be provided; and corresponding expenditures proposed to be provided with funds under the Act and related local public sources under the area plan;

(6) Plans for how direct services funds under the Act will be distributed within the planning and service area, in order to address populations identified as in greatest social need and greatest economic need, as identified in § 1321.27(d)(1);

(7) Process for determining whether the area agency meets requirements to provide services directly where:

(i) As set forth in section 307(a)(8)(A) (42 U.S.C. 3027(a)(8)(A)), no supportive services, nutrition services, disease prevention and health promotion, or family caregiver services will be directly provided by an area agency on aging in the State, unless, in the judgment of the State agency—

(A) Provision of such services by the area agency on aging is necessary to assure an adequate supply of such services;

(B) Such services are directly related to such area agency on aging's administrative functions; or

(C) Such services may be provided more economically, and with comparable quality, by such area agency on aging.

(ii) At its discretion, the State agency may waive the conditions set forth in § 1321.65(b)(7)(i) and allow area agencies on aging to directly provide the supportive services of case management, information and assistance services, and outreach without additional restriction.

(iii) Approval of the area agency to provide direct services shall only be granted for a maximum of the area plan period. For each time approval is granted to an area agency to provide direct services, the area agency must demonstrate the area agency's efforts to identify service providers prior to being granted a subsequent approval.

(8) Minimum adequate proportion requirements, as identified in the approved State plan as set forth in § 1321.27;

(9) Requirements for program development and coordination activities as set forth in § 1321.27(h), if allowed by the State agency;

(10) If the area agency requests to allow Title III–C–1 funds to be used as set forth in § 1321.87(a)(1)(i) through (iii), it must provide the following information to the State agency:

(i) Evidence, using participation projections based on existing data, that provision of such meals will enhance and not diminish the congregate meals program, and a commitment to monitor impact on congregate meals program participation;

(ii) Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need;

(iii) Description of the eligibility criteria for service provision;

(iv) Evidence of consultation with nutrition and other direct services providers, other stakeholders, and the general public regarding the need for and provision of such meals; and

(v) Description of how provision of such meals will be coordinated with nutrition and other direct services providers and other stakeholders.

(11) Initial submission and amendments;

(12) Approval by the State agency; and

(13) Appeals regarding area plans on aging.

(c) Area plans shall incorporate services which address the incidence of hunger, food insecurity and malnutrition; social isolation; and physical and mental health conditions.

(d) Pursuant to section 306(a)(16) of the Act, area plans shall provide, to the extent feasible, for the furnishing of services under this Act, through self-direction.

(e) Area plans on aging shall develop objectives that coordinate with and reflect the State Plan goals for services under the Act.

§ 1321.67 Conflicts of interest policies and procedures for Area Agencies on Aging.

(a) The area agency must have policies and procedures regarding conflicts of interest in accordance with the Act, guidance as set forth by the Assistant Secretary for Aging, and State policies and procedures as set forth at § 1321.47. These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board and advisory council members, and awardees who have responsibilities relating to the area agency's grants and contracts. Conflicts of interest policies and procedures must establish mechanisms to avoid both actual and perceived conflicts of interest and to identify, remove, and remedy any existing or potential conflicts of interest at organizational and individual levels, including:

(1) Reviewing service utilization and financial incentives to ensure agency employees, governing board and advisory council members, grantees, contractors, and other awardees who serve multiple roles, such as assessment and service delivery, are appropriately stewarding Federal resources while fostering services to enhance access to community living;

(2) Ensuring that the area agency on aging employees and agents administering Title III programs do not have a financial interest in Title III programs;

(3) Complying with 45 CFR 1324.21 regarding the Ombudsman program, as appropriate;

(4) Removing and remedying any actual, perceived, or potential conflict between the area agency on aging and the area agency on aging employee or contractor's financial interest in a Title III program;

(5) Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in the Title III program;

(6) Ensuring that no individual, or member of the immediate family of an individual, involved in Title III programs has a conflict of interest;

(7) Requiring that agencies to which the area agency provides Title III funds have policies in place to prohibit the employment or appointment of Title III program decision makers, staff, or volunteers with conflicts that cannot be adequately removed or remedied;

(8) Requiring that Title III programs take reasonable steps to refuse, suspend

or remove Title III program responsibilities of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, that cannot be adequately removed or remedied;

(9) Complying with the State agency's periodic review and identification of conflicts of the Title III program;

(10) Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or subrecipients, except where policies and procedures allow for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value; and

(11) Establishing the actions the area agency will require Title III programs to take in order to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program.

(b) [Reserved]

§ 1321.69 Area Agency on Aging Title III and Title VI coordination responsibilities.

(a) For planning and service areas where there are Title VI programs, the area agency's policies and procedures must explain how the area agency's aging network, including local service providers, will coordinate with Title VI programs. Such policies and procedures must at a minimum address:

(1) How outreach will be provided to tribal elders and family caregivers regarding services for which they may be eligible under Title III;

(2) The communication opportunities the area agency will make available to Title VI programs, such as meetings, email distribution lists, and public hearings;

(3) The methods for collaboration on and sharing of program information and changes;

(4) How Title VI programs may refer individuals who are eligible for Title III services; and

(5) How services will be provided in a culturally appropriate manner.

(b) Policies and procedures may also address:

(1) Opportunities to serve on area agency advisory councils, workgroups, and boards, and

(2) Opportunities to receive notice of Title III and other funding opportunities via the area agency.

Subpart D—Service Requirements

§ 1321.71 Purpose of services allotments under Title III.

(a) Title III of the Act authorizes the distribution of Federal funds to the State agency on aging for the following categories of services:

(1) Supportive services;

(2) Nutrition services;

(3) Evidence-based disease prevention and health promotion services; and

(4) Family caregiver support services.

(b) Funds authorized under these categories are for the purpose of assisting the State agency and its area agencies to develop, provide, or enhance for older persons and family caregivers comprehensive and coordinated community-based direct services and systems.

(c) Except for Ombudsman services, State plan administration, disaster assistance as noted at §§ 1321.99 through 101, or as otherwise allowed in the Act, State agencies on aging with multiple planning and service areas will award the funds made available under of this section to designated area agencies on aging according to the approved intrastate funding formula as set forth in § 1321.9.

(d) Single planning and service area states shall award funds by grant or contract to community services provider agencies and organizations for direct services to older persons and family caregivers in, or serving, communities throughout the planning and service area, except as set forth in § 1321.51(b)(4).

(e) Except where the State agency approves the area agency to provide direct services, as set forth in § 1321.65(b)(7), after subtracting funds for area plan administration as set forth in § 1321.9(c)(2)(iv)(B) and program development and coordination activities, if allowed by the State agency, as set forth in § 1321.27(h), area agencies shall award these funds by grant or contract to community services provider agencies and organizations for direct services to older persons and family caregivers in, or serving, communities throughout the planning and service area.

§ 1321.73 Policies and procedures.

(a) The area agency on aging and/or local service provider shall ensure the development and implementation of policies and procedures in accordance with State agency policies and procedures, including those required as set forth in § 1321.9. The State agency may allow for policies and procedures to be developed by the subrecipient(s), except as set forth at § 1321.9(a) and § 1321.9(c)(2)(xi) and where otherwise specified.

(b) The area agency on aging and/or local service provider will provide the State agency in a timely manner, with statistical and other information which the State agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.9;

(c) The State agency and/or area agencies on aging must develop an independent qualitative and quantitative monitoring process ensuring the quality and effectiveness of services regarding meeting participant needs, the goals described within the State and/or area plan, and State and local requirements, as well as conflicts of interest policies and procedures. Quality monitoring and measurement results are encouraged to be made available to the public in plain language format designed to support and provide information and choice among persons and families receiving services.

§ 1321.75 Confidentiality and disclosure of information.

(a) State agencies and area agencies on aging shall have procedures to protect the confidentiality of information about older persons and family caregivers collected in the conduct of their responsibilities. The procedures shall ensure that no information about an older person or family caregiver, or obtained from an older person or family caregiver by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of their legal representative, unless the disclosure is required by court order, or for program monitoring and evaluation by authorized Federal, State, or local monitoring agencies.

(b) A State agency, area agency on aging or other contracting or granting or auditing agency may not require a provider of long-term care ombudsman services under this part to reveal any information that is protected by disclosure provisions in 45 CFR 1324, subpart A—State Long-Term Care Ombudsman Program. State agencies must comply with confidentiality and disclosure of information provisions as directed in 45 CFR 1324, as appropriate.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

(d) State agencies must have policies and procedures that ensure that entities providing services under this title promote the rights of each older

individual who receives such services. Such rights include the right to confidentiality of records relating to such individual.

(e) State agencies' policies and procedures must explain that individual information and records may be shared with other State and local agencies, community-based organizations, and health care providers and payers in order to provide services.

(f) State agencies' policies and procedures must comply with all applicable Federal laws, codes, rules, and regulations, including the Health Insurance and Portability and Accountability Act (HIPAA), as well as guidance as the State determines, for the collection, use, and exchange of both Personal Identifiable Information (PII) and Personal Health Information (PHI) in the provision of Title III services under the Act.

§ 1321.77 Purpose of services—person- and family-centered, trauma-informed.

(a) Services must be provided to older adults and family caregivers in a manner that is person-centered, trauma-informed, and culturally sensitive. Services should be responsive to their interests, physical and mental health, social and cultural needs, available supports, and desire to live where and with whom they choose.

(b) Services should, as appropriate, provide older adults and family caregivers with the opportunity to develop a person-centered plan that is led by the individual or, if applicable, by the individual and the individual's authorized representative. Services should be incorporated into existing person-centered plans, as appropriate.

(c) State and area agencies and service providers should provide training to staff and volunteers on person-centered and trauma-informed service provision.

§ 1321.79 Responsibilities of service providers under State and area plans.

As a condition for receipt of funds under this part, each State agency and/or area agency on aging shall assure that providers of services shall:

(a) Specify how the provider intends to satisfy the service needs of those identified as in greatest economic need or greatest social need, with a focus on low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons and family caregivers in the population serviced by the provider;

(b) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.9(c)(2)(x) or § 1321.9(c)(2)(xi);

(c) Pursuant to section 306(a)(16) of the Act (42 U.S.C. 3026(a)(16)), provide, to the extent feasible, for the furnishing of services under this Act through self-direction.

(d) With the consent of the older person, or, if there is one, their legal representative, or in accordance with local adult protective services requirements, bring to the attention of adult protective services or other appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons and family caregivers in weather-related and other emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.81 Client eligibility for participation.

(a) An individual must be age 60 or older at the time of service to be eligible to participate in services under the Act, unless the Act otherwise provides an explicit exception. Exceptions are limited to the following specific services:

(1) Nutrition services:

(i) Services shall be available to spouses of any age of older persons;

(ii) Services may be available to:

(A) A person with a disability who lives with an adult age 60 or older or who resides in a housing facility that is primarily occupied by older adults at which congregate meals are served; and

(B) A volunteer during meal hours

(2) Family caregiver support services for:

(i) Adults caring for older adults or individuals of any age with Alzheimer's or related disorder;

(ii) Older relative caregivers age 55 or older who are caring for children and are not the biological or adoptive parent of the child, where older relative caregivers shall no longer be eligible for services under this part when the child reaches 18 years of age; or

(iii) Older relative caregivers age 55 or older who are caring for individuals age 18 to 59 with disabilities and who may be of any relationship, including the biological or adoptive parent.

(3) Services such as information and assistance and public education, where recipients of information may not be age 60 or older, but the information is targeted to those who are age 60 or older and/or benefits those who are age 60 or older.

(b) States, area agencies on aging, and local service providers may develop further eligibility requirements for implementation of services for older adults and family caregivers, as long as they do not conflict with the Act, this part, or guidance as set forth by the Assistant Secretary for Aging. Such requirements may include:

(1) Assessment of greatest social need;

(2) Assessment of greatest economic need;

(3) Assessment of functional and support need;

(4) Geographic boundaries;

(5) Limitations on number of persons that may be served;

(6) Limitations on number of units of service that may be provided;

(7) Limitations due to availability of staff/volunteers;

(8) Limitations to avoid duplication of services; and

(9) Specification of settings where services shall or may be provided.

§ 1321.83 Client and service priority.

(a) The State agency and/or area agency shall ensure service to those identified as members of priority groups through assessment of local needs and resources.

(b) The State agency and/or area agency shall identify criteria for being given priority in the delivery of services under Title III, Parts B, C and D, in accordance with the Act and guidance as set forth by the Assistant Secretary for Aging.

(c) The State agency and/or area agency shall identify criteria for being given priority in the delivery of services under Title III, Part E, in accordance with the Act and guidance as set forth by the Assistant Secretary for Aging to include:

(1) caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals);

(2) caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(3) when serving older relative caregivers, older relative caregivers of children with severe disabilities or individuals with severe disabilities shall be given priority.

§ 1321.85 Supportive services.

(a) Supportive services are community-based interventions set forth

in the Act under Title III Part B, section 321 (42 U.S.C. 3030d) which meet standards established by the Assistant Secretary for Aging. They include in-home supportive services, access services, which may include multipurpose senior centers, and legal services.

(b) State agencies may allow use of Title III, Part B funds for acquiring, altering or renovating, or constructing facilities to serve as multipurpose senior centers, in accordance with guidance as set forth by the Assistant Secretary for Aging.

(c) For those Title III, Part B services intended to benefit family caregivers, such as those provided under section 321(a)(6)(C) (42 U.S.C. 3030d(a)(6)(C)), section 321(a)(19) (42 U.S.C. 3030d(a)(19)), and section 321(a)(21) (42 U.S.C. 3030d(a)(21)), State and area agencies shall ensure that there is coordination and no inappropriate duplication of such services available under Title III–E.

(d) All funds provided under Title III–B of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

§ 1321.87 Nutrition services.

(a) Nutrition services are community-based interventions as set forth in Title III, Part C of the Act, and as further defined by the Assistant Secretary for Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services.

(1) Congregate Meals are meals provided under Title III C–1 by a qualified nutrition service provider to eligible individuals and consumed while congregating virtually or in-person, except where:

(i) If included as part of an approved State plan as set forth in § 1321.27 or State plan amendment as set forth in § 1321.31(a), and area plan or plan amendment as set forth in § 1321.65 and to complement the congregate meals program, shelf-stable, pick-up, carry-out, drive-through, or similar meals may be provided under Title III C–1;

(ii) Meals provided as set forth in (A) shall:

(A) Not exceed 20 percent of the funds expended by the State agency under Title III C–1;

(B) Not exceed 20 percent of the funds expended by any area agency on aging under Title III C–1;

(iii) Meals provided as set forth in (i) may be provided to complement the congregate meal program:

(A) During disaster or emergency situations affecting the provision of nutrition services;

(B) To older individuals who have an occasional need for such meal; and/or

(C) To older individuals who have a regular need for such meal, based on an individualized assessment, when targeting services to those in greatest economic need and greatest social need.

(2) Home-delivered meals are meals provided under Title III–C–2 by a qualified nutrition service provider to eligible individuals and consumed at their residence or otherwise outside of a congregate setting, as organized by a service provider under the Act. Meals may be provided via home delivery, pick-up, carry-out or drive-through, or through other service as determined by the plan.

(i) Eligibility criteria for home-delivered meals may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability, or other relevant factors pertaining to their need for the service, including social and economic need.

(ii) Home-delivered meals service providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability.

(3) Nutrition education is information provided under Title III–C–1 or 2 which provides individuals with the knowledge and skills to make healthy food and beverage choices. Congregate and home-delivered nutrition services shall provide nutrition education, as appropriate, based on the needs of meal participants.

(4) Nutrition counseling is a service provided under Title III–C–1 or 2 which must align with the Nutrition Care Process of the Academy for Nutrition and Dietetics. Congregate and home-delivered nutrition services shall provide nutrition counseling, as appropriate, based on the needs of meal participants, and the availability of resources and of expertise of a Registered Dietitian Nutritionist.

(5) Other Nutrition Services include additional services provided under Title III–C–1 or 2 that may be provided to meet nutritional needs or preferences of eligible participants, such as weighted utensils, supplemental foods, oral nutrition supplements, or groceries.

(b) State and/or area agency policies and procedures shall define how the availability of meals five or more days per week is determined by taking into consideration availability of resources, the community's need for nutrition services as described in the State and area plan, and whether the decision will be made by each nutrition provider or meal site within a planning and service area.

(c) All funds provided under Title III–C of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

(d) Nutrition Services Incentive Program allocations are available to States and territories that provide nutrition services where:

(1) Nutrition Services Incentive Program allocation amounts are based on the number of meals reported by the State agency which meet the following requirements:

(i) The meal is served to an individual who is eligible to receive services under the Act;

(ii) The meal is served to an individual who has not been means-tested to receive the meal;

(iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service;

(iv) The meal meets the other requirements of the Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 (42 U.S.C. 3030g–22); and

(v) The meal is served by an agency that has a grant or contract with a State agency or area agency.

(2) The State agency may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities.

(3) Nutrition Services Incentive Program funds may only be used to purchase domestically-produced foods used in a meal as set forth under the Act.

(4) Nutrition Services Incentive Program funds are distributed within a State pursuant to § 1321.49(b)(1)(iii) and (d) or § 1321.51(b)(1).

§ 1321.89 Evidence-based disease prevention and health promotion services.

(a) Evidence-based disease prevention and health promotion services programs are community-based interventions as set forth in Title III, Part D of the Act, that have been proven to improve health and well-being and/or reduce risk of injury, disease, or disability among older adults. All programs provided using these funds must be evidence-based and must meet the Act's requirements and guidance as set forth by the Assistant Secretary for Aging.

(b) All funds provided under Title III–D of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

§ 1321.91 Family caregiver support services.

(a) Family caregiver support services are community-based interventions set forth in Title III, Part E of the Act, which meet standards set forth by the Assistant Secretary for Aging and which may be informed through the use of an evidence-informed or evidence-based caregiver assessment, including:

(1) Information to family caregivers about available services via public education;

(2) Assistance to family caregivers in gaining access to the services through:

(i) Individual information and assistance, or

(ii) Case management or care coordination;

(3) Individual counseling, organization of support groups, and caregiver training to assist family caregivers in those areas in which they provide support, including health, nutrition, complex medical care, and financial literacy, and in making decisions and solving problems relating to their caregiving roles;

(4) Respite care to enable family caregivers to be temporarily relieved from their caregiving responsibilities; and

(5) Supplemental services, on a limited basis, to complement the care provided by family caregivers. States and AAAs shall define ''limited basis'' for supplemental services and may consider limiting units, episodes or expenditure amounts when making this determination.

(b) State agencies shall ensure that each of the services authorized under this part are available Statewide.

(c) To provide services listed in paragraphs (a)(4) and (5) of this section to family caregivers of adults aged 60 and older or of individuals of any age with Alzheimer's disease or a related disorder, the older individual for whom they are caring must be determined to be functionally impaired because the individual:

(1) Is unable to perform at least two activities of daily living without substantial assistance, including verbal reminding, physical cueing, or supervision;

(2) At the option of the State, is unable to perform at least three such activities without such assistance; or

(3) Due to a cognitive or other mental impairment, requires substantial supervision because the individual poses a serious health or safety hazard to themself or others.

(d) All funds provided under Title III–E of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

§ 1321.93 Legal assistance.

(a) *General—Definition.* (1) The provisions and restrictions in this section apply to legal assistance funded by and provided pursuant to the Act.

(2) Legal assistance means legal advice and/or representation provided by an attorney to older individuals with economic or social needs, per section 102(33) of the Act (42 U.S.C. 3002(33)). Legal assistance may include, to the extent feasible, counseling, or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney, and counseling or representation by a non-lawyer as permitted by law.

(b) *State Agency on Aging requirements.* (1) Under section 307(a)(11) of the Act (42 U.S.C. 3027(a)(11)), the roles and responsibilities of the State agency shall include assurances for the provision of legal assistance in the State Plan as follows:

(i) Legal assistance, to the extent practicable, supplements and does not duplicate or supplant legal services provided with funding from other sources, including grants made by the Legal Services Corporation;

(ii) Legal assistance supplements existing sources of legal services through focusing legal assistance delivery and provider capacity in the specific areas of law affecting older adults with greatest economic need or greatest social need;

(iii) Reasonable efforts will be made to maintain existing levels of legal assistance for older individuals;

(iv) Advice, training, and technical assistance support for the provision of legal assistance for older adults will be made available to legal assistance providers, as provided in § 1324.303 and section 420(a)(1) of the Act (42 U.S.C. 3032i(a)(1));

(v) The State agency in single planning and service area states or area agencies on aging in States with multiple planning and service areas shall award, through contract funds, only to legal assistance providers that meet the standards and requirements as set forth in this section and section (c); and

(vi) Attorneys and personnel under the supervision of attorneys providing legal assistance shall adhere to the applicable Rules of Professional Conduct including the obligation to preserve the attorney-client privilege.

(2) As set forth in section 307(a)(2)(C) of the Act (42 U.S.C. 3027(a)(2)(C)) and § 1321.27(i)(3), the State agency shall designate the minimum proportion of Title III–B funds and require the expenditure of at least that sum by each area agency in States with multiple planning and service areas or the State agency in States with a single planning and service area for the purpose of procuring contract(s) for legal assistance.

(3) The State agency in States with a single planning and service area shall meet the requirements for area agencies on aging as set forth in § 1321.93(c).

(c) *Area Agency on Aging requirements.* (1) *Adequate proportion funding.* The area agency on aging shall award at a minimum the required adequate proportion of Title III–B funds designated by the State agency to procure legal assistance for older residents of the planning and service area as set forth in § 1321.27 and § 1321.65.

(2) *Standards for selection of legal assistance providers.* Area agencies on aging shall adhere to the following standards in selecting legal assistance providers:

(i) The area agency on aging must select and procure through contract the legal assistance provider or providers best able to provide legal assistance as provided in this paragraph (c)(2) and paragraphs (d) through (f) of this section; and

(ii) The area agency on aging must select the legal assistance provider(s) that best demonstrate the capacity to conduct legal assistance, which means having the requisite expertise and staff to fulfill the requirements of the Act, these regulations, and guidance as set forth by the Assistant Secretary for Aging for provision of legal assistance.

(d) *Standards for legal assistance provider selection.* Selected legal assistance providers shall exhibit the capacity to:

(1) Retain staff with expertise in specific areas of law affecting older persons with economic or social need, including public benefits, resident rights, and alternatives to institutionalization; and

(2) Demonstrate expertise in specific areas of law that are given priority in the Act, including income and public entitlement benefits, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination, and defense of guardianship.

(i) Defense of guardianship means advice to and representation of proposed protected persons and protected persons to divert them from guardianship to less restrictive, more person-directed forms of decisional support whenever possible, to oppose appointment of a guardian in favor of such less restrictive decisional supports,

to seek limitation of guardianship and to seek revocation of guardianship;

(ii) Defense of guardianship includes:

(A) Representation to maintain the rights of individuals at risk of guardianship, assistance removing or limiting an existing guardianship, or assistance to preserve or restore an individual's rights or autonomy. A legal assistance provider(s) shall not represent a petitioner for imposition of a guardianship except in limited circumstances involving guardianship proceedings of older individuals who seek to become guardians, when no other alternatives to guardianship are appropriate, and only if other adequate representation is unavailable in the proceedings; and

(B) Representation to promote use of least-restrictive alternatives to guardianship to preserve or restore an individual's rights and or autonomy.

(iii) Provide effective administrative and judicial advocacy in the areas of law affecting older persons with greatest economic need or greatest social need;

(iv) Support other advocacy efforts, for example, the Long-Term Care Ombudsman Program, including requiring a memorandum of agreement between the State Long-Term Care Ombudsman and the legal assistance provider(s) as required by section 712(h)(8) of the Act (42 U.S.C. 3058g(h)(8)); and

(v) Effectively provide legal assistance to older individuals residing in congregate residential long-term settings as defined in the Act in section 102(35) (42 U.S.C. 3002(35)), or who are isolated as defined in the Act in section 102(24)(c) (42 U.S.C. 3002(24)(c)), or who are restricted to the home due to cognitive or physical limitations.

(e) *Standards for contracting between Area Agencies on Aging and legal assistance providers.* (1) The area agency shall enter into a contract(s) with the selected legal assistance provider(s) that demonstrate(s) the capacity to deliver legal assistance.

(2) The contract shall specify that legal assistance provider(s) shall demonstrate capacity to:

(i) Maintain expertise in specific areas of law that are to be given priority, including: income and public entitlement benefits, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination and defense of guardianship (as defined in paragraph (c)(1)(ii)(B)(1)(ii)).

(ii) Prioritize representation and advice that focus on the specific areas of law that give rise to problems that are disparately experienced by older adults with economic or social need.

(iii) Maintain staff with the expertise, knowledge, and skills to deliver legal assistance as described in this section.

(iv) Engage in reasonable efforts to involve the private bar in legal assistance activities authorized under the Act, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis.

(v) Ensure that attorneys and personnel under the supervision of attorneys providing legal assistance will adhere to the applicable Rules of Professional Conduct including, but not limited to, the obligation to preserve the attorney-client privilege.

(3) The contract shall include provisions:

(i) Describing the duty of the area agency to refer older adults to the legal assistance provider(s) with whom the area agency contracts. In fulfilling this duty, the area agency is precluded from requiring a pre-screening of older individuals seeking legal assistance or from acting as the sole and exclusive referral pathway to legal assistance.

(ii) Requiring the contracted legal assistance provider(s) to maintain capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited English proficient (LEP), including in oral and written communication, and to ensure effective communication for individuals with disabilities, including by providing appropriate auxiliary aids and services where necessary.

(A) This includes requiring legal assistance providers take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited-English proficiency, including an individualized assessment of an individual's need to understand and participate in the legal process (as determined by each individual).

(B) This includes stating the responsibility of the legal assistance provider to provide access to interpretation and translation services to meet clients' needs.

(C) This includes taking appropriate steps to ensure communications with persons with disabilities are as effective as communication with others, including by providing appropriate auxiliary aids and services where necessary to afford qualified persons with disabilities an equal opportunity to participate in, and enjoy the benefits of, legal assistance.

(iii) Providing that the area agency will provide outreach activities that will include information about the availability of legal assistance to address problems experienced by older adults that may have legal solutions, such as those referenced in sections 306(a)(4)(B) (42 U.S.C. 3026(a)(4)(B)) and 306(a)(19) (42 U.S.C. 3026(a)(19)) in the Act. This includes outreach to:

(A) Older adults with greatest economic need due to low income and to those with greatest social need, including older adults of color; and

(B) Older adults of underserved communities, including:

(*1*) Older adults with limited-English proficiency and/or whose primary language is not English;

(*2*) Older adults with severe disabilities;

(*3*) Older adults living in rural areas;

(*4*) Older adults at risk for institutional placement; and

(*5*) Older adults with Alzheimer's disease and related disorders with neurological and organic brain dysfunction and their caregivers.

(iv) Providing that legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable State Rules of Professional Conduct.

(v) Requiring that if legal assistance provider(s) contracted by the area agency is located within a Legal Services Corporation grantee entity, that the legal assistance provider(s) shall adhere to the specific restrictions on activities and client representation and regulations promulgated contained in the Legal Services Corporation Act. Exempted from this requirement are:

(A) Restrictions governing eligibility for legal assistance under such Act;

(B) Restrictions for membership of governing boards; and

(C) Any additional provisions as determined appropriate by the Assistant Secretary for Aging.

(f) *Legal assistance provider requirements.* (1) The provisions and restrictions in this section apply to legal assistance provider(s) when they are providing legal assistance under section 307(a)(11) of the Act (42 U.S.C. 3027(a)(11)).

(2) Legal assistance providers under contract with the State agency in States with single planning and service areas or area agency in States with multiple planning and service areas shall adhere to the following requirements:

(i) Provide legal assistance to meet complex and evolving legal needs that may arise involving a range of private, public, and governmental entities, programs, and activities that may impact an older adult's independence, choice, or financial security; and

(ii) Maintain the capacity for and provision of effective administrative and judicial representation.

(A) *Effective administrative and judicial representation* means the expertise and ability to provide the range of services necessary to adequately address the needs of older adults through legal assistance in administrative and judicial forums, as required under the Act. This includes providing the full range of legal services, from brief service and advice through representation in administrative and judicial proceedings.

(B) [Reserved]

(iii) Conduct administrative and judicial advocacy as is necessary to meet the legal needs of older adults with economic or social need, focusing on such individuals with the greatest economic need or greatest social need:

(A) *Economic need* means the need for legal assistance resulting from income at or below the Federal poverty line, as defined in section 102(44) of the Act (42 U.S.C. 3002(44)), that is insufficient to meet the legal needs of an older individual or that cause barriers to attaining legal assistance to assert the rights of older individuals as articulated in the Act and in the laws, regulations, and Constitution.

(B) *Social need* means the need for legal assistance resulting from social factors, as defined by in section 102(24) of the Act (42 U.S.C. 3002(24)), that cause barriers to attaining legal assistance to assert the rights of older individuals.

(iv) Maintain the expertise required to capably handle matters related to the priority case type areas specified under the Act, including income and public entitlement benefits, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination and defense of guardianship (as defined in paragraph (c)(1)(ii)(B)(*1*)(*ii*) of this section).

(v) Maintain the expertise required to deliver any matters in addition to those specified in (d)(2)(iv) of this section that are related to preserving, maintaining, and restoring an older adult's independence, choice, or financial security.

(vi) Maintain the expertise and capacity to deliver a full range of legal assistance, from brief service and advice through representation in hearings, trials, and other administrative and judicial proceedings in the areas of law affecting such older individuals with economic or social need.

(vii) Maintain the capacity to provide effective legal assistance legal support to other advocacy efforts, including, but not limited to, the Long-Term Care Ombudsman Program serving the planning and service area, as required by section 712(h)(8) of the Act (42 U.S.C. 3058g(h)(8)), and maintain the capacity to form, develop and maintain partnerships that support older adults' independence, choice, or financial security.

(viii) Maintain and exercise the capacity to effectively provide legal assistance to older adults regardless of whether they reside in community or congregate settings, and to provide legal assistance to older individuals who are confined to their home, and older adults whose access to legal assistance may be limited by geography or isolation.

(ix) Maintain the capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited-English proficient (LEP), including in oral and written communication.

(A) Legal assistance provider(s) shall take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited English-speaking proficiency and other communication needs;

(B) Such reasonable steps require an individualized assessment of the needs of individuals who are seeking legal assistance and legal assistance clients to understand and participate in the legal process (as determined by each individual); and

(C) Legal assistance provider(s) are responsible for providing access to interpretation, translation, and auxiliary aids and services to meet older individuals' legal assistance needs.

(x) Maintain staff with knowledge of the unique experiences of older adults with economic or social need and expertise in areas of law affecting such older adults.

(xi) Meet the following legal assistance provider requirements:

(A) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(B) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling, and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(C) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(D) Legal assistance providers that are not housed within Legal Services Corporation grantee entities shall coordinate their services with existing Legal Services Corporation projects to concentrate funds under this Act in providing legal assistance to older adults with the greatest economic need or greatest social need.

(E) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(F) Legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable Rules of Professional Conduct.

(3) Restrictions on legal assistance.

(i) No legal assistance provider(s) shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(A) ''Fee generating case'' means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(B) [Reserved]

(ii) Other adequate representation is deemed to be unavailable when:

(A) Recovery of damages is not the principal object of the client; or

(B) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(C) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.,* Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.,* Supplemental Security Income for Aged, Blind, and Disabled.

(iii) A provider may seek and accept a fee awarded or approved by a court or administrative body or included in a settlement.

(iv) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(4) Legal assistance provider prohibited activities.

(i) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(A) No provider or its employees shall contribute or make available funds, personnel, or equipment provided under the Act to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(B) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office; or

(C) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(ii) No funds made available under the Act shall be used for lobbying activities including, but not limited to, any activities intended to influence any decision or activity by a nonjudicial Federal, State, or local individual or body.

(A) Nothing in this section is intended to prohibit an employee from:

(*1*) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(*2*) Informing a client about a new or proposed statute, executive order, or administrative regulation relevant to the client's legal matter;

(*3*) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Act, Title III regulations or other applicable law. This provision does not authorize publication or training of clients on lobbying techniques or the composition of a communication for the client's use;

(*4*) Making direct contact with the area agency for any purpose; or

(*5*) Testifying before a government agency, legislative body, or committee at the request of the government agency, legislative body, or committee.

(B) [Reserved]

(iii) A provider may use funds provided by private sources to:

(A) Engage in lobbying activities if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities of the provider under the Act;

(B) [Reserved]

(iv) While carrying out legal assistance activities and while using resources provided under the Act, by private entities or by a recipient, directly or through a subrecipient, no provider or its employees shall;

(A) Participate in any public demonstration, picketing, boycott, or strike, whether in person or online, except as permitted by law in connection with the employee's own employment situation;

(B) Encourage, direct, or coerce others to engage in such activities; or

(C) At any time engage in or encourage others to engage in:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction;

(3) Any illegal activity;

(4) Any intentional identification of programs funded under the Act or recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office; or

(v) None of the funds made available under the Act may be used to pay dues exceeding a reasonable amount per legal assistance provider per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations. Such dues may not be used to engage in activities for which Older Americans Act funds cannot be directly used.

§ 1321.95 Service provider Title III and Title VI coordination responsibilities.

In locations where there are Title VI programs, the area agency on aging and/or local service provider shall ensure the development and implementation of policies and procedures which minimally address:

(a) How outreach will be provided to tribal elders and family caregivers regarding services for which they may be eligible under Title III;

(b) The communication opportunities the service provider will make available to Title VI programs, such as meetings and email distribution lists;

(c) The methods for collaboration on and sharing of program information and changes;

(d) How Title VI programs may refer individuals who are eligible for Title III services; and

(e) How services will be provided in a culturally appropriate manner.

Subpart E—Emergency & Disaster Requirements

§ 1321.97 Coordination with State, Tribal, and local emergency management.

(a) *State agencies.* (1) State agencies shall establish emergency plans, as set forth in section 307(a)(28) of the Act (42 U.S.C. 3027(a)(28)). Such plans must include, at a minimum:

(i) The State agency's continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;

(ii) A plan to coordinate activities with area agencies on aging, local emergency response agencies, relief organizations, local governments, State agencies responsible for emergency preparedness, and any other institutions that have responsibility for disaster relief service delivery;

(iii) Processes for developing and updating long-range emergency preparedness plans; and

(iv) Other relevant information as determined by the State Agency.

(2) The plan shall include information describing the involvement of the head of the State agency in the development, revision, and implementation of emergency preparedness plans, including the State Public Health Emergency Preparedness and Response Plan.

(3) The plan shall discuss coordination with tribal, area agency on aging, and local emergency management.

(b) *Area agencies on aging.* (1) Area agencies on aging shall establish emergency plans. Such plans must include:

(i) The area agency's continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;

(ii) A description of coordination activities for both development and implementation of long-range emergency preparedness plans; and

(iii) Other information as deemed appropriate by the area agency on aging.

(2) The area agency on aging shall coordinate with Federal, local, and State emergency response agencies, relief organizations, local and State governments, and any other entities that have responsibility for disaster relief service delivery, as well as with Tribal emergency management, as appropriate.

§ 1321.99 Setting aside funds to address disasters.

(a) Section 310 of the Act (42 U.S.C. 3030) authorizes the use of funds during Presidentially-declared major disaster declarations under the Stafford Act without regard to distribution through the State's intrastate funding formula or funds distribution plan when the following apply:

(1) Title III services are impacted; and

(2) Flexibility is needed as determined by the State agency.

(b) When implementing this authority, State agencies may set aside

funds from their Title III allocations, if specified as being allowed to be withheld for the purpose in their approved intrastate funding formula or funds distribution plan. The following apply for use of set aside funds:

(1) State agencies must submit a State plan amendment as set forth at § 1321.31(b), when the State agency awards the funds for use within all or part of a planning and service area covered by a specific major disaster declaration where Title III services are impacted. The State plan amendment must at a minimum include the specific entities receiving such funds; the amount, source, and intended use for such funds; and other such justification of the use of such funds.

(2) Set aside funds that are awarded under this provision must comply with the requirements under § 1321.101(b) through (e), and

(3) The State agency must have policies and procedures in place to award funds through the intrastate funding formula or funds distribution plan if there are no funds awarded subject to this provision within 30 days of the end of the fiscal year in which the funds were received.

§ 1321.101 Flexibilities under a major disaster declaration.

(a) If a State or Indian Tribe requests and receives a major disaster declaration under the Stafford Act, the State may use disaster relief flexibilities under Title III as set forth in this section to provide disaster relief services for areas of the State where the specific major disaster declaration is authorized and where older adults and family caregivers are affected.

(b) Disaster relief services may include any allowable services under the Act to eligible older individuals or family caregivers during the period covered by the major disaster declaration.

(c) Expenditures of funds under disaster relief flexibilities must be reported separately from the grant where funding was expended. State agencies may expend funds from any source within open grant awards under Title III or Title VII of the Act but must track the source of all expenditures.

(d) State agencies must have policies and procedures outlining communication with area agencies on aging and/or local service providers regarding State agency expectations for eligibility, use, and reporting of services and funds provided under these flexibilities.

(e) A State agency may only make obligations exercising this flexibility during the major disaster declaration incident period or 90 days thereafter or with prior approval from the Assistant Secretary for Aging.

(f) A State agency must submit a State plan amendment as set forth in § 1321.31(b). The State plan amendment must at a minimum include the specific entities receiving such funds; the amount, source, and intended use for such funds; and other such justification of the use of such funds to make obligations as follows:

(1) To allow use of any portion of the funds of any open grant awards under Title III of the Act for disaster relief services for older individuals and family caregivers.

(2) For the State agency to allocate portions of State plan administration, up to a maximum of five percent of the Title III grant award, to a planning and service area covered in whole or part under a major disaster declaration without the requirement of allocation through the intrastate funding formula or funds distribution plan to be used for direct service provision.

(3) For the State agency's use in making direct expenditures and/or acting to procure items on a Statewide level up to five percent or as determined by the Assistant Secretary for Aging during a major disaster declaration, if the State agency adheres to the following:

(i) The State agency judges that provision of services or procurement of supplies by the State agency is necessary to ensure an adequate supply of such services and/or that such services can be provided/supplies procured more economically, and with comparable quality, by the State agency;

(ii) The State agency consults with area agencies on aging prior to exercising the flexibility;

(iii) The State agency uses such set aside funding for services provided through area agencies on aging and other aging network partners to the extent reasonably practicable, in the judgment of the State agency; and

(iv) The State agency ensures reporting of any clients, units, and services provided through such expenditures.

§ 1321.103 Title III and Title VI coordination for emergency and disaster preparedness.

State agencies, area agencies, and Title VI programs should coordinate in emergency preparedness planning, response, and recovery. State agencies and area agencies that have Title VI programs in operation within their jurisdictions must have policies and procedures in place for how they will communicate and coordinate with Title VI programs regarding emergency preparedness planning, response, and recovery.

§ 1321.105 Modification during major disaster declaration or public health emergency.

The Assistant Secretary for Aging retains the right to modify the requirements described in these regulations pursuant to a major disaster declaration or public health emergency.

■ 2. Revise part 1322 to read as follows:

PART 1322—GRANTS TO INDIAN TRIBES AND NATIVE HAWAIIAN GRANTEES FOR SUPPORTIVE, NUTRITION, AND CAREGIVER SERVICES

Sec.

Authority: 42 U.S.C. 3001 *et seq.*

Subpart A—Introduction

§ 1322.1 Basis and purpose of this part.

(a) This program is established to meet the unique needs and circumstances of American Indian elders on Indian reservations and of older Native Hawaiians. This program honors the sovereign government to government relationship with a Tribal organization serving elders and family caregivers through direct grants to serve the eligible participants and similar considerations, as appropriate, for Hawaiian Native grantees representing

elders and family caregivers. This part implements Title VI (parts A, B, and C) of the Older Americans Act, as amended, by establishing the requirements that an Indian Tribal organization or Hawaiian Native grantee shall meet in order to receive a grant to promote the delivery of services for older Indians, Native Hawaiians, and Native American family caregivers that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

(b) Terms used, but not otherwise defined, in this part will have the meanings ascribed to them in the Act.

§ 1322.3 Definitions.

Access to services or access services, as used in this part, means services which may facilitate connection to or receipt of other direct services, including transportation, outreach, information and assistance, and case management services.

Acquiring, as used in this part, means obtaining ownership of an existing facility in fee simple.

Act, means the Older Americans Act of 1965 as amended.

Altering or renovating, as used in this part, means making modifications to or in connection with an existing facility which are necessary for its effective use. Such modifications may include alterations, improvements, replacements, rearrangements, installations, renovations, repairs, expansions, upgrades, or additions, which are not in excess of double the square footage of the original facility and all physical improvements.

Area agency on aging, as used in this part, means a single agency designated by the State agency to perform the functions specified in the Act for a planning and service area.

Budgeting period, as used in § 1322.19, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

Constructing, as used in this part, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department, means the U.S. Department of Health and Human Services.

Domestically-produced foods, as used in this part, means Agricultural foods, beverages and other food ingredients which are a product of the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as ''the United States''), except as may otherwise be required by applicable legal requirements, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

Eligible organization, means either a Tribal organization or a public or nonprofit private organization having the capacity to provide services under this part for older Hawaiian Natives.

Family caregiver, as used in this part, means an adult family member, or another individual, who is an informal provider of in-home and community care to an older Native American; an adult family member, or another individual, who is an informal provider of in-home and community care to an individual of any age with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction; or an older relative caregiver.

Hawaiian Native or Native Hawaiian, as used in this part, means any individual any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778.

Hawaiian Native Grantee, as used in this part, means an eligible organization that has received funds under Title VI of the Act to provide services to older Hawaiians.

Indian reservation, means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688).

Indian tribe, means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

In-home supportive services, as used in this part, references those supportive services provided in the home as set forth in the Act, to include: (a) homemaker and home health aides; (b) visiting and telephone or virtual reassurance; (c) chore maintenance; (d) in-home respite care for families, including adult day care as a respite service for families; and (e) minor modification of homes that is necessary to facilitate the independence and health of older Native Americans.

Major disaster declaration, as used in this part and section 310 of the Act (42 U.S.C. 3030), means a Presidentially-declared disaster under the Robert T. Stafford Relief and Emergency Assistance Act.

Means test, as used in this part in the provision of services, means the use of the income, assets, or other resources of an older Native American, family caregiver, or the households thereof to deny or limit that person's eligibility to receive services under this part.

Multipurpose senior center, as used in the Act, means a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental and behavioral health), social, nutritional, and educational services and the provision of facilities for recreational activities for older Native Americans, as practicable, including as provided via virtual facilities.

Native American, as used in the Act, means a person who is a member of any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92–203; 85 Stat. 688) who;

(1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Is located on, or in proximity to, a Federal or State reservation or rancheria; or is a person who is a Native Hawaiian.

Nutrition Services Incentive Program, as used in the Act, means grant funding to States, eligible Tribal organizations, and Native Hawaiian grantees to support congregate and home-delivered nutrition programs by providing an incentive to serve more meals.

Older Indians, means those individuals who have attained the minimum age determined by the Indian tribe for services.

Older Native Hawaiian, means any individual, age 60 or over, who is an Hawaiian Native.

Older relative caregiver, as used in section 631 of the Act, means: a caregiver who is age 55 or older and lives with, is the informal provider of in-home and community care to, and is the primary caregiver for, a child or an individual with a disability;

(1) in the case of a caregiver for a child is:

(i) The grandparent, step-grandparent, or other relative (other than the parent) by blood, marriage, or adoption, of the child;

(ii) Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers of the child;

(iii) Has a legal relationship to the child, such as legal custody, adoption, or guardianship, or is raising the child informally; and

(2) In the case of a caregiver for an individual with a disability, is the parent, grandparent, step-grandparent, or other relative by blood, marriage, or adoption of the individual with a disability.

Program income, as defined in 2 CFR 200.2 means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in 2 CFR 200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also 2 CFR 200.307, 200.407 and 35 U.S.C. 200–212 (applies to inventions made under Federal awards).

Project period, as used in § 1322.19, means the total time for which a project is approved including any extensions.

Reservation, as used in section 305(b)(2) of the Act (42 U.S.C. 3025(b)(2)) with respect to the designation of planning and service areas, means any Federally or State recognized American Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

Service area, as used in § 1322.5(b) and elsewhere in this part, means that geographic area approved by the Assistant Secretary for Aging in which the Tribal organization or Hawaiian Native grantee provides supportive, nutrition, and/or family caregiver support services to older Indians or Native Hawaiians residing there. Service areas are approved through the funding application process, which may include Bureau of Indian Affairs service area maps. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a non-contiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the Tribal organization.

Service provider, means any entity that is awarded a subgrant or contract from a Tribal organization or Native Hawaiian grantee to provide services under this part.

State agency, as used in this part, means the designated State unit on aging for each of the 50 States, the District of Columbia, and the territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

Title VI director, as used in this part, means a single individual who is the key personnel responsible for day-to-day management of the Title VI program and who serves as a contact point for communications regarding the Title VI program.

Tribal organization, as used in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

Voluntary contributions, as used in section 315 of the Act (42 U.S.C. 3030c-2), means non-coerced donations of money or other personal resources by individuals receiving services under the Act.

Subpart B—Application

§ 1322.5 Application requirements.

An eligible organization shall submit an application. The application shall be submitted as prescribed in section 614 of the Act (42 U.S.C. 3057e) and in accordance with the Assistant Secretary for Aging's instructions for the specified project and budget periods. In addition to the requirements set out in section 614 of the Act (42 U.S.C. 3057e), the application shall provide for:

(a) Program objectives, as set forth in section 614(a)(5) of the Act (42 U.S.C. 3057e(a)(5)), and any objectives established by the Assistant Secretary for Aging.

(b) A map and/or description of the geographic boundaries of the service area proposed by the eligible organization, which may include Bureau of Indian Affairs service area maps;

(c) Documentation of the ability of the eligible organization to deliver supportive and nutrition services to older *Native Americans,* or documentation that the eligible organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Assistant Secretary for Aging that:

(1) The eligible organization represents at least 50 individuals who have attained 60 years of age or older and reside in the service area;

(2) The eligible organization shall comply with all applicable State and local license and safety requirements, if any, for the provision of those services;

(3) If a substantial number of the older Native Americans residing in the service area are limited English proficient, the Tribal organization shall utilize the services of workers who are fluent in the language used by a predominant number of older Native Americans;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in §§ 1322.7 through 1322.17; and

(6) The services provided under this part shall be coordinated, where applicable, with services provided under Title III of the Act as set forth in 45 CFR 1321 and Title VII of the Act as set forth in 45 CFR 1324, and the eligible organization shall establish and follow policies and procedures as set forth in § 1322.13;

(7) The eligible organization shall have a completed needs assessment

within the project period immediately prior to the application identifying the need for nutrition and supportive services for older Native Americans and, if applying for funds under Title VI Part C, for family caregivers;

(8) The eligible organization shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging; and

(9) The eligible organization shall complete a program evaluation using data as set forth by the Assistant Secretary for Aging and shall use findings of such program evaluation to establish and update program goals and objectives.

(e) A tribal resolution(s) authorizing the Tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the Indian tribe or eligible organization.

§ 1322.7 Application approval.

(a) Approval of any application under section 614(e) of the Act (42 U.S.C. 3057e), shall not commit the Assistant Secretary for Aging in any way to make additional, supplemental, continuation, or other awards with respect to any approved application.

(b) The Assistant Secretary for Aging may give first priority in awarding grants to grantees that have effectively administered such grants in the prior year.

(c) Upon approval of an application and acceptance of the funding award, the Tribal organization or Hawaiian Native grantee is required to submit all performance and fiscal reporting as set forth by the Assistant Secretary for Aging on a no less than an annual basis.

(d) If the Assistant Secretary disapproves of an application, the Assistant Secretary must follow procedures outlined in section 614(d) of the Act (42 U.S.C. 3057e(d)).

§ 1322.9 Hearing procedures.

In meeting the requirements of section 614(d)(3) of the Act (42 U.S.C. 3057e(d)(3)), if the Assistant Secretary for Aging disapproves an application from an eligible organization, the eligible organization may file a written request for a hearing with the with the Departmental Appeals Board (DAB) in accordance with 45 CFR part 16.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the eligible organization shall submit to the DAB, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and all documentation to support its position as well as any documentation requested by the DAB.

(b) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the DAB will notify the applicant by certified mail that the appeal has been received.

(c) The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision. After consideration of the record, the DAB will issue a written decision, based on the record, that sets forth the reasons for the decision and the evidence on which it was based. The decision will be issued within 30 days of the closing of the record and d will be promptly mailed to the eligible organization. A disapproval decision issued by the DAB represents the final determination of the Assistant Secretary for Aging and remains in effect unless reversed or stayed on judicial appeal, except that that Assistant Secretary for Aging may modify or set aside the decision before the record of the proceedings under this subpart is filed in court.

(d) Either the eligible organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

Subpart C—Service Requirements

§ 1322.11 Purpose of services allotments under Title VI.

(a) Title VI of the Act authorizes the distribution of Federal funds to Tribal organizations and a Hawaiian Native grantee for the following categories of services:

(1) Supportive services;

(2) Nutrition services; and

(3) Family caregiver support program services.

(b) Funds authorized under these categories are for the purpose of assisting a Tribal organization or Hawaiian Native grantee to develop or enhance comprehensive and coordinated community-based systems for older Native Americans and family caregivers.

§ 1322.13 Policies and procedures.

The tribal organization and Hawaiian Native grantee shall ensure the development and implementation of policies and procedures, including those required as set forth in this part.

(a) Upon approval of a program application and acceptance of funding, the Tribal organization or Hawaiian Native grantee must appoint a Title VI Director and provide appropriate contact information for the Title VI Director consistent with guidance from the Assistant Secretary for Aging.

(b) The tribal organization or Hawaiian Native grantee shall provide the Assistant Secretary for Aging with statistical and other information in order to meet planning, coordination, evaluation and reporting requirements in a timely manner and shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging.

(c) A Tribal organization or Hawaiian Native grantee must maintain program policies and procedures. Policies and procedures shall address:

(1) Direct service provision, including:

(i) Requirements for client eligibility, periodic assessment, and person-centered planning, where appropriate;

(ii) Access to information and assistance to minimally address:

(A) Establishing or having a list of all services that are available to older Native Americans in the service area,

(B) Maintaining a list of services needed or requested by older Native Americans;

(C) Providing assistance to older Native Americans to help them take advantage of available services;

(D) Working with agencies, such as area agencies on aging and other programs funded by Title III and Title VII as set forth in § 1321.53 of this chapter, to facilitate participation of older Native Americans; and

(E) A listing and definitions of services that may be provided by the tribal organization or Native Hawaiian grantee with funds received under the Act;

(iii) Limitations on the frequency, amount, or type of service provided; and

(iv) The grievance process for older individuals and family caregivers who are dissatisfied with or denied services under the Act.

(2) Fiscal requirements including:

(i) *Voluntary contributions.* Voluntary contributions, where:

(A) Each Tribal organization or Hawaiian Native grantee shall:

(1) Provide each older Native American with a voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Native American with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under the Act.

(B) Each tribal organization or Native Hawaiian grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the Tribal organization or Native Hawaiian grantee shall consider the income ranges of older Native Americans in the service area and the Tribal organization's or Hawaiian Native grantee's other sources of income. However, means tests may not be used.

(C) A Tribal organization or Hawaiian Native grantee that receives funds under this part may not deny any older Native American a service because the older Native American will not or cannot contribute to the cost of the service.

(ii) *Buildings and equipment.* Buildings and equipment, where costs incurred for altering or renovating, utilities, insurance, security, necessary maintenance, janitorial services, repair, and upkeep (including Federal property unless otherwise provided for) to keep buildings and equipment in an efficient operating condition, may be an allowable use of funds if:

(A) Costs are not payable by third parties through rental or other agreements;

(B) Costs support an allowed activity under Title VI Part A, B, or C of the Act and are allocated proportionally to the benefiting grant program;

(C) Constructing and acquiring activities are only allowable for multipurpose senior centers;

(D) In addition to complying with 2 CFR 200, the Tribal organization or Native Hawaiian grantee (and all other necessary parties) must file a Notice of Federal Interest in the appropriate official records of the jurisdiction where the property is located at the time of acquisition or prior to commencement of construction, as applicable. The Notice of Federal Interest must indicate that the acquisition or construction has been funded with an award under Title VI of the Act and that inquiries regarding the Federal Government's interest in the property should be directed in writing to the Assistant Secretary for Aging.

(E) Altering and renovating activities are allowable for facilities providing services with funds provided as set forth in this part and as subject to 2 CFR 200.

(iii) *Supplement, not supplant.* Funds awarded under this Part must be used to supplement, not supplant existing Federal, State, and local funds expended to support activities.

(d) The Tribal organization or Hawaiian Native grantee must develop a monitoring process ensuring the quality and effectiveness of services regarding meeting participant needs, the goals outlined within the approved application, and Tribal organization requirements.

§ 1322.15 Confidentiality and disclosure of information.

A Tribal organization or Hawaiian Native grantee shall develop and maintain confidentiality and disclosure procedures as follows:

(a) A Tribal organization or Hawaiian Native grantee shall have procedures to ensure that no information about an older Native American or obtained from an older Native American by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or, if there is one, of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A Tribal organization or Hawaiian Native grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A Tribal organization or Hawaiian Native grantee shall not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

(d) The Tribal organization or Hawaiian Native grantee must have policies and procedures that ensure that entities providing services under this title promote the rights of each older Native American who receives such services. Such rights include the right to confidentiality of records relating to such Native American.

(e) A Tribal organization's or Hawaiian Native grantee's policies and procedures may outline that individual information and records may be shared with other State and local agencies, community-based organizations, and health care providers and payers, as appropriate, in order to provide services.

(f) A Tribal organization's or Hawaiian Native grantee's policies and procedures must comply with all applicable Federal laws, codes, rules, and regulations, including the Health Insurance and Portability and Accountability Act (HIPAA), as well as guidance as the Tribal organization or Hawaiian Native grantee determines, for the collection, use, and exchange of both Personal Identifiable Information (PII) and Personal Health Information (PHI) in the provision of Title VI services under the Act.

§ 1322.17 Purpose of services—person- and family-centered, trauma-informed.

(a) Services must be provided to older Native Americans and family caregivers in a manner that is person-centered, trauma-informed, and culturally sensitive. Services should be responsive to their interests, physical and mental health, social and cultural needs, available supports, and desire to live where and with whom they choose. Person-centered services may include community-centered and family-centered approaches consistent with the traditions, practices, beliefs, and cultural norms and expectations of the Tribal organization or Hawaiian Native grantee.

(b) Services should, as appropriate, provide older Native Americans and family caregivers with the opportunity to develop a person-centered plan that is led by the individual or, if applicable, by the individual and the individual's authorized representative. Services should be incorporated into existing person-centered plans, as appropriate.

(c) Tribal organizations and Hawaiian Native grantees should provide training to staff and volunteers on person-centered and trauma-informed service provision.

§ 1322.19 Responsibilities of service providers.

As a condition for receipt of funds under this part, each Tribal organization and Hawaiian Native grantee shall assure that providers of services shall:

(a) Provide service participants with an opportunity to contribute to the cost of the service as provided in § 1322.13(c)(2)(i);

(b) Provide, to the extent feasible, for the furnishing of services under this Act, through self-direction.

(c) With the consent of the older Native American, or their legal representative if there is one, or in accordance with local adult protective services requirements, bring to the attention of adult protective services or other appropriate officials for follow-up, conditions or circumstances which place the older Native American, or the household of the older Native American, in imminent danger;

(d) Where feasible and appropriate, make arrangements for the availability of services to older Native Americans and family caregivers in weather-related and other emergencies;

(e) Assist participants in taking advantage of benefits under other programs; and

(f) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1322.21 Client eligibility for participation.

(a) An individual must have attained the minimum age determined by the Tribal organization or Hawaiian Native grantee as specified in their approved application, to be eligible to participate in services under the Act, unless the Act otherwise provides an explicit exception. Exceptions are limited to the following specific services:

(1) Nutrition services:

(i) Services shall be available to spouses of any age of older Native Americans;

(ii) Services may be available to:

(A) A person with a disability who lives with an adult, age 60 or older, or who resides in a housing facility that is primarily occupied by older adults at which congregate meals are served; and

(B) A volunteer during meal hours.

(2) Family caregiver support services for:

(i) Adults caring for older Native Americans or individuals of any age with Alzheimer's or related disorder;

(ii) Older relative caregivers age 55 or older who are caring for children and are not the biological or adoptive parent of the child, where older relative caregivers shall no longer be eligible for services under this part when the child reaches 18 years of age; or

(iii) Older relative caregivers age 55 or older who are caring for individuals age 18 to 59 with disabilities, and who may be of any relationship, including the biological or adoptive parent.

(3) Services such as information and assistance and public education, where recipients of information may not be older Native Americans, but the information is targeted to those who are older Native Americans and/or benefits those who are older Native Americans.

(b) A Tribal organization or Hawaiian Native grantee may develop further eligibility requirements for implementation of services for older Native Americans and family caregivers, consistent with the Act and other guidance as set forth by the Assistant Secretary for Aging. Such requirements may include:

(1) Assessment of functional and support needs;

(2) Geographic boundaries;

(3) Limitations on number of persons that may be served;

(4) Limitations on number of units of service that may be provided;

(5) Limitations due to availability of staff/volunteers;

(6) Limitations to avoid duplication of services;

(7) Specification of settings where services shall or may be provided;

(8) Whether to serve Native Americans who have tribal or Native Hawaiian membership other than those who are specified in the Tribal organization's or Hawaiian Native grantee's approved application; and

(9) Whether to serve older individuals or family caregivers who are non-Native Americans, but live within the approved service area and are considered members of the community by the Tribal organization.

§ 1322.23 Client and service priority.

(a) The Tribal organization or Hawaiian Native grantee shall ensure service to those identified as members of priority groups through their assessment of local needs and resources.

(b) The Tribal organization or Hawaiian Native grantee shall identify criteria for being given priority in the delivery of services under Title VI, parts A or B, consistent with the Act and guidance as set forth by the Assistant Secretary for Aging.

(c) The Tribal organization or Hawaiian Native grantee shall identify criteria for being given priority in the delivery of services under Title VI, part C, consistent with the Act and guidance as set forth by the Assistant Secretary for Aging to include:

(1) Caregivers who are older Native Americans with greatest social need, and older Native Americans with greatest economic need (with particular attention to low-income older individuals);

(2) Caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(3) When serving older relative caregivers, older relative caregivers of children with severe disabilities or individuals with severe disabilities shall be given priority.

§ 1322.25 Supportive services.

(a) Supportive services are community-based interventions as set forth in Title VI of the Act, are intended to be comparable to such services set forth under Title III, and meet standards established by the Assistant Secretary for Aging. They include in-home supportive services, access services, which may include multipurpose senior centers, and legal services.

(b) A Tribal organization or Hawaiian Native grantee may provide any of the supportive services mentioned under title III of the Act, and any other supportive services that are necessary for the general welfare of older Native Americans and older Hawaiian Natives.

(c) A Tribal organization or Hawaiian Native grantee may allow use of Title VI, part A and B funds, respectively, for acquiring, altering or renovating, or constructing facilities to serve as multipurpose senior centers, in accordance with guidance as set forth by the Assistant Secretary for Aging.

(d) For those Title VI, parts A and B services intended to benefit family caregivers, a Tribal organization or Hawaiian Native grantee, respectively, shall ensure that there is coordination and no duplication of such services available under Title VI, part C or Title III.

(e) If a Tribal organization or Hawaiian Native grantee elects to provide legal services, it shall comply with the requirements in § 1321.71 of this chapter and legal services providers shall comply fully with the requirements in § 1321.71(c) through (p) of this chapter.

§ 1322.27 Nutrition services.

(a) Nutrition services are community-based interventions as set forth in Title VI, Parts A and B of the Act, and as further defined by the Assistant Secretary on Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services.

(1) Congregate Meals are meals provided by a qualified nutrition direct service provider to eligible individuals and consumed while congregating virtually, in-person, or in community off-site.

(2) Home-Delivered Meals are meals provided by a qualified nutrition direct service provider to eligible individuals and consumed where they currently reside. Meals may be provided via home delivery, pick-up, carry-out or drive-through, or through other service as determined by the Tribal organization or Hawaiian Native grantee.

(i) Eligibility criteria for home delivered meals, as determined by the Tribal organization or Hawaiian Native grantee, may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of

disability, or other relevant factors pertaining to their need for the service.

(ii) Home-delivered meals providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability.

(3) Nutrition education is information provided which provides individuals with the knowledge and skills to make healthy food and beverage choices. Congregate and home-delivered nutrition services may provide nutrition education, as appropriate, based on the needs of meal participants.

(4) Nutrition counseling is a standardized service provided which must align with the Nutrition Care Process of the Academy for Nutrition and Dietetics. Congregate and home-delivered nutrition services may provide nutrition counseling, as appropriate, based on the needs of meal participants.

(5) Other Nutrition Services include additional services that may be provided to meet nutritional needs or preferences, such as weighted utensils, supplemental foods, or food items, based on the needs of eligible participants.

(b) The Tribal organization or Hawaiian Native grantee shall provide congregate meals and home delivered meals to eligible participants and may provide nutrition education, nutrition counseling, and other nutrition services, as available. As set forth in section 614(a)(8) of the Act (42 U.S.C. 3057e(a)(8)), if the need for nutrition services is met from other sources, the Tribal organization or Hawaiian Native grantee may use the available funding under the Act for supportive services.

(c) Nutrition Services Incentive Program allocations are available to a Tribal organization or Hawaiian Native grantee that provides nutrition services where:

(1) Nutrition Services Incentive Program allocation amounts are based on the number of meals reported by the Tribal organization or Hawaiian Native grantee which meet the following requirements:

(i) The meal is served to an individual who is eligible to receive services under the Act;

(ii) The meal is served to an individual who has not been means-tested to receive the meal;

(iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service;

(iv) The meal meets the other requirements of the Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339; and

(v) The meal is served by an agency that is, or has a grant or contract with, a Tribal organization or Hawaiian Native grantee.

(2) The Tribal organization or Hawaiian Native grantee may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities.

(3) Nutrition Services Incentive Program funds may only be used to purchase domestically-produced foods used in a meal as set forth under the Act.

(d) Where applicable, the Tribal organization or Hawaiian Native grantee shall work with agencies responsible for administering nutrition and other programs to facilitate participation of older Native Americans.

§ 1322.29 Family caregiver support services.

(a) Family caregiver support services are community-based interventions set forth in Title VI, part C of the Act, which meet standards set forth by the Assistant Secretary for Aging and which may be informed through the use of an evidence-informed or evidence-based caregiver assessment, including:

(1) Information to caregivers about available services via public education;

(2) Assistance to caregivers in gaining access to the services through:

(i) Individual information and assistance; or

(ii) Case management or care coordination;

(3) Individual counseling, organization of support groups, and caregiver training to assist the caregivers in those areas in which they provide support, including health, nutrition, complex medical care, and financial literacy, and in making decisions and solving problems relating to their caregiving roles;

(4) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(5) Supplemental services, on a limited basis, to complement the care provided by caregivers. A Tribal organization or Hawaiian Native grantee shall define ''limited basis'' for supplemental services and may consider limiting units, episodes or expenditure amounts when making this determination.

(b) The Title VI Native American Family Caregiver Support Program is intended to serve unpaid family caregivers and to provide services to caregivers, not to the people for whom they care. Its primary purpose is not to pay for care for an elder. However, respite care may be provided to an unpaid family caregiver.

(c) To provide services listed in paragraphs (a)(4) and (5) of this section to caregivers of older Native Americans or of individuals of any age with Alzheimer's disease or a related disorder, the individual for whom they are caring must be determined to be functionally impaired because the individual—

(1) Is unable to perform at least two activities of daily living without substantial assistance, including verbal reminding, physical cueing, or supervision;

(2) At the option of the Tribal organization or Hawaiian Native grantee, is unable to perform at least three such activities without such assistance; or

(3) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.

§ 1322.31 Title VI and Title III coordination.

A Tribal organization or Hawaiian Native grantee under Title VI of the Act must have policies and procedures that outline how they will coordinate with any State agency and any applicable area agency on aging providing Title III and/or VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area for which older Native Americans and family caregivers are eligible to ensure compliance with sections 614(a)(11) (42 U.S.C. 3057e(a)(11)) and 624(a)(3) (42 U.S.C. 3057e(a)(3)) of the Act, respectively. A Tribal organization or Hawaiian Native grantee may meet these requirements by participating in tribal consultation with States. Policies and procedures shall address:

(a) How Tribal organization or Hawaiian Native grantee will provide outreach to tribal elders and family caregivers regarding services for which they may be eligible under Title III, and

(b) How the Tribal organization or Hawaiian Native grantee will coordinate with Title III and VII programs including:

(1) Communication opportunities a Tribal organization or Hawaiian Native grantee will make available to Title III and VII programs, such as meetings, email distribution lists, and presentations,

(2) Methods for collaboration on and sharing of program information and changes,

(3) Processes for how Title VI programs may refer individuals who are eligible for Title III services;

(4) Processes for providing feedback on the State plan on aging and any area plans on aging providing Title III and VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area.

Subpart D—Emergency and Disaster Requirements

§ 1322.33 Coordination with Tribal, State, and local emergency management.

A Tribal organization or Hawaiian Native grantee shall establish emergency plans. Such plans must include, at a minimum:

(a) A continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;

(b) A plan to coordinate activities with the State agency, any area agencies on aging providing Title III and VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area, local emergency response and management agencies, relief organizations, local governments, other State agencies responsible for emergency preparedness, and any other institutions that have responsibility for disaster relief service delivery;

(c) Processes for developing and updating long-range emergency preparedness plans; and

(d) Other relevant information as determined by the Tribal organization or Hawaiian Native grantee.

§ 1322.35 Flexibilities under a major disaster declaration.

(a) If a State or Indian Tribe requests and receives a major disaster declaration under the Stafford Act, the Tribal organization or Hawaiian Native grantee may use disaster relief flexibilities as set forth in this section to provide disaster relief services within its approved service area for areas of the State or Indian Tribe where the specific major disaster declaration is authorized and where older Native Americans and family caregivers are affected.

(b) Disaster relief services may include any allowable services under the Act to eligible older Native Americans or family caregivers during the period covered by the major disaster declaration.

(c) Expenditures of funds under disaster relief flexibilities must be reported separately from the grant where funding was expended. A Tribal organization or Hawaiian Native grantee may expend funds from any source within open grant awards under Title VI of the Act but must track the source of all expenditures.

(d) A Tribal organization or Hawaiian Native grantee must have policies and procedures outlining eligibility, use, and reporting of services and funds provided under these flexibilities.

(e) A Tribal organization or Hawaiian Native grantee may only make obligations exercising this flexibility during the major disaster declaration incident period or 90 days thereafter or with prior approval from the Assistant Secretary for Aging.

§ 1322.37 Title VI and Title III coordination for emergency and disaster preparedness.

A Tribal organization or Hawaiian Native grantee under Title VI of the Act and State and area agencies funded under Title III of the Act should coordinate in emergency preparedness planning, response, and recovery. A Tribal organization or Hawaiian Native grantee must have policies and procedures in place for how they will communicate and coordinate with State agencies and area agencies regarding emergency preparedness planning, response, and recovery.

§ 1322.39 Modification during major disaster declaration or public health emergency.

The Assistant Secretary for Aging retains the right to modify the requirements described in these regulations pursuant to a major disaster declaration or public health emergency.

■ 3. Under the authority of 42 U.S.C. 3001 *et seq.,* remove part 1323.

■ 4. Revise part 1324 to read as follows:

PART 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Sec.

Authority: 42 U.S.C. 3001 *et seq.*

Subpart A—State Long-Term Care Ombudsman Program

§ 1324.1 Definitions.

The following definitions apply to this part:

Immediate family, pertaining to conflicts of interest as used in section 712 of the Act (42 U.S.C. 3058g), means a member of the household or a relative with whom there is a close personal or significant financial relationship.

Office of the State Long-Term Care Ombudsman, as used in sections 711 (42 U.S.C. 3058f) and 712 (42 U.S.C. 3058g) of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.

Official duties, as used in section 712 of the Act (42 U.S.C. 3058g) with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act, 45 CFR 1324, subpart A, and/or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

Representatives of the Office of the State Long-Term Care Ombudsman, as used in sections 711 (42 U.S.C. 3058f) and 712 (42 U.S.C. 3058g) of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in § 1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act (42 U.S.C. 3058g(a)(5)).

Resident representative means any of the following:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access to the resident's medical, social, or other personal information; management of financial matters; or receipt of notifications;

(2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access to the resident's medical, social or other personal information; management of financial matters; or receipt notifications;

(3) Legal representative, as used in section 712 of the Act (42 U.S.C. 3058g); or

(4) The court-appointed guardian or conservator of a resident.

(5) Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

State Long-Term Care Ombudsman, or Ombudsman, as used in sections 711 (42 U.S.C. 3058f) and 712 (42 U.S.C. 3058g) of the Act, means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in § § 1324.13 and 1324.19.

State Long-Term Care Ombudsman program, Ombudsman program, or program, as used in sections 711 (42 U.S.C. 3058f) and 712 (42 U.S.C. 3058g) of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

Willful interference means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in § 1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in § 1324.19.

§ 1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

(a) The Office of the State Long-Term Care Ombudsman shall be an entity headed by the State Long-Term Care Ombudsman, who shall carry out all of the functions and responsibilities set forth in § 1324.13 and, directly and/or through local Ombudsman entities, the duties set forth in § 1324.19.

(b) The State agency shall establish the Office and thereby carry out the Long-Term Care Ombudsman program in either of the following ways:

(1) The Office is a distinct entity, separately identifiable, and located within or connected to the State agency; or

(2) The State agency enters into a contract or other arrangement with any public agency or nonprofit organization which shall establish a separately identifiable, distinct entity as the Office.

(c) The State agency shall require that the Ombudsman serve on a full-time basis. In providing leadership and management of the Office, the functions, responsibilities, and duties, as set forth in § § 1324.13 and 1324.19 are to constitute the entirety of the Ombudsman's work. The State agency or other agency carrying out the Office shall not require or request the Ombudsman to be responsible for leading, managing or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis.

(1) This provision does not limit the authority of the Ombudsman program to provide ombudsman services to populations other than residents of long-term care facilities so long as the appropriations under the Act are utilized to serve residents of long-term care facilities, as authorized by the Act.

(2) [Reserved]

(d) The State agency, and other entity selecting the Ombudsman, if applicable, shall ensure that the Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:

(1) Long-term services and supports or other direct services for older persons or individuals with disabilities;

(2) Consumer-oriented public policy advocacy;

(3) Leadership and program management skills; and

(4) Negotiation and problem resolution skills.

(e) Where the Ombudsman has the legal authority to do so, he or she shall establish policies and procedures, in consultation with the State agency, to carry out the Ombudsman program in accordance with the Act. Where State law does not provide the Ombudsman with legal authority to establish policies and procedures, the Ombudsman shall recommend policies and procedures to the State agency or other agency in which the Office is organizationally located, and such agency shall establish Ombudsman program policies and procedures. Where local Ombudsman entities are designated within area agencies on aging or other entities, the Ombudsman and/or appropriate agency shall develop such policies and procedures in consultation with the agencies hosting local Ombudsman entities and with representatives of the Office. The policies and procedures must address the following:

(1) *Program administration.* Policies and procedures regarding program administration must include, but not be limited to:

(i) A requirement that the agency in which the Office is organizationally located must not have personnel policies or practices that prohibit the Ombudsman from performing the functions and responsibilities of the Ombudsman, as set forth in § 1324.13, or from adhering to the requirements of section 712 of the Act (42 U.S.C. 3058g). Nothing in this provision shall prohibit such agency from requiring that the Ombudsman, or other employees or volunteers of the Office, adhere to the personnel policies and procedures of the entity which are otherwise lawful.

(ii) A requirement that an agency hosting a local Ombudsman entity must not have personnel policies or practices which prohibit a representative of the Office from performing the duties of the Ombudsman program or from adhering to the requirements of section 712 of the Act (42 U.S.C. 3058g). Nothing in this provision shall prohibit such agency from requiring that representatives of the Office adhere to the personnel policies and procedures of the host agency which are otherwise lawful.

(iii) A requirement that the Ombudsman shall monitor the performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.

(iv) A description of the process by which the agencies hosting local Ombudsman entities will coordinate with the Ombudsman in the employment or appointment of representatives of the Office.

(v) Standards to assure prompt response by the Office and/or local Ombudsman entities to complaints, prioritizing abuse, neglect, exploitation, and time-sensitive complaints and that consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

(vi) Procedures that clarify appropriate fiscal responsibilities of the local Ombudsman entity, including but not limited to clarifications regarding access to programmatic fiscal information by appropriate representatives of the Office.

(2) *Procedures for access.* Policies and procedures regarding timely access to facilities, residents, and appropriate records (regardless of format and including, upon request, copies of such records) by the Ombudsman and representatives of the Office must include, but not be limited to:

(i) Access to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;

(ii) Access to all residents to perform the functions and duties set forth in §§ 1324.13 and 1324.19;

(iii) Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties set forth in §§ 1324.13 and 1324.19;

(iv) Access to review the medical, social and other records relating to a resident, if—

(A) The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures;

(C) The resident is unable to communicate consent to the review and has no legal representative; or

(D) Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman;

(v) Access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities;

(vi) Access of the Ombudsman to, and, upon request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities; and

(vii) Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR part 160 and 45 CFR part 164, subparts A and E, does not preclude release by covered entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

(3) *Disclosure.* Policies and procedures regarding disclosure of files, records, and other information maintained by the Ombudsman program must include, but not be limited to:

(i) Provision that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or designee of the Ombudsman for such purpose and in accordance with the criteria developed by the Ombudsman, as required by § 1324.13(e);

(ii) Prohibition of the disclosure of identifying information of any resident with respect to whom the Ombudsman program maintains files, records, or information, except as otherwise provided by § 1324.19(b)(5) through (8), unless:

(A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iii) Prohibition of the disclosure of identifying information of any complainant with respect to whom the Ombudsman program maintains files, records, or information, unless:

(A) The complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The complainant communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iv) Standard criteria for making determinations about disclosure of resident information when the resident is unable to provide consent and there is no resident representative or the resident representative refuses consent as set forth in § 1324.19(b)(5) through (8);

(v) Prohibition on requirements for reporting abuse, neglect, or exploitation to adult protective services or any other entity, long-term care facility, or other concerned person;

(vi) Exclusion of the Ombudsman and representatives of the Office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in § 1324.19(b)(5) through (8); and

(vii) Adherence to the provisions of paragraph (e)(3) of this section, regardless of the source of the request for information or the source of funding for the services of the Ombudsman program, notwithstanding section 705(a)(6)(c) of the Act (42 U.S.C. 3058d(a)(6)(c)).

(4) *Conflicts of interest.* Policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in § 1324.21, including:

(i) Ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the Ombudsman has or may have a conflict of interest;

(ii) Requiring that other agencies in which the Office or local Ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an Ombudsman or a representative of the Office who has or may have a conflict that cannot be adequately removed or remedied;

(iii) Requiring that the Ombudsman take reasonable steps to refuse, suspend, or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family who has or may have a conflict of interest, which cannot be removed or remedied;

(iv) Establishing the methods by which the Office and/or State agency will periodically review and identify conflicts of the Ombudsman and representatives of the Office; and

(v) Establishing the actions the Office and/or State agency will require the Ombudsman or representatives of the Office to take in order to remedy or remove such conflicts.

(5) *Systems advocacy.* Policies and procedures related to systems advocacy must assure that the Office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate.

(i) Such procedures must exclude the Ombudsman and representatives of the Office from any State lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act (42 U.S.C. 3058g).

(ii) Nothing in this part shall prohibit the Ombudsman or the State agency or other agency in which the Office is organizationally located from establishing policies which promote consultation regarding the

determinations of the Office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the Office.

(6) *Designation.* Policies and procedures related to designation must establish the criteria and process by which the Ombudsman shall designate and/or refuse, suspend, or remove designation of local Ombudsman entities and representatives of the Office.

(i) Such criteria should include, but not be limited to, the authority to refuse, suspend, or remove designation a local Ombudsman entity or representative of the Office in situations in which an identified conflict of interest cannot be removed or remedied as set forth in § 1324.21.

(ii) [Reserved]

(7) *Grievance process.* Policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.

(i) Such process shall include an opportunity for reconsideration of the Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. Notwithstanding the grievance process, the Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office.

(ii) [Reserved]

(8) *Determinations of the Office.* Policies and procedures related to the determinations of the Office must ensure that the Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office without interference and shall not be constrained by or necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located, regarding:

(i) Disclosure of information maintained by the Ombudsman program within the limitations set forth in section 712(d) of the Act (42 U.S.C. 3058g(d));

(ii) Recommendations to changes in Federal, State and local laws, regulations, and other governmental policies and actions pertaining to the health, safety, welfare, and rights of residents; and

(iii) Provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

§ 1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

The Ombudsman, as head of the Office, shall have responsibility and authority for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program, as follows.

(a) *Functions.* The Ombudsman shall, personally or through representatives of the Office—

(1) Identify, investigate, and resolve complaints that—

(i) Are made by, or on behalf of, residents; and

(ii) Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of—

(A) Providers, or representatives of providers, of long-term care;

(B) Public agencies; or

(C) Health and social service agencies.

(2) Provide services to protect the health, safety, welfare, and rights of the residents;

(3) Inform residents about means of obtaining services provided by the Ombudsman program;

(4) Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;

(5) Represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;

(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;

(7)(i) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) Facilitate public comment on the laws, regulations, policies, and actions;

(iv) Provide leadership to Statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office; and

(v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

(vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.

(vii) In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes to government agency regulations and policies by the Ombudsman or representatives of the Office do not constitute lobbying activities as defined by 45 CFR part 93.

(8) Coordinate with and promote the development of citizen organizations consistent with the interests of residents; and

(9) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils to protect the well-being and rights of residents; and

(b) *Responsibilities.* The Ombudsman shall be the head of a unified Statewide long-term care Ombudsman program and shall:

(1) Establish or recommend policies, procedures, and standards for administration of the Ombudsman program pursuant to § 1324.11(e);

(2) Require representatives of the Office to fulfill the duties set forth in § 1324.19 in accordance with Ombudsman program policies and procedures.

(c) *Designation.* The Ombudsman shall determine designation and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act (42 U.S.C. 3058g(a)(5)) and the policies and procedures set forth in § 1324.11(e)(6).

(1) If an Ombudsman chooses to designate local Ombudsman entities, the Ombudsman shall:

(i) Designate local Ombudsman entities to be organizationally located within public or non-profit private entities;

(ii) Review and approve plans or contracts governing local Ombudsman entity operations, including, where applicable, through area agency on aging plans, in coordination with the State agency; and

(iii) Monitor, on a regular basis, the Ombudsman program performance of local Ombudsman entities.

(2) The Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on and consistent with standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the Act (42 U.S.C. 3011(d)) and set forth by the Assistant Secretary for Aging, in consultation with residents, resident representatives, citizen organizations, long-term care providers, and the State agency, that—

(i) Specify a minimum number of hours of initial training;

(ii) Specify the content of the training, including training relating to Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; investigative and resolution techniques; and such other matters as the Office determines to be appropriate;

(iii) Specify that all program staff or volunteers who have access to residents, files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office; and

(iv) Specify an annual number of hours of in-service training for all representatives of the Office;

(3) Prohibit any representative of the Office from carrying out the duties described in § 1324.19 unless the representative—

(i) Has received the training required under paragraph (c)(2) of this section or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and

(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(4) The Ombudsman shall investigate allegations of misconduct by representatives of the Office in the performance of Ombudsman program duties and, as applicable, coordinate such investigations with the State agency in which the Office is organizationally located, agency hosting the local Ombudsman entity and/or the local Ombudsman entity.

(5) Policies, procedures, or practices which the Ombudsman determines to be in conflict with the laws, policies, or procedures governing the Ombudsman program shall be sufficient grounds for refusal, suspension, or removal of designation of the representative of the Office and/or the local Ombudsman entity.

(d) *Ombudsman program information.* The Ombudsman shall manage the files, records, and other information of the Ombudsman program, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such files, records, and other information are the property of the Office. Nothing in this provision shall prohibit a representative of the Office or a local Ombudsman entity from maintaining such information in accordance with Ombudsman program requirements. All program staff or volunteers who access the files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office.

(e) *Disclosure.* In making determinations regarding the disclosure of files, records, and other information maintained by the Ombudsman program, the Ombudsman shall:

(1) Have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program. The Ombudsman shall comply with section 712(d) of the Act (42 U.S.C. *3058g(d))* in responding to requests for disclosure of files, records, and other information, regardless of the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program;

(2) Develop and adhere to criteria to guide the Ombudsman's discretion in determining whether to disclose the files, records, or other information of the Office. Criteria for disclosure of records shall consider if the disclosure has the potential to cause:

(i) Retaliation against residents, complainants, or witnesses,

(ii) Undermining of the working relationships between the Ombudsman program, facilities, or other agencies; or

(iii) Undermining of other official duties of the program;

(3) Develop and adhere to a process for the appropriate disclosure of information maintained by the Office, including:

(i) Classification of at least the following types of files, records, and information: medical, social, and other records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the Ombudsman program reporting system;

(ii) Identification of the appropriate individual designee or category of designee, if other than the Ombudsman, authorized to determine the disclosure of specific categories of information in accordance with the criteria described in paragraph (e) of this section;

(f) *Fiscal management.* The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program.

(g) *Annual report.* In addition to the annual submission of the National Ombudsman Reporting System report, the Ombudsman shall independently develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act (42 U.S.C. 3058g(h)(1)) and as otherwise required by the Assistant Secretary.

(1) Such report shall:

(i) Describe the activities carried out by the Office in the year for which the report is prepared;

(ii) Contain analysis of Ombudsman program data;

(iii) Describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;

(iv) Contain policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;

(v) Contain analysis of the success of the Ombudsman program, including success in providing services to residents of assisted living, board and care facilities, and other similar adult care facilities; and

(vi) Describe barriers that prevent the optimal operation of the Ombudsman program.

(2) The Ombudsman shall make such report available to the public and submit it to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities.

(h) *Memoranda of understanding.* Through adoption of memoranda of understanding or other means, the Ombudsman shall lead State-level coordination and support appropriate local Ombudsman entity coordination, between the Ombudsman program and other entities with responsibilities relevant to the health, safety, well-being, or rights of residents of long-term care facilities, including:

(1) The required adoption of memoranda of understanding between the Ombudsman program and:

(i) Legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C)), addressing at a minimum referral processes and strategies to be used when the Ombudsman program and a legal assistance program are both providing program services to a resident.

(ii) Facility and long-term care provider licensure and certification programs, addressing at minimum communication protocols and procedures to share information including procedures for access to copies of licensing and certification records maintained by the State with respect to long-term care facilities;

(2) The recommended adoption of memoranda of understanding or other means between the Ombudsman program and:

(i) Area agency on aging programs;

(ii) Aging and disability resource centers;

(iii) Adult protective services programs;

(iv) Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);

(v) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));

(vi) Victim assistance programs;

(vii) State and local law enforcement agencies;

(viii) Courts of competent jurisdiction; and

(ix) The State Legal Assistance Developer as provided under section 731 of the Act (42 U.S.C. 3058j) and as set forth in subpart C.

(i) *Other activities.* The Ombudsman shall carry out such other activities as the Assistant Secretary determines to be appropriate.

§ 1324.15 State agency responsibilities related to the Ombudsman program.

(a) *Compliance.* In addition to the responsibilities set forth in part 1321 of this chapter, the State agency shall ensure that the Ombudsman complies with the relevant provisions of the Act and of this rule.

(b) *Authority and access.* The State agency shall ensure, through the development of policies, procedures, and other means, consistent with § 1324.11(e)(2), that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.

(c) *Training.* The State agency shall provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. The State agency may utilize funds appropriated under Title III and/or Title VII of the Act designated for direct services in order to provide access to such training opportunities.

(d) *Personnel supervision and management.* The State agency shall provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.

(e) *State agency monitoring.* The State agency shall provide monitoring, as required by § 1321.9(b) of this chapter, including but not limited to fiscal monitoring, where the Office and/or local Ombudsman entity is organizationally located within an agency under contract or other arrangement with the State agency. Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19. The State agency may make reasonable requests for reports, including aggregated data regarding Ombudsman program activities, to meet the requirements of this provision.

(f) *Disclosure limitations.* The State agency shall ensure that any review of files, records, or other information maintained by the Ombudsman program is consistent with the disclosure limitations set forth in §§ 1324.11(e)(3) and 1324.13(e).

(g) *State and area plans on aging.* The State agency shall integrate the goals and objectives of the Office into the State plan and coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Act and other State elder rights, disability rights, and elder justice programs, including, but not limited to, legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C), to promote collaborative efforts and diminish duplicative efforts. Where applicable, the State agency shall require inclusion of goals and objectives of local Ombudsman entities into area plans on aging.

(h) *Elder rights leadership.* The State agency shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman program services with the activities of other programs authorized by Title VII of the Act, as well as other State and local entities with responsibilities relevant to the health, safety, well-being, or rights of older adults, including residents of long-term care facilities as set forth in § 1324.13(h).

(i) *Interference, retaliation, and reprisals.* The State agency shall:

(1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation, and reprisals:

(i) By a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or

(ii) By a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated at §§ 1324.13 and 1324.19; and

(2) Provide for appropriate sanctions with respect to interference, retaliation, and reprisals.

(j) *Legal counsel.* (1) The State agency shall ensure that:

(i) Legal counsel for the Ombudsman program is adequate, available, is without conflict of interest (as defined by the State ethical standards governing the legal profession), and has competencies relevant to the legal needs of:

(A) The program, in order to provide consultation and/or representation as needed to assist the Ombudsman and

representatives of the Office in the performance of their official functions, responsibilities, and duties, including complaint resolution and systems advocacy. Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official duties.

(B) Residents, in order to provide consultation and representation as needed for the Ombudsman program to protect the health, safety, welfare, and rights of residents.

(ii) The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the Legal Assistance Developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents.

(2) Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). At a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long-term care facilities.

(3) Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

(4) The communications between the Ombudsman and their legal counsel are subject to attorney-client privilege.

(k) *Fiscal management.* The State agency shall ensure that:

(1) The Ombudsman receives notification of all sources of funds received by the State agency that are allocated or appropriated to the Ombudsman program and provides information on any requirements of the funds, and the Ombudsman is supported in their determination of the use of funds;

(2) The Ombudsman has full authority to determine the use of fiscal resources appropriated or otherwise available for the operation of the Office;

(3) Where local Ombudsman entities are designated, the Ombudsman approves the allocations of Federal and State funds to such entities, prior to any distribution of such funds, subject to applicable Federal and State laws and policies; and

(4) The Ombudsman determines that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program.

(l) *State agency requirements of the Office.* The State agency shall require the Office to:

(1) Develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act (42 U.S.C. 3058g(h)(1)) and § 1324.13(g) and as otherwise required by the Assistant Secretary.

(2) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3) Provide such information as the Office determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns;

(4) Establish procedures for the training of the representatives of the Office, as set forth in § 1324.13(c)(2); and

(5) Coordinate Ombudsman program services with entities with responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities, as set forth in § 1324.13(h).

§ 1324.17 Responsibilities of agencies hosting local Ombudsman entities.

(a) The agency in which a local Ombudsman entity is organizationally located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.

(b) The agency in which a local Ombudsman entity is organizationally located shall not have personnel policies or practices which prohibit the representatives of the Office from performing the duties, or from adhering to the access, confidentiality, and disclosure requirements of section 712 of the Act (42 U.S.C. 3058g), as implemented through this rule and the policies and procedures of the Office.

(1) Policies, procedures, and practices, including personnel management practices of the host agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.

(2) Nothing in this provision shall prohibit the host agency from requiring that the representatives of the Office adhere to the personnel policies and procedures of the agency which are otherwise lawful.

§ 1324.19 Duties of the representatives of the Office.

In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity and may designate an employee or volunteer of the local Ombudsman entity as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.

(a) *Duties.* An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(2) Provide services to protect the health, safety, welfare, and rights of residents;

(3) Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints;

(4) Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(5)(i) Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(6) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils; and

(7) Carry out other activities that the Ombudsman determines to be appropriate.

(b) *Complaint processing.* (1) With respect to identifying, investigating and resolving complaints, and regardless of the source of the complaint (*i.e.,* complainant), the Ombudsman and the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate and resolve a complaint impacting multiple residents or all residents of a facility.

(2) Regardless of the source of the complaint (*i.e.,* the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:

(i) The Ombudsman or representative of Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints.

(ii) The Ombudsman or representative of the Office shall discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:

(A) Determine the perspective of the resident (or resident representative, where applicable) of the complaint;

(B) Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;

(C) Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure shall be consistent with paragraph (b)(3) of this section;

(D) Advise the resident (and resident representative, where applicable) of the resident's rights;

(E) Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;

(F) Investigate the complaint to determine whether the complaint can be verified; and

(G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

(iii) Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:

(A) Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and

(B) Determine whether the complaint was resolved to the satisfaction of the complainant.

(iv) In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.

(3) The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act (42 U.S.C. 3058g(d)) and the procedures set forth in § 1324.11(e)(3).

(i) Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.

(ii) Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in paragraph (b)(3)(i) of this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide information on how a resident or representative may obtain contact information of such facility representatives or entities, and/or disclose the information for which the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.

(iii) In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary.

(4) For purposes of paragraphs (b)(1) through (3) of this section, communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office, in accordance with the procedures of the Office;

(5) For purposes of paragraphs (b)(1) through (3) of this section, if a resident is unable to communicate his or her informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the communication by a resident representative of informed consent and/or perspective regarding the resolution of the complaint if the Ombudsman or representative of the Office has no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.

(6) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by § 1324.11(e)(3), shall provide that the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services;

access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;

(ii) The resident has no resident representative;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident;

(iv) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(v) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(vi) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(7) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by § 1324.11(e)(3), shall provide that, the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;

(ii) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(iv) The representative of the Ombudsman obtains the approval of the Ombudsman.

(8) The procedures for disclosure, as required by § 1324.11(e)(3), shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies;

(i) Where such resident is able to communicate informed consent, or has a resident representative available to provide informed consent, the Ombudsman or representative of the Office shall follow the direction of the resident or resident representative as set forth paragraphs (b)(1) through (3) of this section; and

(ii) Where the resident is unable to communicate informed consent, and has no resident representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:

(A) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(B) The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and

(C) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(iii) In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office described in paragraph (b)(9) of this section, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(9) Prior to disclosing resident-identifying information pursuant to paragraph (b)(6) or (8) of this section, a representative of the Office must obtain approval by the Ombudsman or, alternatively, follow policies and procedures of the Office which provide for such disclosure.

(i) Where the policies and procedures require Ombudsman approval, they shall include a time frame in which the Ombudsman is required to communicate approval or disapproval in order to assure that the representative of the Office has the ability to promptly take actions to protect the health, safety, welfare or rights of residents.

(ii) Where the policies and procedures do not require Ombudsman approval prior to disclosure, they shall require that the representative of the Office promptly notify the Ombudsman of any disclosure of resident-identifying information under the circumstances set forth in paragraph (b)(6) or (8) of this section.

(iii) Disclosure of resident-identifying information under paragraph (b)(7) of this section shall require Ombudsman approval.

§ 1324.21 Conflicts of interest.

The State agency and the Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both the State agency and the Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section.

(a) *Identification of organizational conflicts.* In identifying conflicts of interest pursuant to section 712(f) of the Act (42 U.S.C. 3058g(f)), the State agency and the Ombudsman shall consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

(1) Is responsible for licensing, surveying, or certifying long-term care services, including facilities;

(2) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;

(3) Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;

(4) Has governing board members with any ownership, investment, or employment interest in long-term care facilities;

(5) Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;

(6) Provides long-term care services, including programs carried out under a Medicaid waiver approved under

section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under section 1905(a) or subsection (i), (j), or (k) of section 1915 of the Social Security Act;

(7) Provides long-term care coordination or case management, including for residents of long-term care facilities;

(8) Sets reimbursement rates for long-term care facilities;

(9) Sets reimbursement rates for long-term care services;

(10) Provides adult protective services;

(11) Is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act;

(12) Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;

(13) Conducts preadmission screening for long-term care facility admission;

(14) Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or

(15) Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

(b) *Removing or remedying organizational conflicts.* The State agency and the Ombudsman shall identify and take steps to remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.

(1) The Ombudsman shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(2) Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall:

(i) Take reasonable steps to avoid internal conflicts of interest;

(ii) Establish a process for review and identification of internal conflicts;

(iii) Take steps to remove or remedy conflicts;

(iv) Ensure that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and

(v) Assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(3) Where a State agency is unable to adequately remove or remedy a conflict, it shall carry out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act (42 U.S.C. 3058g(a)(4)). The State agency may not enter into a contract or other arrangement to carry out the Ombudsman program if the other entity, and may not operate the Office directly if it:

(i) Is responsible for licensing, surveying, or certifying long-term care facilities;

(ii) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or

(iii) Has any ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility.

(4) Where the State agency carries out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act (42 U.S.C. 3058g(a)(4)), the State agency shall:

(i) Prior to contracting or making another arrangement, take reasonable steps to avoid conflicts of interest in such agency or organization which is to carry out the Ombudsman program and to avoid conflicts of interest in the State agency's oversight of the contract or arrangement;

(ii) Establish a process for periodic review and identification of conflicts;

(iii) Establish criteria for approval of steps taken by the agency or organization to remedy or remove conflicts;

(iv) Require that such agency or organization have a process in place to:

(A) Take reasonable steps to avoid conflicts of interest, and

(B) Disclose identified conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval.

(5) Where an agency or organization carrying out the Ombudsman program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, the State agency shall either operate the Ombudsman program directly or by contract or other arrangement with another public agency or nonprofit private organization.

(6) Where local Ombudsman entities provide Ombudsman services, the Ombudsman shall:

(i) Prior to designating or renewing designation, take reasonable steps to avoid conflicts of interest in any agency which may host a local Ombudsman entity.

(ii) Establish a process for periodic review and identification of conflicts of interest with the local Ombudsman entity in any agencies hosting a local Ombudsman entity,

(iii) Require that such agencies disclose identified conflicts of interest with the local Ombudsman entity and steps taken to remove or remedy conflicts within such agency to the Ombudsman,

(iv) Establish criteria for approval of steps taken to remedy or remove conflicts in such agencies, and

(v) Establish a process for review of and criteria for approval of plans to remove or remedy conflicts with the local Ombudsman entity in such agencies.

(7) Failure of an agency hosting a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension or removal of designation of the local Ombudsman entity by the Ombudsman.

(c) *Identifying individual conflicts of interest.* (1) In identifying conflicts of interest pursuant to section 712(f) of the Act (42 U.S.C. 3058g(f)), the State agency and the Ombudsman shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.

(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:

(i) Direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(ii) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or a long-term care service;

(iii) Employment of an individual by, or participation in the management of, a long-term care facility or a related organization, in the service area or by the owner or operator of any long-term care facility in the service area;

(iv) Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;

(v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);

(vi) Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval;

(vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services; and

(viii) Serving residents of a facility in which an immediate family member resides.

(ix) Management responsibility for, or operating under the supervision of, an individual with management responsibility for, adult protective services.

(x) Serves as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity).

(d) *Removing or remedying individual conflicts.* (1) The State agency or Ombudsman shall develop and implement policies and procedures, pursuant to § 1324.11(e)(4), to ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a conflict of interest as set forth in § 1324.21(c). This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.

(2) When considering the employment or appointment of an individual as the Ombudsman or as a representative of the Office, the State agency or other employing or appointing entity shall:

(i) Take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;

(ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;

(iii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office, and

(iv) Take steps to remove or remedy conflicts.

(3) In no circumstance shall the entity, which appoints or employs the Ombudsman, appoint or employ an individual as the Ombudsman who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Has been employed by or participating in the management of a long-term care facility within the previous twelve months.

(iv) Receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangemen with an owner or operator of a long-term care facility.

(4) In no circumstance shall the State agency, other agency which carries out the Office, or an agency hosting a local Ombudsman entity appoint or employ an individual, nor shall the Ombudsman designate an individual, as a representative of the Office who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or

(iv) Is employed by, or participating in the management of, a long-term care facility.

(A) An agency which appoints or employs representatives of the Office shall make efforts to avoid appointing or employing an individual as a representative of the Office who has been employed by or participating in the management of a long-term care facility within the previous twelve months.

(B) Where such individual is appointed or employed, the agency shall take steps to remedy the conflict.

Subpart B—Programs for Prevention of Elder Abuse, Neglect, and Exploitation

§ 1324.201 State agency responsibilities for the prevention of elder abuse, neglect, and exploitation.

(a) In accordance with Title VII-Chapter 3 of the Act, the distribution of Federal funds to the State agency on aging by formula is authorized to carry out activities to develop, strengthen, and carry out programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation.

(b) All programs using these funds must meet requirements as set forth in the Act, including those of section 721(c), (d), (e), (42 U.S.C. 3058g(c–e)) and guidance as set forth by the Assistant Secretary for Aging.

Subpart C—State Legal Assistance Development Program

§ 1324.301 Definitions.

(a) Definitions as set forth in § 1321.3 apply to this part.

(b) Terms used, but not otherwise defined in this part will have the meanings ascribed to them in the Act.

§ 1324.303 Legal Assistance Developer.

(a) In accordance with section 731 of the Act (42 U.S.C. 3058j), the State agency shall designate an individual who shall be known as a State Legal Assistance Developer, and other personnel, sufficient to ensure—

(1) State leadership in securing and maintaining the legal rights of older individuals;

(2) State capacity for coordinating the provision of legal assistance, in accordance with section 102(23) and (24) and consistent with section 102(33) of the Act (42 U.S.C. 3002(33)), to include prioritizing such services provided to individuals with greatest economic need, or greatest social need;

(3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, long-term care Ombudsmen programs, adult protective services, and other service providers under the Act;

(i) The Legal Assistance Developer shall utilize the trainings, case consultations, and technical assistance provided by the support and technical assistance entity established pursuant to section 420(c) of the Act (42 U.S.C. 3032i(c)).

(ii) [Reserved]

(4) State capacity to promote financial management services to older individuals at risk of guardianship,

conservatorship, or other fiduciary proceedings;

(i) In so doing, the Legal Assistance Developer shall take into consideration promotion of activities to increase awareness of and access to self-directed financial management services and legal assistance and;

(ii) The Legal Assistance Developer shall also take into consideration promotion of activities that proactively enable older adults and those they designate as decisional supporters through powers of attorney, health care proxies, supported decision making agreements, and similar instruments or approaches to be connected to resources and education to manage their finances so as to limit their risk for guardianship, conservatorship, or more restrictive fiduciary proceedings;

(5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings;

(i) In so doing, the Legal Assistance Developer shall take into consideration engaging in activities aimed at preserving an individual's rights or autonomy, including, but not limited to, increasing awareness of and access to least-restrictive alternatives to guardianship, conservatorship, or more restrictive fiduciary proceedings, such as supported decision making, and legal assistance;

(ii) In so doing, the Legal Assistance Developer shall adhere to the restrictions contained in section 321(a)(6)(B)(i) of the Act (42 U.S.C. 3030d(a)(6)(B)(i)) regarding the involvement of legal assistance providers in guardianship proceedings, and shall apply these restrictions to conservatorship and other fiduciary proceedings;

(iii) In undertaking this activity, the Legal Assistance Developer shall take into consideration coordination of efforts with legal assistance providers funded under the Act contracted by area agencies on aging, any Bar Association Elder Law Section, and other elder rights or entities active in the State.

(6) State capacity to improve the quality and quantity of legal services provided to older individuals.

(b) The activities designated by the State agency for the Legal Assistance Developer, in accordance with paragraphs (a)(1) through (6) of this section, shall be contained in the State plan, per section 307 of the Act and as set forth in § 1321.27.

(c) The State agency shall ensure that the Legal Assistance Developer has the knowledge, resources, and capacity to conduct the activities outlined in paragraph (a) of this section.

(d) Conflicts of interest.

(1) In designating a Legal Assistance Developer, the State agency shall consider any potential conflicts of interest posed by any candidate for the role, and take steps to prevent, remedy, or remove such conflicts of interest.

(2) In designating a Legal Assistance Developer, the State agency shall consider both organizational and individual interests that may impact the effectiveness and credibility of the work of the Legal Assistance Developer to coordinate legal assistance and work to secure, protect, and promote the legal rights of older adults in the State.

(i) This includes holding a position or performing duties that could lead to decisions that are or have the appearance of being contrary to the Legal Assistance Developer's duties as defined in this section and contained in the State plan as set forth in § 1321.27 of this chapter.

(ii) [Reserved]

(3) The State agency shall not designate as Legal Assistance Developer any individual who is:

(i) Serving as a director of adult protective services, or as a legal counsel to adult protective services;

(ii) Serving as a State Long-Term Care Ombudsman, or as legal counsel to a State Long-Term Care Ombudsman program;

(iii) Serving as a hearing officer, administrative law judge, trier of fact or counsel to these positions in an administrative proceeding related to the legal rights of older adults, such as one in which a legal assistance provider might appear;

(iv) Serving as legal counsel or a party to an administrative proceeding related to long-term care settings, including residential settings;

(v) Conducting surveys of and licensure certifications for long-term care settings, including residential settings, or serving as counsel or advisor to such positions;

(vi) Serving as a public or private guardian, conservator, or fiduciary or operating such a program, or serving as counsel to these positions or programs.

(4) The State agency and the Legal Assistance Developer shall be responsible for identifying any other actual and potential conflicts of interest and circumstances that may lead to the appearance of a conflict of interest; identifying processes for preventing conflicts of interest and, where a conflict of interest has been identified, for removing or remedying the conflict.

(5) The State agency shall develop and implement policies and procedures to ensure that the Legal Assistance Developer is not required or permitted to hold positions or perform duties that would constitute a conflict of interest.

Dated: June 12, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–12829 Filed 6–15–23; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 751
Perchloroethylene (PCE); Regulation under the Toxic Substances Control Act (TSCA); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2020–0720; FRL–8329–02–OCSPP]

RIN 2070–AK84

Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to address the unreasonable risk of injury to human health presented by perchloroethylene (PCE) under its conditions of use as documented in EPA's December 2020 Risk Evaluation for PCE and December 2022 revised risk determination for PCE prepared under the Toxic Substances Control Act (TSCA). PCE is a widely used solvent in a variety of occupational and consumer applications including fluorinated compound production, petroleum manufacturing, dry cleaning, and aerosol degreasing. EPA determined that PCE presents an unreasonable risk of injury to health due to the significant adverse health effects associated with exposure to PCE, including neurotoxicity effects from acute and chronic inhalation exposures and dermal exposures, and cancer from chronic inhalation exposures to PCE. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. PCE, also known as perc and tetrachloroethylene, is a neurotoxicant and a likely human carcinogen. Neurotoxicity, in particular impaired visual and cognitive function and diminished color discrimination, are the most sensitive adverse effects driving the unreasonable risk of PCE, and other adverse effects associated with exposure include central nervous system depression, kidney and liver effects, immune system toxicity, developmental toxicity, and cancer. To address the identified unreasonable risk, EPA is proposing to prohibit most industrial and commercial uses of PCE; the manufacture (including import), processing, and distribution in commerce of PCE for the prohibited industrial and commercial uses; the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; and, the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 10-year phaseout. For certain conditions of use that would not be subject to a prohibition, EPA is also proposing to require a PCE workplace chemical protection program that includes requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact. EPA is also proposing to require prescriptive workplace controls for laboratory use, and to establish recordkeeping and downstream notification requirements. Additionally, EPA proposes to provide certain time-limited exemptions from requirements for certain critical or essential emergency uses of PCE for which no technically and economically feasible safer alternative is available.

DATES: Comments must be received on or before August 15, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before July 17, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0720, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kelly Summers, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (202) 564–2201; email address: *PCE.TSCA@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. Executive Summary

A. Does this action apply to me?

You may be potentially affected by the proposed action if you manufacture (defined under TSCA to include import), process, distribute in commerce, use, or dispose of PCE or products containing PCE. 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 include:

- Crude Petroleum Extraction (NAICS code 211120).
- Support Activities for Oil and Gas Operations (NAICS code 213112).
- Nonwoven Fabric Mills (NAICS code 313230).
- Wood Window and Door Manufacturing (NAICS code 321911).
- Paper Bag and Coated and Treated Paper Manufacturing (NAICS code 322220).
- Commercial Screen Printing (NAICS code 323113).
- Petroleum Refineries (NAICS code 324110).
- Petroleum Lubricating Oil and Grease Manufacturing (NAICS code 324191).
- Petrochemical Manufacturing (NAICS code 325110).
- Industrial Gas Manufacturing (NAICS code 325120).
- Other Basic Inorganic Chemical Manufacturing (NAICS code 325180).
- All Other Basic Organic Chemical Manufacturing (NAICS code 325199).
- Plastics Material and Resin Manufacturing (NAICS code 325211).
- Synthetic Rubber Manufacturing (NAICS code 325212).
- Paint and Coating Manufacturing (NAICS code 325510).
- Adhesive Manufacturing (NAICS code 325520).
- Soap and Other Detergent Manufacturing (NAICS code 325611).
- Polish and Other Sanitation Good Manufacturing (NAICS code 325612).
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS code 325998).
- Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing (NAICS code 326113).
- All Other Plastics Product Manufacturing (NAICS code 326199).
- Rubber and Plastics Hoses and Belting Manufacturing (NAICS code 326220).
- Rubber Product Manufacturing for Mechanical Use (NAICS code 326291).
- All Other Rubber Product Manufacturing (NAICS code 326299).

- Pottery, Ceramics, and Plumbing Fixture Manufacturing (NAICS code 327110).
- Glass Container Manufacturing (NAICS code 327213).
- Cement Manufacturing (NAICS code 327310).
- Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum) (NAICS code 331492).
- Metal Crown, Closure, and Other Metal Stamping (except Automotive) (NAICS code 332119).
- Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing (NAICS code 332215).
- Saw Blade and Handtool Manufacturing (NAICS code 332216).
- Other Fabricated Wire Product Manufacturing (NAICS code 332618).
- Metal Heat Treating (NAICS code 332811).
- Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers (NAICS code 332812).
- Electroplating, Plating, Polishing, Anodizing, and Coloring (NAICS code 332813).
- Industrial Valve Manufacturing (NAICS code 332911).
- Fluid Power Valve and Hose Fitting Manufacturing (NAICS code 332912).
- Plumbing Fixture Fitting and Trim Manufacturing (NAICS code 332913).
- Other Metal Valve and Pipe Fitting Manufacturing (NAICS code 332919).
- Ball and Roller Bearing Manufacturing (NAICS code 332991).
- Small Arms Ammunition Manufacturing (NAICS code 332992).
- Ammunition (except Small Arms) Manufacturing (NAICS code 332993).
- Small Arms, Ordnance, and Ordnance Accessories Manufacturing (NAICS code 332994).
- Fabricated Pipe and Pipe Fitting Manufacturing (NAICS code 332996).
- All Other Miscellaneous Fabricated Metal Product Manufacturing (NAICS code 332999).
- Other Industrial Machinery Manufacturing (NAICS code 333249).
- Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS code 333415).
- Machine Tool Manufacturing (NAICS code 333517).
- Measuring, Dispensing, and Other Pumping Equipment Manufacturing (NAICS code 333914).
- Welding and Soldering Equipment Manufacturing (NAICS code 333992).
- Packaging Machinery Manufacturing (NAICS code 333993).
- Industrial Process Furnace and Oven Manufacturing (NAICS code 333994).
- Fluid Power Cylinder and Actuator Manufacturing (NAICS code 333995).
- Fluid Power Pump and Motor Manufacturing (NAICS code 333996).
- All Other Miscellaneous General Purpose Machinery Manufacturing (NAICS code 333999).
- Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables (NAICS code 334513).
- Analytical Laboratory Instrument Manufacturing (NAICS code 334516).
- Motor Vehicle Body Manufacturing (NAICS code 336211).
- Travel Trailer and Camper Manufacturing (NAICS code 336214).
- Other Motor Vehicle Parts Manufacturing (NAICS code 336390).
- Aircraft Manufacturing (NAICS code 336411).
- Aircraft Engine and Engine Parts Manufacturing (NAICS code 336412).
- Other Aircraft Parts and Auxiliary Equipment Manufacturing (NAICS code 336413).
- Guided Missile and Space Vehicle Manufacturing (NAICS code 336414).
- Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing (NAICS code 336415).
- Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing (NAICS code 336419).
- Ship Building and Repairing (NAICS code 336611).
- Surgical and Medical Instrument Manufacturing (NAICS code 339112).
- Jewelry and Silverware Manufacturing (NAICS code 339910).
- Sporting and Athletic Goods Manufacturing (NAICS code 339920).
- Doll, Toy, and Game Manufacturing (NAICS code 339930).
- Office Supplies (except Paper) Manufacturing (NAICS code 339940).
- Gasket, Packing, and Sealing Device Manufacturing (NAICS code 339991).
- Musical Instrument Manufacturing (NAICS code 339992).
- Fastener, Button, Needle, and Pin Manufacturing (NAICS code 339993).
- Broom, Brush, and Mop Manufacturing (NAICS code 339994).
- Burial Casket Manufacturing (NAICS code 339995).
- All Other Miscellaneous Manufacturing (NAICS code 339999).
- Motor Vehicle Supplies and New Parts Merchant Wholesalers (NAICS code 423120).
- Home Furnishing Merchant Wholesalers (NAICS code 423220).
- Industrial Supplies Merchant Wholesalers (NAICS code 423840).
- Service Establishment Equipment and Supplies Merchant Wholesalers (NAICS code 423850).
- Other Miscellaneous Durable Goods Merchant Wholesalers (NAICS code 423990).
- Grain and Field Bean Merchant Wholesalers (NAICS code 424510).
- Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690).
- Petroleum Bulk Stations and Terminals (NAICS code 424710).
- Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals) (NAICS code 424720).
- New Car Dealers (NAICS code 441110).
- Used Car Dealers (NAICS code 441120).
- Other Gasoline Stations (NAICS code 447190).
- Sporting Goods Stores (NAICS code 451110).
- All Other Miscellaneous Store Retailers (except Tobacco Stores) (NAICS code 453998).
- Scheduled Passenger Air Transportation (NAICS code 481111).
- Scheduled Freight Air Transportation (NAICS code 481112).
- Pipeline Transportation of Natural Gas (NAICS code 486210).
- Teleproduction and Other Postproduction Services (NAICS code 512191).
- Other Motion Picture and Video Industries (NAICS code 512199).
- Miscellaneous Intermediation (NAICS code 523910).
- Other Financial Vehicles (NAICS code 525990).
- Lessors of Other Real Estate Property (NAICS code 531190).
- Offices of Real Estate Agents and Brokers (NAICS code 531210).
- Testing Laboratories (NAICS code 541380).
- Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) (NAICS code 541715).
- Marketing Research and Public Opinion Polling (NAICS code 541910).
- All Other Professional, Scientific, and Technical Services (NAICS code 541990).
- Offices of Other Holding Companies (NAICS code 551112).
- Hazardous Waste Treatment and Disposal (NAICS code 562211).
- Solid Waste Landfill (NAICS code 562212).
- Solid Waste Combustors and Incinerators (NAICS code 562213).
- Other Nonhazardous Waste Treatment and Disposal (NAICS code 562219).
- Remediation Services (NAICS code 562910).
- Materials Recovery Facilities (NAICS code 562920).

- All Other Miscellaneous Waste Management Services (NAICS code 562998).
- General Automotive Repair (NAICS code 811111).
- Automotive Exhaust System Repair (NAICS code 811112).
- Automotive Transmission Repair (NAICS code 811113).
- Other Automotive Mechanical and Electrical Repair and Maintenance (NAICS code 811118).
- Automotive Body, Paint, and Interior Repair and Maintenance (NAICS code 811121).
- Automotive Glass Replacement Shops (NAICS code 811122).
- Automotive Oil Change and Lubrication Shops (NAICS code 811191).
- All Other Automotive Repair and Maintenance (NAICS code 811198).
- Consumer Electronics Repair and Maintenance (NAICS code 811211).
- Computer and Office Machine Repair and Maintenance (NAICS code 811212).
- Communication Equipment Repair and Maintenance (NAICS code 811213).
- Other Electronic and Precision Equipment Repair and Maintenance (NAICS code 811219).
- Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance (NAICS code 811310).
- Home and Garden Equipment Repair and Maintenance (NAICS code 811411).
- Other Personal and Household Goods Repair and Maintenance (NAICS code 811490).
- Drycleaning and Laundry Services (except Coin-Operated) (NAICS code 812320).
- Industrial Launderers (NAICS code 812332).

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final TSCA section 6(a) rule are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

If you have any questions regarding the applicability of this proposed action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if the U.S. Environmental Protection Agency hereinafter EPA or ''the Agency,'' determines through a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more requirements listed in TSCA section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents such risk.

C. What action is the Agency taking?

Pursuant to TSCA section 6(b), EPA determined that PCE presents an unreasonable risk of injury to health, without consideration of costs or other nonrisk factors, including an unreasonable risk to potentially exposed or susceptible subpopulations (PESS) identified as relevant to the 2020 Risk Evaluation for PCE by EPA, under the conditions of use (Refs. 1 and 2). The term ''conditions of use'' is defined at TSCA section 3(4) (15 U.S.C. 2602(4)) to mean the circumstances under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of. A detailed description of the conditions of use that drive EPA's determination that PCE presents an unreasonable risk is included in Unit III.B.1. EPA notes that all TSCA conditions of use of PCE are subject to this proposal. Accordingly, to address the unreasonable risk, EPA is proposing, under TSCA section 6(a), to:

(i) Prohibit most industrial and commercial uses and the manufacture (including import), processing, and distribution in commerce, of PCE for those uses, outlined in Unit IV.A.1.;

(ii) Prohibit the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use, outlined in Unit IV.A.1.;

(iii) Prohibit the manufacture (including import), processing, distribution in commerce, and commercial use of PCE in dry cleaning and spot cleaning through a 10-year phaseout, outlined in Unit IV.A.1.;

(iv) Require strict workplace controls, including a PCE Workplace Chemical Protection Program (WCPP), which would include requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact with PCE, for the 16 occupational conditions of use not prohibited, outlined in Unit IV.A.2.;

(v) Require prescriptive workplace controls for laboratory use, outlined in Unit IV.A.3.; and

(vi) Establish recordkeeping and downstream notification requirements, outlined in Unit IV.A.4.

(vii) Provide a 10-year time limited exemption under TSCA section 6(g) for certain emergency uses of PCE in furtherance of National Aeronautics and Space Administration's mission, for specific conditions of use which are critical or essential and for which no technically and economically feasible safer alternative is available, outlined in Unit IV.A.5.

In addition, EPA is proposing to amend the general provision of 40 CFR part 751, subpart A, to define ''authorized person,'' ''direct dermal contact,'' ''ECEL,'' ''exposure group,'' ''owner or operator,'' ''potentially exposed person,'' ''regulated area,'' and ''retailer'' so that these definitions may be commonly applied to this and other rules under TSCA section 6 that would be codified under 40 CFR part 751. EPA seeks public comment on all aspects of this proposed rule.

D. Why is the Agency taking this action?

Under TSCA section 6(a), ''[i]f the Administrator determines in accordance with subsection (b)(4)(A) that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Administrator shall by rule . . . apply one or more of the [section 6(a)] requirements to such substance or mixture to the extent necessary so that the chemical substance or mixture no longer presents such risk.'' PCE was the subject of a risk evaluation under TSCA section 6(b)(4)(A) that was issued in December 2020 (2020 Risk Evaluation for PCE) (Ref. 1). In addition, EPA issued a revised unreasonable risk determination in December 2022 (Ref. 2), determining that PCE, as a whole chemical substance, presents an unreasonable risk of injury to health under the conditions of use. As a result, EPA is proposing to take action to the extent necessary so that PCE no longer presents such risk. The unreasonable risk is described in Unit III.B.2. and the conditions of use that drive the unreasonable risk for PCE are described in Unit III.B.1.

PCE's hazards are well established. EPA's 2020 Risk Evaluation for PCE considered the hazards associated with exposure to PCE and determined that PCE presents an unreasonable risk of injury to health due to the significant adverse health effects associated with exposure to PCE. While some of the risks of adverse effects from PCE exposure are associated with acute single exposures, other risks are associated with long-term repeated exposures. The most sensitive health effect driving the unreasonable risk of PCE and selected as the basis for this proposed rule is neurotoxicity, based on the best available science and weight of scientific evidence and in consideration of the severity of the hazards, magnitude of exposure, population exposed, and uncertainties in the December 2020 Risk Evaluation for PCE and December 2022 revised risk determination for PCE. The most sensitive endpoint is dependent on both the point of departure (POD) and the associated total uncertainty factor. For PCE, impaired visual and cognitive function and diminished color discrimination following chronic exposures represent the most sensitive endpoint indicating neurotoxicity, based on epidemiological data reported in two studies that identified lowest observed adverse effect levels for color confusion and impaired pattern recognition and reaction time in pattern memory. Other significant adverse outcomes include kidney and liver effects, immune system toxicity, reproductive toxicity, developmental toxicity, and cancer. For this proposed rulemaking, EPA has determined that protecting against the most sensitive endpoint would also address the risk for other acute, chronic non-cancer, and cancer endpoints. This proposed rule would eliminate the unreasonable risk to human health from the TSCA conditions of use of PCE, as identified in the 2020 Risk Evaluation for PCE and the revised unreasonable risk determination for PCE in December 2022.

EPA is not proposing a complete ban on PCE. The Agency has considered the benefits of PCE for various uses as required under TSCA section 6(c)(2)(A) and (B) and recognizes that continued use of PCE for some TSCA conditions of use may provide benefits that complement the Agency's efforts to address climate-damaging hydrofluorocarbons (HFCs) under the American Innovation and Manufacturing Act of 2020 (AIM Act) (42 U.S.C. 7675), supporting human health and environmental protection under these programs, and that for these uses, strict workplace controls to address the unreasonable risk can be implemented. Therefore, this rule proposes to allow PCE's continued use in tandem with strict workplace controls for the generation of HFC–125 and HFC–134a, two of the regulated substances that are subject to a phasedown under the AIM Act. While HFC–125 and HFC–134a are two of the regulated substances subject to the phasedown in production and consumption by 85% over the next 15 years, HFCs–134a and –125 can be mixed with other substances to make lower global warming potential blends that are likely to be used to facilitate the transition from certain other HFCs and HFC blends with higher global warming potentials in certain applications.

Additionally, the Agency recognizes that some conditions of use may be important for national security applications or for other critical needs. For example, PCE is a critical diluent (to modify the consistency or other properties in a formulation) for maskant applied to military and commercial aircraft skin panels that prevents chemical milling or industrial etching of certain areas and is also used in petrochemical manufacturing as a processing aid in catalyst regeneration for reformate and isomerate (these are gasoline blending stocks) that make up an estimated 45% of the U.S. gasoline pool. Therefore, this rule proposes to allow certain continued uses of PCE provided that sufficient worker protections are in place to address the unreasonable risk for certain occupational conditions of use. For the conditions of use for which EPA is proposing strict workplace controls under a WCPP, EPA expects that many workplaces already have stringent controls in place that reduce exposures to PCE; for some workplaces, EPA understands that these existing controls may already reduce exposures enough to meet the inhalation exposure concentration limit proposed in this rulemaking or to prevent direct dermal contact with PCE.

Accordingly, EPA is proposing strict workplace controls to address the unreasonable risk and allow continued use of PCE for several conditions of use, including for processing as a reactant/intermediate, use in vapor degreasing, use as a maskant for chemical milling, use in adhesives and sealants, use as a processing aid in catalyst regeneration in petrochemical manufacturing, and use as a laboratory chemical, which comprise more than an estimated 80% of the current production volume of PCE. EPA is proposing to ban or phaseout most conditions of use of PCE, including use in dry cleaning and spot cleaning, aerosol degreasing, paints and coatings, aerosol lubricants, and wipe cleaning, comprising less than an estimated 20% of the current production volume of PCE. Of the conditions of use that would not be prohibited, EPA expects the production volume for those conditions of use to decline over time. For example, EPA expects the industrial and commercial use of PCE as a reactant in the generation of HFC–134a and HFC–125 to decline over time, in light of the AIM Act requirements to phase down production and consumption of listed HFCs by 85% over the next 15 years. Unit IV.A. describes EPA's proposed regulatory action and Unit IV.B. describes the alternative regulatory actions as required under TSCA section 6(c)(2)(A). The rationale for the proposed regulatory action and alternative regulatory actions, including the TSCA section 6 requirements considered in developing the regulatory actions, is described in Units III.B.3. and V.

E. What are the estimated incremental impacts of this action?

EPA has prepared an Economic Analysis of the potential incremental impacts associated with this rulemaking that can be found in the rulemaking docket (Ref. 3). As described in more detail in the Economic Analysis (Ref. 3) and in Units VI.D. and X.D., EPA was unable to quantify all incremental costs of this proposed rule. The quantifiable cost of the proposed rule is estimated to be $14.0 million annualized over 20 years at a 3% discount rate and $14.3 million annualized over 20 years at a 7% discount rate. These costs take compliance with implementation of a WCPP into consideration, which would include an existing chemical exposure limit (ECEL) of 0.14 ppm (0.98 mg/m^3) for inhalation exposures as an 8-hour time-weighted average (TWA), dermal controls to prevent direct dermal contact, applicable personal protective equipment (PPE) requirements, and reformulation costs of numerous products. The most notable unquantified costs include possible costs from prohibition of use of PCE as a processing aid outside of the petrochemical industry; EPA's analysis was unable to quantify these costs, as described more fully in section 7.11 in the Economic Analysis (Ref. 3). The economic impact on users of PCE for chemical milling and vapor degreasing is also unclear because there are no clear alternatives to PCE; these users might have to use PPE to meet the requirements of a WCPP for PCE.

Chemical milling using PCE is most prominent in the aerospace industry. Vapor degreasing is used in several advanced manufacturing industries, including aerospace, automotive, energy, medical devices, and others (Ref. 3).

In addition, EPA estimates that 6,000 dry cleaners still use PCE, a majority of which are small businesses. Nevertheless, despite information EPA has sought from stakeholders, it is still unclear as to the impact of a prohibition of PCE for dry cleaning through a gradual phaseout; EPA has not been able to estimate the number of dry cleaning facility closures that may be associated with this phaseout. More information on the challenges of estimating these impacts, in part due to the age of relevant machines in use, is in the Economic Analysis (Ref. 3). Overall, EPA expects few closures because EPA estimates that only about 60 PCE machines are expected to be in use at the end of the proposed phaseout period given the age of the machines and the declining trend of use; this is detailed in section 7.7 of the Economic Analysis. Table 7–10 in that section details the age of the PCE dry cleaning machines in New York State, for which EPA has data. EPA believes that the data is generalizable to other states; industry has informed the Agency that very few PCE machines have been purchased in recent years. Based on the estimated revenues per firm presented in Table 31 of the Economic Analysis and the 6,000 estimated number of dry cleaning firms using PCE as dry cleaning solvent (see section 6.1.5 (A) of the Economic Analysis), the total revenue for dry cleaning firms using PCE as dry cleaning solvent is approximately $3.1 billion. According to IRS (2013) data, profit in this sector is about 4.8% of sales, implying that total profit of firms using PCE as dry cleaning solvent is about $148 million. However, EPA has proposed a 10-year phaseout of PCE in dry cleaning and estimates that only about 60 PCE dry cleaning machines would remain at the end of the phaseout (see section 7.7.3. of the Economic Analysis). This suggests that the proposed option would only affect about $31 million of the industry's total revenue and about $1.5 million of the industry's profit. Many of these firms would likely choose to purchase non-PCE machines or become drop shops (do dry cleaning at another site) rather than close. A detailed sensitivity analysis of varying assumptions on ages of PCE dry cleaning machines and PCE dry cleaning machine life is provided in section 11 of the Economic Analysis.

The actions proposed in this rule are expected to achieve health benefits for the American public, some of which can be monetized and others that, while tangible and significant, cannot be monetized. The monetized benefits of this proposed rule are approximately $10.2 million to $46.3 million annualized over 20 years at a 3% discount rate and $4.72 million to $29.4 million annualized over 20 years at a 7% discount rate. The monetized benefits include potential reductions in risk of liver, kidney, brain, and testicular cancer. Non-monetized benefits include risk reduction of neurotoxicity, kidney toxicity, liver effects, immune/hematological effects, reproductive effects, and developmental effects (Ref. 3). Neurotoxic effects of PCE in human studies include visual deficits, impaired cognition, and decreased math scores. Also, prenatal and early childhood exposure to PCE in drinking water are associated with increases in drug, alcohol, and tobacco use (Ref. 1). Reductions in PCE exposure are therefore likely to be associated with large dollar-valued, but currently unmonetized, benefits.

Additionally, the Agency expects that the proposed dry cleaning phaseout will decrease health risks for affected populations that may own/operate or work at dry cleaning facilities. As described in more detail in the Economic Analysis, the Agency analyzed the demographic characteristics of several populations that would be impacted by this rulemaking, including for dry cleaning (Ref. 3). Based on reasonably available information, the Agency understands that a significant number of members of minority populations may own or work at dry cleaning facilities.

II. Background

A. Overview of Perchloroethylene

This proposed rule applies to PCE (CASRN 127–18–4) and is specifically intended to address the unreasonable risk of injury to health EPA has identified in the 2020 Risk Evaluation for PCE and the 2022 revised unreasonable risk determination, as described in Unit III.B.2. PCE is a colorless volatile liquid with a mildly sweet odor that is produced in and imported into the United States. PCE is manufactured, processed, distributed, used, and disposed of as part of many industrial, commercial, and consumer conditions of use.

As outlined in further detail in Unit III.B.1., PCE is used for the production of fluorinated compounds, as a solvent for dry cleaning and vapor degreasing; in catalyst regeneration in petrochemical manufacturing; and in a variety of commercial and consumer applications such as adhesives, paints and coatings, aerosol degreasers, brake cleaners, aerosol lubricants, sealants, stone polish, stainless steel polish and wipe cleaners. According to data submitted for the EPA's 2016 Chemical Data Reporting rule (CDR), the total aggregate annual production volume of PCE in the U.S. decreased from 388 million pounds to around 324 million pounds between 2012 and 2015 (Ref. 4). The total aggregate annual production volume ranged from 250 to 500 million pounds between 2016 and 2019 according to CDR (Ref. 5).

B. Regulatory Actions Pertaining to PCE

Because of its adverse health effects, PCE is subject to numerous Federal laws and regulations in the United States and is also subject to regulation by some States and other countries. A summary of EPA regulations pertaining to PCE, as well other Federal, state, and international regulations (Ref. 6) is in the docket and in Appendix A of the 2020 Risk Evaluation for PCE (Ref. 1).

C. Consideration of Occupational Safety and Health Administration (OSHA) Occupational Health Standards in TSCA Risk Evaluations and TSCA Risk Management Actions

Although EPA must consider and factor in, to the extent practicable, certain nonrisk factors as part of TSCA section 6(a) rulemaking (see TSCA section 6(c)(2)), EPA must nonetheless still ensure that the selected regulatory requirements apply ''to the extent necessary so that the chemical substance or mixture no longer presents [unreasonable] risk.'' 15 U.S.C. 2605(a). This requirement to eliminate unreasonable risk is distinguishable from approaches mandated by some other laws, including the Occupational Safety and Health Act (OSH Act), which includes both significant risk and feasibility (technical and economic) considerations in the setting of standards.

Congress intended for EPA to consider occupational risks from chemicals it evaluates under TSCA, among other potential exposures, as relevant and appropriate. As noted previously, TSCA section 6(b) requires EPA to evaluate risks to PESS identified as relevant by the Administrator. TSCA section 3(12) defines the term ''potentially exposed or susceptible subpopulation'' as ''a group of individuals within the general population identified by the Administrator who, due to either greater

susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.''

The OSH Act similarly requires OSHA to evaluate risk specific to workers prior to promulgating new or revised standards and requires OSHA standards to substantially reduce significant risk to the extent feasible, even if workers are exposed over a full working lifetime. *See* 29 U.S.C. 655(b)(5); *Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607, 642 (1980) (plurality opinion).

Thus, the standards for chemical hazards that OSHA promulgates under the OSH Act share a broadly similar purpose with the standards that EPA promulgates under TSCA section 6(a). The control measures OSHA and EPA require to satisfy the objectives of their respective statutes may also, in many circumstances, overlap or coincide. However, as this section outlines, there are important differences between EPA's and OSHA's regulatory approaches and jurisdiction, and EPA considers these differences when deciding whether and how to account for OSHA requirements (Ref. 6) when evaluating and addressing potential unreasonable risk to workers so that compliance requirements are clearly explained to the regulated community.

1. OSHA Requirements

OSHA's mission is to ensure that employees work in safe and healthful conditions. The OSH Act establishes requirements that each employer comply with the General Duty Clause of the Act (29 U.S.C. 654(a)), as well as with occupational safety and health standards issued under the Act.

a. General Duty Clause of the OSH Act

The General Duty Clause of the OSH Act requires employers to keep their workplaces free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. The General Duty Clause is cast in general terms, and does not establish specific requirements like exposure limits, PPE, or other specific protective measures that EPA could potentially consider when developing its risk evaluations or risk management requirements. OSHA, under limited circumstances, has cited the General Duty Clause for regulating exposure to chemicals. To prove a violation of the General Duty Clause, OSHA must prove employer or industry recognition of the hazard, that the hazard was causing or likely to cause death or serious physical harm, and a feasible method to eliminate or materially reduce the hazard was available. In rare situations, OSHA has cited employers for violation of the General Duty Clause where exposures were below a chemical-specific permissible exposure limit (PEL), a TWA based on an employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded (Ref. 7). In such situations, OSHA must demonstrate that the employer had actual knowledge that the PEL was inadequate to protect its employees from death or serious physical harm. Because of the heavy evidentiary burden on OSHA to establish violations of the General Duty Clause, it is not frequently used to cite employers for employee exposure to chemical hazards.

b. OSHA Standards

OSHA standards are issued pursuant to the OSH Act and are found in title 29 of the CFR. There are separate standards for general industry, laboratories, construction, maritime and agriculture sectors, and general standards applicable to a number of sectors (*e.g.,* OSHA's Respiratory Protection standard). OSHA has numerous standards that apply to employers who operate chemical manufacturing and processing facilities, as well as to downstream employers whose employees may be occupationally exposed to hazardous chemicals.

OSHA sets legally enforceable limits on the airborne concentrations of hazardous chemicals, referred to as PELs, established for employers to protect their workers against the health effects of exposure to hazardous substances (29 CFR part 1910, subpart Z, part 1915, subpart Z, and part 1926, subparts D and Z). Under section 6(a) of the OSH Act, OSHA was permitted an initial 2-year window after the passage of the Act to adopt ''any national consensus standard and any established Federal standard.'' 29 U.S.C. 655(a). OSHA used this authority in 1971 to establish PELs that were adopted from Federal health standards originally set by the Department of Labor through the Walsh-Healy Act, in which approximately 400 occupational exposure limits (OELs) were selected based on the American Conference of Governmental Industrial Hygienists (ACGIH) 1968 list of Threshold Limit Values (TLVs). In addition, about 25 exposure limits recommended by the American Standards Association (now called the American National Standards Institute or ANSI) were adopted as PELs.

Following the 2-year window provided under section 6(a) of the OSH Act for adoption of national consensus and existing Federal standards, OSHA has issued health standards following the requirements in section 6(b) of the Act. OSHA has established approximately 30 PELs under section 6(b)(5) as part of comprehensive substance-specific standards that include additional requirements for protective measures such as use of PPE, establishment of regulated areas, exposure assessment, hygiene facilities, medical surveillance, and training. These ancillary provisions in substance-specific OSHA standards further mitigate residual risk that could be present due to exposure at the PEL.

Many OSHA PELs have not been updated since they were established in 1971, including the PEL for PCE. In many instances, scientific evidence has accumulated suggesting that the current limits of many PELs are not sufficiently protective. On October 10, 2014, OSHA published a **Federal Register** document in which it recognized that many of its PELs are outdated and inadequate for ensuring protection of worker health (79 FR 61384). In addition, health standards issued under section 6(b)(5) of the OSH Act must reduce significant risk only to the extent that it is technologically and economically feasible. OSHA's legal requirement to demonstrate that its section 6(b)(5) standards are technologically and economically feasible at the time they are promulgated often precludes OSHA from imposing exposure control requirements sufficient to ensure that the chemical substance no longer presents a significant risk to workers. As described in that notice, while new advancements or developments in science and technology from the time a PEL is promulgated may improve the scientific basis for making findings of significant risk, technical feasibility or economic feasibility, OSHA has been unable to update most of the PELs established in 1971 and they remain frozen at levels at which they were initially adopted (79 FR 61384, October 10, 2014). One example of how industries have evolved in the intervening 50 years as to what is technologically and economically feasible is the halogenated solvent cleaning industry, which, in response to EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated under section 112 of the 1990 Clean Air Act Amendments (see National Emissions Standards for Halogenated Solvent Cleaning, 40 CFR part 63, subpart T), has made equipment

improvements that conserve solvent resources and reduce workplace exposure.

In sum, the great majority of OSHA's chemical standards are outdated or do not sufficiently reduce risk to workers. While it is possible in some cases that the OSHA standards for some chemicals reviewed under TSCA will eliminate unreasonable risk, based on EPA's experience thus far in conducting occupational risk assessments under TSCA EPA believes that OSHA chemical standards would in general be unlikely to address unreasonable risk to workers within the meaning of TSCA, since TSCA section 6(b) unreasonable risk determinations may account for unreasonable risk to more sensitive endpoints and working populations than OSHA's risk evaluations typically contemplate, and EPA is obligated to apply TSCA section 6(a) risk management requirements to the extent necessary so that the unreasonable risk is no longer presented.

Because the requirements and application of TSCA and OSHA regulatory analyses differ, and because many of OSHA's chemical-specific standards are based on outdated information regarding the technological and economic feasibility of the standards and the risks associated with exposure, it is necessary for EPA to conduct risk evaluations and, where it finds unreasonable risk to workers, develop risk management requirements for chemical substances that OSHA also regulates, and it is expected that EPA's findings and requirements may sometimes diverge from OSHA's. However, it is also appropriate that EPA consider the chemical standards that OSHA has already developed to limit the compliance burden to employers by aligning management approaches required by the agencies, where alignment will adequately address unreasonable risk to workers. The following unit discusses EPA's consideration of OSHA standards in its risk evaluation and management strategies under TSCA.

2. Consideration of OSHA Standards in TSCA Risk Evaluations

When characterizing the risk during risk evaluation under TSCA, EPA believes it is appropriate to evaluate the levels of risk present in scenarios where no mitigation measures are assumed to be in place for the purpose of determining unreasonable risk (see Unit II.C.2.a.). (It should be noted that there are some cases where scenarios may reflect certain mitigation measures, such as in instances where exposure estimates are based on monitoring data at facilities that have existing engineering controls in place. For example, the Halogenated Solvent Cleaning NESHAP, first promulgated in 1994 and last updated in 2007, established standards reflecting the maximum achievable control technology for major and certain area sources, standards reflecting generally available control technology for other area sources, and facility-wide emission limits for certain halogenated solvent cleaning machines. Consequently, emissions monitoring from facilities meeting the NESHAP would reflect emissions reduction resulting from existing engineering controls already in place to meet the standards.)

In addition, EPA believes it may be appropriate to also evaluate the levels of risk present in scenarios considering applicable OSHA requirements as well as scenarios considering industry or sector best practices for industrial hygiene that are clearly articulated to the Agency. EPA may evaluate risk under scenarios that consider industry or sector best practices for industrial hygiene that are clearly articulated to the Agency, when doing so serves to inform its risk management efforts. Characterizing risks using scenarios that reflect different levels of mitigation can help inform potential risk management actions by providing information that could be used during risk management to tailor risk mitigation appropriately to address any unreasonable risk identified (see Unit II.C.2.b. and Unit II.C.3.).

a. Risk Characterization for Unreasonable Risk Determination

When making unreasonable risk determinations as part of TSCA risk evaluations, EPA cannot assume as a general matter that all workers are always equipped with and appropriately using sufficient PPE, although it does not question the veracity of public comments received on the 2020 Risk Evaluation for PCE regarding the occupational safety practices often followed by industry respondents. When characterizing the risk to human health from occupational exposures during risk evaluation under TSCA, EPA believes it is appropriate to evaluate the levels of risk present in scenarios where PPE is not assumed to be used by workers. This approach of not assuming PPE use by workers considers the risk to PESS (workers and occupational non-users (ONUs)) who may not be covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan. Mitigation scenarios included in the EPA risk evaluation in order to inform its risk management efforts (*e.g.,* scenarios considering use of PPE) likely represent current practice in many facilities where companies effectively address worker and bystander safety requirements. However, the Agency cannot assume that all facilities across all uses of the chemical substance will have adopted these practices for the purposes of making the TSCA risk determination.

Therefore, EPA makes its determinations of unreasonable risk based on scenarios that do not assume compliance with OSHA standards, including any applicable exposure limits or requirements for use of respiratory protection or other PPE. Making unreasonable risk determinations based on such scenarios should not be viewed as an indication that EPA believes there are no occupational safety protections in place at any location, or that there is widespread noncompliance with applicable OSHA standards. Rather, it reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by an OSHA State Plan, or because their employer is out of compliance with OSHA standards, or because EPA finds unreasonable risk for purposes of TSCA notwithstanding existing OSHA requirements.

b. Risk Evaluation To Inform Risk Management Requirements

In addition to the scenarios described previously, EPA risk evaluations may characterize the levels of risk present in scenarios considering applicable OSHA requirements (*e.g.,* chemical-specific PELs and/or chemical-specific health standards with PELs and additional ancillary provisions) as well as scenarios considering industry or sector best practices for industrial hygiene that are clearly articulated to the Agency to help inform risk management decisions.

3. Consideration of OSHA Standards in TSCA Risk Management Actions

When undertaking risk management actions, EPA: (1) Develops occupational risk mitigation measures to address any unreasonable risk identified by EPA, striving for consistency with applicable OSHA requirements and industry best practices, including appropriate application of the hierarchy of controls (Ref. 8), when those measures would address an unreasonable risk; and (2) Ensures that EPA requirements apply to all potentially exposed workers in accordance with TSCA requirements.

Consistent with TSCA section 9(d), EPA consults and coordinates TSCA activities with OSHA and other relevant Federal agencies for the purpose of achieving the maximum applicability of TSCA while avoiding the imposition of duplicative requirements.

Informed by the mitigation scenarios and information gathered during the risk evaluation and risk management process, the Agency might propose rules that require risk management practices that may be already common practice in many or most facilities. Adopting clear, broadly applicable regulatory standards will foster compliance across all facilities (ensuring a level playing field) and assure protections for all affected workers, especially in cases where current OSHA standards may not apply to them or not be sufficient to address the unreasonable risk.

For evaluation scenarios which involve OSHA chemical-specific PELs, EPA's risk evaluation in some cases may illustrate that limiting exposure to OSHA's PEL would result in acceptable levels of risk under TSCA under certain conditions of use. In these cases, TSCA risk management requirements could incorporate and reinforce requirements in OSHA standards and ensure that risks are addressed, including for circumstances where OSHA requirements are not applicable (*e.g.,* public sector workers not covered by an OSHA State plan, and self-employed workers) by asserting TSCA compliance/enforcement as well. EPA's risk evaluation may also find unreasonable risk under TSCA associated with some occupational conditions of use, even when the applicable OSHA requirements are being met. In these cases, EPA would need to develop risk management requirements beyond those included in OSHA's standards.

4. PCE and OSHA Requirements

EPA incorporated the considerations described earlier in this unit in the 2020 Risk Evaluation for PCE, the December 2022 revised unreasonable risk determination for PCE, and this rulemaking. Specifically, in the TSCA 2020 Risk Evaluation for PCE, EPA presented risk estimates based on workers' exposures with and without respiratory protection. EPA determined that even when respirators are used by workers, most of the conditions of use evaluated presented an unreasonable risk. Additional consideration of OSHA standards in the revised unreasonable risk determination is discussed further in the **Federal Register** notice announcing that document (Ref. 9). In Units III.B.3. and Unit V., EPA outlines the importance of considering the hierarchy of controls utilized by the industrial hygiene community (hereafter referred to as ''hierarchy of controls'') when developing risk management actions in general, and specifically when determining if and how regulated entities may meet a risk-based exposure limit for PCE. The hierarchy of controls is a prioritization of exposure control strategies from most protective and preferred to least protective and preferred techniques. In order of precedence, they are: elimination of the hazard, substitution with a less hazardous substance, engineering controls, administrative controls such as training or exclusion zones with warning signs, and, finally, use of PPE (Ref. 8). Under the hierarchy of controls the use of respirators (and all PPE) should only be considered after all other measures have been taken to reduce exposures. As discussed in Units IV.A. and V.A.1., EPA's risk management approach would not rely solely or primarily on the use of respirators and dermal PPE to address unreasonable risk to workers; instead, EPA is proposing prohibitions for most conditions of use and a WCPP for certain occupational conditions of use. The WCPP would require consideration of the hierarchy of controls before use of respirators and other PPE. The WCPP is discussed in full in Units IV.A.2. and V.A.1.b.

In accordance with the approach described earlier in Unit II.C.3., EPA intends for this regulation to be as consistent as possible with the existing OSHA standards, with additional requirements as necessary to address the unreasonable risk. One notable difference between the WCPP and the OSHA standards are the exposure limits. The WCPP would include an ECEL of 0.14 ppm as an 8-hour TWA to address unreasonable risk for chronic cancer and non-cancer and acute non-cancer inhalation endpoints. EPA recognizes that for PCE, the ECEL would be significantly lower than the OSHA PEL (100 ppm as an 8-hour TWA). In addition to the distinctions in statutory requirements described in this unit, EPA has identified several factors contributing to the differences in these levels, outlined here.

The TSCA ECEL value for PCE is a lower value than the OSHA PEL (and other existing OELs, discussed in Unit II.C.5.) for many reasons, including the age of the data and studies the values are based on and that the values may not fully capture either the complete database of studies considered in the 2020 Risk Evaluation for PCE or more recent advances in modeling and scientific interpretation of toxicological data applied in the calculation of the PCE ECEL. EPA considers the PCE ECEL to represent the best available science under TSCA section 26(h) because it was derived from information in the 2020 Risk Evaluation for PCE, which was subject to peer review, and which is the result of a systematic review process that investigated the reasonably available information in order to identify relevant adverse health effects. Additionally, by using the information from the 2020 Risk Evaluation for PCE, the ECEL incorporates advanced modeling and peer-reviewed methodologies, and accounts for exposures to potentially exposed and susceptible subpopulations, as required by TSCA.

For PCE, the EPA ECEL is an 8-hour occupational inhalation exposure limit based on chronic non-cancer neurotoxicity effects, and takes into consideration the uncertainties identified in the 2020 Risk Evaluation for PCE (Ref. 10). The ECEL represents the concentration at which an adult human, including a member of a PESS, would be unlikely to suffer adverse effects if exposed for a working lifetime. EPA has determined as a matter of risk management policy that ensuring exposures remain at or below the ECEL will eliminate any unreasonable risk of injury to health from occupational inhalation exposures. In addition to the ECEL, as part of this rulemaking EPA is proposing an ECEL action level, a value half of the ECEL, that would trigger additional monitoring to ensure that workers are not exposed to concentrations above the ECEL.

For PCE, the ECEL of 0.14 ppm is based on the most sensitive point of departure across acute, chronic non-cancer, and cancer endpoints. Neurotoxicity based on visual and cognitive deficits following chronic exposure was the basis of the PCE ECEL based on epidemiological data from Cavalleri et al., 1994 and Echeverria et al., 1995 (Refs. 10, 1, 11, 12). The ECEL incorporates a benchmark margin of exposure of 100 to account for human variability and the absence of a no-effect level in the studies.

The OSHA PEL for PCE of 100 ppm as an 8-hour TWA was established in 1971. OSHA is required to promulgate a standard that reduces significant risk to the extent that it is technologically and economically feasible to do so (81 FR 16285). A 1989 update to 25 ppm based on a quantitative cancer risk assessment and technological feasibility analysis was later vacated by court order, reverting to the original PEL of 100 ppm (Ref. 13); (See also 54 FR 2332, 2686, 2688 (1989)). The basis of the 100

ppm PEL is unclear, however most original PELs were based on acute health effects only observable at higher concentrations as more sensitive chronic studies, including the chronic exposure studies used to inform the PCE ECEL, were not available at the time the PEL was established (see, *e.g.,* 79 FR 61383, 61388). As discussed in Units II.D., III.B., and VII.D., the TSCA ECEL represents the best available science at time of publication of the 2020 Risk Evaluation for PCE. As described earlier, in a 2014 request for information OSHA described how, while new developments in science and technology from the time the PEL for PCE was established in 1971 may improve the scientific basis for making findings of significant risk, technical feasibility, or economic feasibility that is required under section 6(b)(5) of the OSH Act, OSHA has been unable to update the PEL for PCE and it remains frozen at the level that was originally adopted in 1971 (79 FR 61383, October 10, 2014).

5. PCE and Other Occupational Exposure Limits

EPA is aware of other OELs for PCE, including the ACGIH TLV, the California Division of Occupational Safety and Health (Cal/OSHA) PEL, and the National Institute for Occupational Safety and Health (NIOSH) Recommended Exposure Limit (REL).

The 8-hour TWA TLV recommended by the ACGIH is 25 ppm. This TLV is based on ''discomfort and subjective complaints'' occurring at 100 ppm and above (Ref. 14). Neurological effects such as dizziness, headache, sleepiness, and incoordination were also indicated at 100 ppm and above. The TLV appears to use a four-fold ''margin of safety'' consistent with other TLV reports but lower than what would be recommended by EPA guidance (Ref. 15), which would support a downward adjustment of 30x-100x. The TLV report acknowledges that the liver effects were observed at as low as 9 ppm in mice after only 30 days of continuous exposure, however ACGIH determined that the exposure pattern was not representative of occupational scenarios. Additionally, quantitative risks from cancer were not considered because PCE was classified as only an animal carcinogen. Notably, the TLV report did not cite either epidemiological study used as the basis of the EPA ECEL, despite them being published 1–2 years prior to the 1996 TLV update.

The Cal/OSHA PEL is 25 ppm, lower than the OSHA PEL and equivalent to the ACGIH TLV. The 25 ppm value is also equivalent to the vacated 1989 OSHA PEL, which was based on a quantitative cancer risk assessment and technological feasibility analysis. Despite the Cal/OSHA PEL being equivalent to the vacated 1989 OSHA PEL based on cancer, Cal/OSHA did not perform a quantitative cancer risk assessment and the PEL is primarily based on non-cancer central nervous systems (CNS) effects (Ref. 16).

In 1976, the NIOSH REL for PCE was 50 ppm as a TWA for up to a 10-hour workday, 40-hour workweek (Ref. 17). This REL was considered protective of neurological effects as well as eye and respiratory tract irritation. The current REL for PCE is ''Ca (potential occupational carcinogen) minimize workplace exposure concentrations'' (Ref. 18). As described in NIOSH's Appendix A, this non-quantitative value is based on the lowest feasible concentration (Ref. 19).

D. Summary of EPA's Risk Evaluation Activities on PCE

In December 2016, EPA selected PCE as one of the first 10 chemicals for risk evaluation under TSCA section 6 (15 U.S.C. 2605). EPA published the scope of the PCE risk evaluation in June 2017 (82 FR 31592, July 7, 2017) (FRL–9963–57), and, after receiving public comments, published the problem formulation in June 2018 (83 FR 26998, June 11, 2018) (FRL–9978–40). In May 2020, EPA published a draft risk evaluation(85 FR 26464, May 4, 2020) (FRL–10008–63), and after public comment and peer review by the Science Advisory Committee on Chemicals (SACC), EPA issued the 2020 Risk Evaluationfor PCE in December 2020 in accordance with TSCA section 6(b) (85 FR 82474, December 18, 2020) (FRL–10017–44). EPA subsequently issued a draft revised TSCA unreasonable risk determination for PCE (87 FR 39085, June 30, 2022) (FRL–9942–01–OCSPP), and after public notice and receipt of comments, published a revised Unreasonable Risk Determination for PCE (87 FR 76481, December 14, 2022) (FRL–9942–01–OCSPP). The 2020 Risk Evaluation for PCE and supplemental materials are in docket EPA–HQ–OPPT–2019–0502, with the December 2022 revised unreasonable risk determination and additional materials supporting the risk evaluation process in docket EPA–HQ–OPPT–2016–0732, on *https://www.regulations.gov.*

1. 2020 Risk Evaluation

In the 2020 Risk Evaluation for PCE, EPA evaluated risks associated with 61 conditions of use within the following categories: manufacture (including import), processing, distribution in commerce, industrial and commercial use, consumer use, and disposal. Descriptions of these conditions of use are in Unit III.B.1. The 2020 Risk Evaluation for PCE identified significant adverse health effects associated with exposure to PCE, including neurotoxicity effects from acute and chronic inhalation exposures and dermal exposures, and cancer from chronic inhalation exposures to PCE. A further discussion of the hazards of PCE is in Unit III.B.2.

2. Revised Unreasonable Risk Determination

EPA has been revisiting specific aspects of its first ten TSCA existing chemical risk evaluations, including the 2020 Risk Evaluation for PCE, to ensure that the risk evaluations upon which risk management decisions are made better align with TSCA's objective of protecting human health and the environment. For PCE, EPA revised the original unreasonable risk determination based on the 2020 Risk Evaluation for PCE and issued a final revised unreasonable risk determination in December 2022 (Ref. 2). EPA revised the risk determination for the 2020 Risk Evaluation for PCE pursuant to TSCA section 6(b) and consistent with Executive Order 13990 (entitled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'') and other Administration priorities (Refs. 20, 21, and 22). The revisions consisted of making the risk determination based on the whole chemical substance instead of by individual conditions of use (which resulted in the revised risk determination superseding the prior ''no unreasonable risk'' determinations and withdrawing the associated TSCA section 6(i)(1) ''no unreasonable risk'' order); and clarifying that the risk determination does not reflect an assumption that all workers are always provided and appropriately wear PPE (Ref. 2).

In determining whether PCE presents unreasonable risk under the conditions of use, EPA considered relevant risk-related factors, including, but not limited to: the effects of the chemical substance on health (including cancer and non-cancer risks) and human exposure to the substance under the conditions of use (including duration, magnitude and frequency of exposure); the effects of the chemical substance on the environment and environmental exposure under the conditions of use; the population exposed (including any PESS); the severity of hazard (including the nature of the hazard, the

irreversibility of the hazard); and uncertainties.

EPA determined that PCE presents an unreasonable risk of injury to health. The unreasonable risk determination is driven by risks to workers and ONUs (workers who do not directly handle the chemical but perform work in an area where the chemical is present) due to occupational exposures to PCE (*i.e.,* during manufacture, processing, industrial and commercial uses, or disposal); to children of employees at dry cleaning facilities due to PCE exposures at those facilities; and to consumers and bystanders associated with consumer uses of PCE due to exposures from consumer use of PCE and PCE-containing products. EPA did not identify risks of injury to the environment that drive the unreasonable risk determination for PCE. The PCE conditions of use that drive EPA's determination that the chemical substance poses unreasonable risk to health are listed in the unreasonable risk determination (Ref. 2) and also in Unit III.B.1., with descriptions to aid chemical manufacturers, processors, and users in determining how their particular use or activity would be addressed under the proposed regulatory provisions.

While the 2020 Risk Evaluation for PCE estimated different risks for occupational non-users and workers, the benchmark (and thus the ECEL value) is the same for both populations. That is, while workers and occupational non-users may have different exposure patterns, the level of exposure such that risks are no longer unreasonable is the same for both workers and occupational non-users. Thus, for the purposes of risk management, the distinction between worker and occupational non-user is no longer relevant, and both are encompassed by the definition of a potentially exposed person, as outlined in Unit IV.A.2.a.

3. Fenceline Screening Analysis

The 2020 Risk Evaluation for PCE excluded the assessment of certain exposure pathways that were or could be regulated under another EPA-administered statute (see section 1.4.2 of the December 2020 Risk Evaluation for PCE) (Refs. 1, 2). This resulted in the surface water, drinking water, and ambient air pathways for PCE exposure not being assessed for human health risk to the general population. In June 2021, EPA made a policy announcement on the path forward for TSCA chemical risk evaluations, indicating that EPA would, among other things, examine whether the exclusion of certain exposure pathways from the risk evaluations would lead to a failure to identify and protect fenceline communities (Refs. 9, 23). EPA then conducted a screening analysis to identify whether there may be potential risks to people living near the fenceline of facilities releasing PCE.

In order to assess the potential risk to the general population in proximity to a facility releasing PCE, EPA developed the TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0, which was presented to the SACC in March 2022, with a report issued by the SACC on May 18, 2022 (Ref. 24). This analysis is discussed in Unit VI.A.

III. Regulatory Approach

A. Background

Under TSCA section 6(a), if the Administrator determines through a TSCA section 6(b) risk evaluation that the manufacture (including import), processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of such activities, presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more of the following requirements to the extent necessary so that the chemical substance or mixture no longer presents such risk.

- Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of the substance or mixture, or limit the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce (TSCA section 6(a)(1)).
- Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of the substance or mixture for a particular use or above a specific concentration for a particular use (TSCA section 6(a)(2)).
- Limit the amount of the substance or mixture which may be manufactured, processed, or distributed in commerce for a particular use or above a specific concentration for a particular use specified (TSCA section 6(a)(2)).
- Require clear and adequate minimum warning and instructions with respect to the substance or mixture's use, distribution in commerce, or disposal, or any combination of those activities, to be marked on or accompanying the substance or mixture (TSCA section 6(a)(3)).
- Require manufacturers and processors of the substance or mixture to make and retain certain records, or conduct certain monitoring or testing (TSCA section 6(a)(4)).
- Prohibit or otherwise regulate any manner or method of commercial use of the substance or mixture (TSCA section 6(a)(5)).
- Prohibit or otherwise regulate any manner or method of disposal of the substance or mixture, or any article containing such substance or mixture, by its manufacturer or processor or by any person who uses or disposes of it for commercial purposes (TSCA section 6(a)(6)).
- Direct manufacturers or processors of the substance or mixture to give notice of the unreasonable risk determination to distributors, certain other persons, and the public, and to replace or repurchase the substance or mixture (TSCA section 6(a)(7)).

As described in Unit III.B.3., EPA analyzed how the TSCA section 6(a) requirements could be applied to address the unreasonable risk found to be present in the 2020 Risk Evaluation for PCE and the final revised unreasonable risk determination, so that PCE no longer presents such unreasonable risk. EPA's proposed regulatory action and two alternative regulatory actions are described in Unit IV. EPA is requesting public comment on all elements of the proposed regulatory action and the alternative regulatory actions and is providing notice that based on consideration of comments and any new information submitted to EPA during the comment period on this proposed rule, EPA may in the final rule modify elements of the proposed regulatory action. The public should understand that public comments could result in changes to elements of the proposed and alternative regulatory actions when this rulemaking is finalized. For example, elements such as timelines for phase out could be lengthened or shortened, ECELs could be modified, or the WCPP could have conditions added or eliminated.

Under the authority of TSCA section 6(g), EPA may consider granting a time-limited exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use if EPA finds that: (1) The specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure; (2) Compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or (3) The specific condition of use, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety. Based on reasonably available information, EPA has analyzed

the need for an exemption and is proposing that a TSCA section 6(g) exemption is warranted for certain conditions of use, as detailed in Unit IV.A.5. EPA is requesting comment on the proposed rule's section 6(g) exemption provisions and rationale. In addition, EPA has found that two TSCA section 6(g) exemptions may be warranted if the second alternative regulatory action considered by EPA is adopted in the final rule. Therefore, the public should assume that if EPA were to promulgate the second alternative to the proposed regulatory action, EPA would at the same time grant an exemption from the rule requirements for two conditions of use under TSCA section 6(g). Unit IV.B.2.b. includes information regarding EPA's second alternative action that includes exemptions under TSCA section 6(g). EPA is requesting public comment regarding the need for exemptions from the rule (and under what specific circumstances), including exemptions from the proposed regulatory action (*e.g.,* a WCPP) and the primary and second alternative regulatory actions, pursuant to the provisions of TSCA section 6(g).

TSCA section 6(c)(2)(A) requires EPA, in proposing and promulgating TSCA section 6(a) rules, to consider and include a statement addressing certain factors, including the costs and benefits and the cost effectiveness of the regulatory action and of the one or more primary alternative regulatory actions considered by the Administrator. A description of all TSCA section 6 requirements considered in developing this proposed regulatory action is in Unit III.B.3., and Unit V. includes more information regarding EPA's consideration of exemptions and alternatives. TSCA section 6(c)(2)(C) requires that in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use and in setting an appropriate transition period for such action, EPA consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment will be reasonably available as substitutes when the proposed prohibition or restriction takes effect. Unit V.B. includes more information regarding EPA's consideration of alternatives, and Unit VI. provides more information on EPA's considerations more broadly under TSCA section 6(c)(2).

EPA carried out required consultations as described in this unit and also considered impacts on children's environmental health as part of its approach to developing this TSCA section 6 regulatory action.

1. Consultations

EPA conducted consultations and outreach in developing this proposed regulatory action. The Agency held a federalism consultation from July 22, 2021, until October 22, 2021, as part of this rulemaking process and pursuant to Executive Order 13132. This included a background presentation on September 9, 2020, and a consultation meeting on July 22, 2021. During the consultation, EPA met with State and local officials early in the process of developing the proposed action in order to receive meaningful and timely input into its development (Ref. 25). During the consultation, participants and EPA discussed additional reporting requirements as a risk management tool to address the unreasonable risk, EPA's consideration of safer alternatives, and potential impacts to drinking water utilities (Ref. 25).

PCE is not manufactured (including imported), processed, distributed in commerce, or regulated by Tribal governments. However, EPA consulted with Tribal officials during the development of this proposed action (Ref. 26). The Agency held a Tribal consultation from May 17, 2021, to August 20, 2021, with meetings on June 15 and July 8, 2021. Tribal officials were given the opportunity to meaningfully interact with EPA risk managers concerning the current status of risk management. During the consultation, EPA discussed risk management under TSCA section 6(a), findings from the 2020 Risk Evaluation for PCE, types of information that would be helpful to inform risk management, principles for transparency during the risk management process, and types of information EPA is seeking from Tribes (Ref. 26). EPA received no written comments as part of this consultation.

In addition to the formal consultations, EPA also conducted outreach to advocates of communities that might be subject to disproportionate risk from the exposures to PCE, such as minority populations, low-income populations, and indigenous peoples. EPA's Environmental Justice (EJ) consultation occurred from June 3, 2021, through August 20, 2021. On June 16, 2021, and July 6, 2021, EPA held public meetings as part of this consultation. These meetings were held pursuant to and in compliance with Executive Orders 12898 and 14008. EPA received five written comments following the EJ meetings, in addition to oral comments provided during the consultation (Refs. 27, 28, 29, 30, 31). In general, commenters supported strong outreach to affected communities, encouraged EPA to follow the hierarchy of controls utilized by the industrial hygiene community, favored prohibitions, and noted the uncertainty, and in some cases inadequacy, of PPE. Commenters also urged EPA to address in this rulemaking ongoing releases from hazardous waste and disposal sites, in particular vapor intrusion of PCE from contaminated groundwater, soil, and indoor air. Additionally, commenters expressed concern that the adverse health impacts of PCE dry cleaning fall disproportionately to owners and employees of minority owned small businesses, noted the viability of professional wet cleaning as an alternative to PCE dry cleaning, and urged EPA to consider adverse economic impacts of the regulation and establishing a financial program to offset transition costs to local communities (Ref. 32).

As required by section 609(b) of the Regulatory Flexibility Act (RFA), EPA convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives (SERs) that potentially would be subject to this proposed rule's requirements (Ref. 33). EPA met with SERs before and during Panel proceedings, on September 26, 2022, and November 10, 2022. Panel recommendations are in Unit X.C. and in the Initial Regulatory Flexibility Analysis (IRFA) (Ref. 34), the Panel report is in the docket (Ref. 33). EPA requests comment on all elements of the IRFA, and, in particular, the flexibilities that EPA has identified following input from the SERs during the SBAR process. Additional requests for comment based on Panel recommendations are in Unit VIII.

Units X.C., X.E., X.F., and X.J. provide more information regarding the consultations.

2. Other Stakeholder Engagement

In addition to the formal consultations described in Unit X., EPA held a webinar on January 14, 2021, providing an overview of the TSCA risk management process and the risk evaluation findings for PCE. EPA also presented on the risk evaluation and risk management under TSCA for PCE at a Small Business Administration (SBA) Office of Advocacy Environmental roundtable on January 15, 2021. At both events, EPA staff provided an overview of the TSCA risk management process and the findings in the 2020 Risk Evaluation for PCE (Ref. 35). Attendees of these meetings were given an opportunity to voice their concerns

regarding the risk evaluation and risk management.

Furthermore, EPA engaged in discussions with representatives from different industries, non-governmental organizations, technical experts and users of PCE. A list of external meetings held during the development of this proposed rule is in the docket (Ref. 36); meeting materials and summaries are also in the docket. The purpose of these discussions was to create awareness and educate stakeholders and regulated entities on the provisions for risk management required under TSCA section 6(a); explain the risk evaluation findings; obtain input from manufacturers, processors, distributors, users, academics, advisory councils, and members of the public health community about uses of PCE; identify workplace practices, engineering controls, administrative controls, PPE, and industrial hygiene plans currently in use or feasibly adoptable to reduce exposure to PCE under the conditions of use; understand the importance of PCE in the various uses subject to this proposed rule; compile knowledge about critical uses, substitute chemicals or alternative methods; identify various standards and performance specifications; and generate potential risk reduction strategies. EPA has met with, or otherwise communicated with, a variety of companies, trade associations and non-governmental organizations to discuss the topics outlined in this paragraph; a list of external meetings held during the development of this proposed rule is in the docket (Ref. 36).

3. Children's Environmental Health

The EPA 2021 Policy on Children's Health (Ref. 37) requires EPA to protect children from environmental exposures by consistently and explicitly considering early life exposures (from conception, infancy, early childhood and through adolescence until 21 years of age) and lifelong health in all human health decisions through identifying and integrating children's health data and information when conducting risk assessments. TSCA section 6(b)(4)(A) also requires EPA to conduct risk evaluations ''to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment . . . including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' Infants, children, and pregnant women are listed as examples of subpopulations that may be considered relevant ''potentially exposed or susceptible subpopulations'' in the TSCA section 3(12) definition of that term. In addition, TSCA section 6(a) requires EPA to apply one or more risk management requirements under TSCA section 6(a) so that PCE no longer presents an unreasonable risk (including unreasonable risk to PESS).

The 2020 Risk Evaluation for PCE evaluated the hazards of PCE to toddlers and older children (11–15 years and 16–20 years) and did not find disproportionate adverse health impacts to these groups (Ref. 1). Evidence of hazards to infants and males and females of reproductive age was found for reproductive and developmental toxicity. The reproductive and developmental health effects of concern related to exposures to PCE are reduced sperm quality, spontaneous abortion, and decreased fetal/placental weight. The most sensitive non-cancer hazard driving the unreasonable risk for PCE is neurotoxicity (CNS effects). Early lifestage development of the nervous system can be a sensitive period, however the studies on PCE do not provide sufficient evidence of greater sensitivity to neurotoxicity in early lifestages than later lifestages, such as during adulthood. While the literature contains methodological limitations in human studies, animal studies were considered adequate to represent reproductive and development effects in the 2020 Risk Evaluation for PCE.

The 2020 Risk Evaluation for PCE released in December 2020 considered impacts on both children and adults from occupational and consumer use from inhalation and dermal exposures, as applicable. For occupational use, the risk evaluation considered males (≤16 years of age) and females of reproductive age (≤16 years of age to less than 50 years of age) for both dermal and inhalation exposures. Additionally, because many dry cleaners are family owned and operated, the risk evaluation assumed children of employees may spend the full workday at dry cleaning facilities, in particular those too young to be in school, during which time they may be exposed to similar air concentration levels as ONUs. The risk evaluation considered inhalation exposures to children of employees present at dry cleaners by evaluating central nervous system effects for the most sensitive lifestage: infants less than one year old. Children of employees present at dry cleaners would be exposed to higher PCE concentrations than children who live or attend daycare or school above or adjacent to dry cleaners, and EPA therefore expects that risks to those populations are covered by evaluation of children within dry cleaning facilities. For consumer use, EPA evaluated dermal exposures for children ages 11 to 15 and 16 to 20 years of age and adults >20 years of age, and the evaluation of bystander exposure from inhalation exposures includes infants, toddlers and older children. While risks to children are not disproportionate, effects observed in studies include central nervous system effects from acute inhalation exposure.

B. Regulatory Assessment of PCE

1. Description of Conditions of Use

This unit describes the TSCA conditions of use that drive EPA's unreasonable risk determination for the chemical substance PCE. Condition of use descriptions were obtained from EPA sources such as CDR use codes, the 2020 Risk Evaluation for PCE and related documents, as well as the Organisation for Economic Co-operation and Development harmonized use codes and stakeholder engagements. For additional description of the conditions of use, including process descriptions and worker activities considered in the risk evaluation, see the Problem Formulation of the 2020 Risk Evaluation for PCE, the 2020 Risk Evaluation for PCE, and supplemental files (Refs. 38, 1, 39). EPA acknowledges that some of the terms in this unit may be defined under other statutes, however the descriptions here are intended to provide clarity to the regulated entities who will implement the provisions of this rulemaking under TSCA section 6(a).

a. Manufacturing (Including Import)

i. *Domestic manufacture.* This condition of use refers to the making or producing of a chemical substance within the United States (including manufacturing for export), or the extraction of a component chemical substance from a previously existing chemical substance or a complex combination of substances. This description does not apply to PCE production as a byproduct, including during the manufacture of 1,2-dichloroethane which EPA intends to consider in the risk evaluation for 1,2-dichloroethane (Ref. 40).

ii. *Import.* This condition of use refers to the act of causing a chemical substance or mixture to arrive within the customs territory of the United States.

b. Processing

i. *Processing as a reactant/intermediate.* This condition of use refers to processing PCE in chemical reactions for the manufacturing of

another chemical substance or product. Through processing as a reactant or intermediate, PCE serves as a feedstock in the production of another chemical product via a chemical reaction in which PCE is completely consumed. For example, PCE is used as a reactant in the production of HFCs, hydrochlorofluorocarbons (HCFCs), and chlorofluorocarbons (CFCs). This condition of use includes reuse of PCE, including PCE originally generated as a byproduct or residual PCE as a reactant.

ii. *Processing into formulation, mixture or reaction product in cleaning and degreasing products.* This condition of use refers to when PCE is added to a cleaning or degreasing product (or product mixture) prior to further distribution of the product. For example, formulators may mix PCE at varying concentrations with other additives to formulate cleaning or degreasing products that are used to remove dirt and dissolve oils, greases, and similar materials from textiles, glassware, metal surfaces, furniture, furnishings, and other articles, or to cleanse, sanitize, bleach, scour, polish, protect, or improve the appearance of surfaces.

iii. *Processing into formulation, mixture or reaction product in adhesive and sealant products.* This condition of use refers to when PCE is added to an adhesive or sealant product (or product mixture) prior to further distribution of the product. For example, formulators may mix PCE at varying concentrations with other additives to formulate products that promote bonding between other substances, promote adhesion of surfaces, or prevent seepage of moisture or air.

iv. *Processing into formulation, mixture or reaction product in paint and coating products.* This condition of use refers to when PCE is added to a paint or coating product (or product mixture) prior to further distribution of the product. For example, formulators may mix PCE at varying concentrations with other additives to formulate paint and coating products that are applied to surfaces to enhance properties such as water repellency, gloss, fade resistance, ease of application, or foam prevention. Additionally, PCE is incorporated into coating products, such as maskant, that protect a substrate during exposure to a chemical process such as chemical milling, plating, and anodizing.

v. *Processing into formulation, mixture or reaction product in other chemical products and preparations.* This condition of use refers to when PCE is added to other chemical products (or product mixtures) or preparations prior to further distribution of the product. For example, formulators may mix PCE at varying concentrations with other additives to formulate inks, toners, colorants, photographic supplies, lubricants, greases, mold releases, and other products.

vi. *Processing by repackaging.* This condition of use refers to the preparation of a chemical substance or mixture for distribution in commerce in a different form, state, or quantity. This includes transferring of PCE from a bulk container into smaller containers.

vii. *Recycling.* This condition of use refers to processing waste streams of PCE at a third-party site for the purpose of recovering materials or otherwise preparing the waste for reuse instead of disposal. Waste solvents can be restored via solvent reclamation/recycling. The recovery process may involve an initial vapor recovery or mechanical separation step followed by distillation, purification, and final packaging.

c. Industrial and Commercial Use

i. *Industrial and commercial use as solvent for open-top batch vapor degreasing.* This condition of use refers to the industrial and commercial use of PCE as a solvent for cleaning and degreasing through the process of heating PCE to its volatilization point and using its vapors to remove dirt, oils, greases, and other surface contaminants from metal and other parts using batch open-top vapor degreaser machines.

ii. *Industrial and commercial use as solvent for closed-loop batch vapor degreasing.* This condition of use refers to the industrial and commercial use of PCE as a solvent for cleaning and degreasing through the process of heating PCE to its volatilization point and using its vapors to remove dirt, oils, greases, and other surface contaminants from metal and other parts using batch closed-loop degreaser machines.

iii. *Industrial and commercial use as solvent for in-line conveyorized vapor degreasing.* This condition of use refers to the industrial and commercial use of PCE as a solvent for cleaning and degreasing through the process of heating PCE to its volatilization point and using its vapors to remove dirt, oils, greases, and other surface contaminants from metal and other parts using in-line conveyorized vapor degreaser machines.

iv. *Industrial and commercial use as solvent for in-line web cleaner vapor degreasing.* This condition of use refers to the industrial and commercial use of PCE as a solvent for cleaning and degreasing through a process of heating PCE to its volatilization point and using its vapors to remove dirt, oils, greases, and other surface contaminants from metal and other parts using web vapor degreaser machines.

v. *Industrial and commercial use as solvent for cold cleaning.* This condition of use refers to the industrial and commercial use of PCE as a non-boiling solvent in cold cleaning machines, including simple spray sinks and dip tanks, to remove dirt, oils, greases, and other surface contaminants from metal and other parts.

vi. *Industrial and commercial use as solvent for aerosol spray degreaser/cleaner.* This condition of use refers to the industrial and commercial use of PCE as a solvent in degreasing and cleaning products to remove dirt, grease, stains, spots, and foreign matter through a process that uses an aerosolized solvent spray, typically applied from a pressurized can, to remove residual contaminants from electronics, metals, and other fabricated materials. This description includes use of PCE in products for energized electrical cleaning for equipment with an electrical current running through it, such as electric motors, armatures, relays, electric panel, generators, and other equipment. This description does not apply to use of PCE in products intended for automotive care, welding, or mold cleaning, which are described in different conditions of use.

vii. *Industrial and commercial use as a solvent for aerosol lubricants.* This condition of use refers to the industrial and commercial use of PCE in aerosolized products to reduce friction, heat generation and wear between solid surfaces.

viii. *Industrial and commercial use as a solvent for penetrating lubricants and cutting tool coolants.* This condition of use refers to the industrial and commercial use of PCE in liquid products such as metalworking, cutting, and tapping fluids, including penetrating lubricants and cutting tool coolants, to reduce friction, heat generation and wear between solid surfaces.

ix. *Industrial and commercial use in solvent-based adhesives and sealants.* This condition of use refers to the industrial and commercial use of PCE as a solvent in adhesive and sealant products to promote bonding between other substances, promote adhesion of surfaces, or prevent seepage of moisture or air.

x. *Industrial and commercial use in solvent-based paints and coatings.* This condition of use refers to the industrial and commercial use of PCE as a solvent in paint and coating, including maskant, that is applied to surfaces to enhance properties such as water repellence, increased gloss, improved fade

resistance, ease of application, and foam prevention. This description does not apply to the use of PCE in maskant for chemical milling, which is described in a different condition of use

xi. *Industrial and commercial use in maskant for chemical milling.* This condition of use refers to the industrial and commercial use of PCE as a solvent in maskants or elastomer-based coatings that are used to protect a substrate during exposure to a chemical process, such as chemical milling, plating and anodizing.

xii. *Industrial and commercial use as a processing aid in pesticide, fertilizer and other agricultural chemical manufacturing.* This condition of use refers to the industrial and commercial use of PCE to improve the processing characteristics or the operation of process equipment or to alter or buffer the pH of the substance of mixture during the production of non-pesticidal products used to increase the productivity and quality of plant, animal and forestry crops produced on a commercial scale. Processing aids are added to a reaction mixture to aid in the manufacture or synthesis or another chemical substance but are not intended to remain in or become part of the product or product mixture or affect the function of a substance or article created.

xiii. *Industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing.* This condition of use refers to the industrial and commercial use of PCE to improve processing characteristics or the operation of process equipment during the production of oil, gas, and other similar products. For example, PCE is used in both reforming and isomerization processes at refineries. In the reforming process, PCE is added directly to a regenerator in a Continuous Catalytic Regeneration reforming unit, and in the isomerization process, PCE is added to the hydrocarbon feed. In both processes, PCE provides chlorine ions to regenerate the catalysts and is consumed in the process.

xiv. *Industrial and commercial use in wipe cleaning.* This condition of use refers to the industrial and commercial use of PCE in non-aerosol degreasing and cleaning products to remove dirt, grease, stains, spots, and foreign matter from furniture and furnishings or to cleanse, sanitize, bleach, scour, polish, protect, or improve the appearance of surfaces through wipe cleaning.

xv. *Industrial and commercial use in other spot cleaning and spot removers, including carpet cleaning.* This condition of use refers to the industrial and commercial use of PCE in products to remove dirt, grease, stains, spots, and foreign matter from furniture and furnishes, including carpets and rugs. This description does not apply to the use of PCE as a spot cleaner at dry cleaning facilities, which is described under other conditions of use.

xvi. *Industrial and commercial use in mold release.* This condition of use refers to the industrial and commercial use of PCE in products to remove dirt, grease, stains, spots, and foreign matter, including release agent residues, from molds and casting surfaces.

xvii. *Industrial and commercial use in dry cleaning and spot cleaning post-2006 dry cleaning.* This condition of use refers to industrial and commercial use of PCE in products for spot cleaning and as a solvent in degreasing and cleaning applications to remove dirt, grease, stains, spots, and foreign matter from garments at dry cleaning facilities that use PCE dry cleaning machines after the promulgation of the 2006 PCE NESHAP for Dry Cleaning Facilities (40 CFR part 63, subpart M). This includes dry cleaning facilities using third generation (dry-to-dry, non-vented machines with refrigerated condensers), fourth generation (dry-to-dry, non-vented machines with both refrigerated condensers and carbon adsorbers as secondary vapor controls), or fifth generation (dry-to-dry, non-vented machines with secondary vapor controls, a monitor inside the machine drum, and an interlocking system to ensure the concentration is below approximately 300 ppm before the loading door can be opened) PCE dry cleaning machines.

xviii. *Industrial and commercial use in dry cleaning and spot cleaning 4th/5th gen only dry cleaning.* This condition of use refers to industrial and commercial use of PCE in products for spot cleaning and as a solvent in degreasing and cleaning applications to remove dirt, grease, stains, spots, and foreign matter from garments at dry cleaning facilities that use fourth generation or fifth generation PCE machines. In addition to use as a solvent in dry cleaning equipment, PCE is found in products to spot clean garments to remove stains or spots before and after dry cleaning treatment.

xix. *Industrial and commercial use in automotive care products (e.g., engine degreaser and brake cleaner).* This condition of use refers to the industrial and commercial use of PCE in aerosolized products to remove dirt, grease, stains, and foreign matter from interior and exterior vehicle surfaces. This description includes use of products for motorized vehicle maintenance and their parts, but does not include energized electrical cleaners, which is covered by the industrial and commercial use as a solvent for aerosol spray degreaser/cleaner. Additionally, this description does not include use of non-aerosolized products intended for automotive care, which are covered by different conditions of use.

xx. *Industrial and commercial use in non-aerosol cleaner.* This condition of use refers to the industrial and commercial use of PCE in non-aerosol products to remove dirt, grease, stains, and foreign matter from furniture, furnishings, interior or exterior vehicles, and other materials, or to clean, sanitize, bleach scour, polish, or improve the appearance of surfaces in all other applications not specified elsewhere in this section.

xxi. *Industrial and commercial use in metal (e.g., stainless steel) and stone polishes.* This condition of use refers to the industrial and commercial use of PCE in non-aerosolized products for metal (*e.g.,* stainless steel) and stone polishing applications, including stone and marble cleaner and wax.

xxii. *Industrial and commercial use in laboratory chemicals.* This condition of use refers to the industrial and commercial use of PCE, often in small quantities, in a laboratory process or in specialized laboratory equipment for instrument calibration/maintenance chemical analysis, chemical synthesis, extracting and purifying other chemicals, dissolving other substances, executing research, development, test and evaluation methods, and similar activities.

xxiii. *Industrial and commercial use in welding.* This condition of use refers to the industrial and commercial use of PCE in welding applications. For example, PCE can be found in aerosolized products that cast or join materials, promote the fusing of minerals, and prevent oxide formation, including products that reduce welding spatter or prevent the spatter from sticking to surfaces.

xxiv. *Industrial and commercial use in other textile processing.* This condition of use refers to the industrial and commercial use of PCE in processing textile products not described elsewhere. For example, PCE is used as a scourer and for sizing and finishing of cloth.

xxv. *Industrial and commercial use in wood furniture manufacturing.* This condition of use refers to the industrial and commercial use of PCE in the manufacture of wood furniture or wood furniture components (including household furniture, wood office furniture, wood containers and pallets,

and all other wood products) not described elsewhere.

xxvi. *Industrial and commercial use in foundry applications.* This condition of use refers to the industrial and commercial use of PCE in metal foundry, smelting, and metallurgical applications not described elsewhere, such as soldering/desoldering, at nonferrous metal foundries (except die-casting), nonferrous metal diecasting foundries, aluminum foundries, and iron foundries.

xxvii. *Industrial and commercial use in specialty Department of Defense uses (oil analysis and water pipe repair).* During the risk evaluation, the Department of Defense (DOD) provided monitoring data for PCE in various uses, including for oil analysis and water pipe repair. This condition of use refers to the industrial and commercial use of PCE in specialty DOD uses in oil analysis and water pipe repair. After the risk evaluation was published, DOD determined there is no current data to indicate that PCE is required for these specialty uses.

xxviii. *Commercial use in inks and ink removal products (based on printing).* This condition of use refers to the commercial use of PCE in ink and ink removal products used in printing for writing, printing, or creating an image on paper and other substrates, applied to substrates to change their color or hide images, or to remove dirt and other contaminants from substrates such as cleaning machines or printing plates, at print shops.

xxix. *Commercial use in inks and ink removal products (based on photocopying).* This condition of use refers to the commercial use of PCE in ink and ink removal products used in photocopying for writing, printing, creating an image on paper and other substrates, applied to substrates to change their color or hide images, or to remove dirt and other contaminants from substrates such as cleaning machines or printing plates.

xxx. *Commercial use in photographic film.* This condition of use refers to the commercial use of PCE in photographic supplies, film, photoprocessing chemicals, and photographic paper. For example, PCE is used as a liquid-gate fluid to help protect scratching of optical negatives during filming.

xxxi. *Commercial use in metal mold cleaning, release and protectant products.* This condition of use refers to the commercial use of PCE in mold release products to create barriers to prevent certain materials from adhering to each other. This description does not apply to the use of PCE in mold cleaning products that remove residual coatings from mold release, which is described under a different condition of use.

d. Consumer Use

i. *Consumer use in cleaners and degreasers (other).* This condition of use refers to the consumer use of PCE as a solvent in degreasing and cleaning products use to remove dirt, grease, stains, spots, and foreign matter through a process that uses an aerosolized solvent spray, typically applied from a pressurized can, to remove residual contaminants from electronics, metals, and other fabricated materials not described elsewhere in this section.

ii. *Consumer use in dry cleaning solvent.* This condition of use refers to consumer exposure to PCE used to remove dirt, grease, stains, spots, and foreign matter from garments via dry cleaning, in particular the transportation, storage, and wear of articles that were dry cleaned with PCE. For example, garments that are dry cleaned at facilities that use PCE as a dry cleaning solvent have residual concentrations of PCE remaining in the article after a dry cleaning event.

iii. *Consumer use in automotive care products (brake cleaner).* This condition of use refers to the consumer use of PCE in aerosolized products to remove dirt, grease, stains, and foreign matter from interior and exterior vehicle surfaces, including brake cleaner.

iv. *Consumer use in automotive care products (parts cleaner).* This condition of use refers to the consumer use of PCE in non-aerosolized products that are to remove dirt, grease, stains, and foreign matter from interior and exterior vehicle surfaces, including parts cleaner.

v. *Consumer use in aerosol cleaner (vandalism mark and stain remover).* This condition of use refers to the consumer use of PCE in aerosolized products for cleaning and furniture care, including vandalism mark and stain remover.

vi. *Consumer use in non-aerosol cleaner (e.g., marble and stone polish).* This condition of use refers to the consumer use of PCE in non-aerosolized products for cleaning and furniture care, typically in the form of a solid or liquid cleaner not described elsewhere in this section, including liquid marble and stone polish.

vii. *Consumer use in lubricants and greases (cutting fluid).* This condition of use refers to the consumer use of PCE in non-aerosolized products to reduce friction, heat generation and wear between solid surfaces, including cutting fluid.

viii. *Consumer use in lubricants and greases (lubricants and penetrating oils).* This condition of use refers to the consumer use of PCE in aerosolized products to reduce friction, heat generation and wear between solid surfaces, including lubricant and penetrating oils.

ix. *Consumer use in adhesives for arts and crafts (including industrial adhesive, arts and crafts adhesive, gun ammunition sealant).* This condition of use refers to the consumer use of PCE as an adhesive in arts, crafts, and hobby products to promote bonding between other substances, promote adhesion of surfaces, or prevent seepage of moisture or air, in particular industrial adhesive, adhesive for arts and crafts, and gun ammunition sealant. For example, PCE may be used in gun ammunition sealant products to ensure no moisture gets into ammunition casings.

x. *Consumer use in adhesives for arts and crafts (livestock grooming adhesive).* This condition of use refers to the consumer use of PCE in livestock grooming adhesive spray.

xi. *Consumer use in adhesives for arts and crafts (column adhesive, caulk and sealant).* This condition of use refers to the consumer use of PCE for column adhesive, caulk and sealant.

xii. *Consumer use in solvent-based paints and coatings (outdoor water shield (liquid)).* This condition of use refers to the consumer use of PCE in solvent-based non-aerosol paint and coating products to enhance properties such as water repellence, increased gloss, improved fade resistance, ease of application, or foam prevention, in particular the use in outdoor water shield sealants and coatings.

xiii. *Consumer use in solvent-based paints and coatings (coating and primers (aerosol)).* This condition of use refers to the consumer use of PCE in solvent-based paint and coating aerosol products to enhance properties such as water repellence, increased gloss, improved fade resistance, ease of application, or foam prevention, in particular the use in aerosolized coating and primers.

xiv. *Consumer use in solvent-based paints and coatings (rust primer and sealant (liquid)).* This condition of use refers to the consumer use of PCE in solvent-based paint and coating liquid products to enhance properties such as water repellence, increased gloss, improved fade resistance, ease of application, or foam prevention, in particular the use in liquid rust primer and sealant.

xv. *Consumer use in solvent-based paints and coatings (metallic overglaze).* This condition of use refers to the consumer use of PCE in solvent-based paint and coating products to enhance

properties such as water repellence, increased gloss, improved fade resistance, ease of application, or foam prevention, in particular the use in solvent based metallic overglaze for ceramics.

xvi. *Consumer use in metal (e.g., stainless steel) and stone polishes.* This condition of use refers to the consumer use of PCE in liquid wax-based products for metal (*e.g.,* stainless steel) and stone polishing.

xvii. *Consumer use in inks and ink removal products.* This condition of use refers to the consumer use of PCE in ink and ink removal products for writing, printing, creating an image on paper and other substrates, applied to substrates to change their color or hide images, or to remove dirt and other contaminants from substrates.

xviii. *Consumer use in welding.* This condition of use refers to the consumer use of PCE in products that cast or join materials, promote the fusing of minerals, or prevent oxide formation, including products that reduce welding spatter or prevent the spatter from sticking to surfaces.

xix. *Consumer use in metal mold cleaning, release and protectant products.* This condition of use refers to the consumer use of PCE in products to create barriers to prevent certain materials from adhering to each other and assist in the removal of dirt, grease, oils, and other contaminants from metal molds, machinery, electrical and electronic equipment, pins, and mechanical equipment.

e. Disposal

This condition of use refers to the process of disposing generated waste streams of PCE that are collected and transported to a third-party site for their final disposition, such as waste incineration or landfilling.

f. Terminology in This Proposed Rule

For purposes of this proposed rulemaking ''occupational conditions of use'' refers to the TSCA conditions of use described in Units III.B.1.a., b., c., and e. Although EPA identified both industrial and commercial uses in the 2020 Risk Evaluation for PCE for purposes of distinguishing scenarios, the Agency clarified then and clarifies now that EPA interprets the authority Congress gave to the Agency to ''regulat[e] any manner or method of commercial use'' under TSCA section 6(a)(5) to reach both industrial and commercial uses.

Additionally, in the 2020 Risk Evaluation for the chemical substance PCE, EPA identified and assessed all known, intended, and reasonably foreseen industrial, commercial, and consumer uses of PCE in order to determine whether PCE as a whole chemical substance presents unreasonable risks to health and the environment. EPA determined that all industrial, commercial, and consumer uses of PCE evaluated in the 2020 Risk Evaluation for PCE drive the EPA determination that PCE presents unreasonable risk of injury to health. As such, for purposes of this risk management rulemaking, ''consumer use'' refers to all consumer uses including known, intended, and reasonably foreseen consumer uses of PCE. Likewise, for the purpose of this risk management rulemaking, ''industrial and commercial use'' refers to all industrial and commercial uses, including known, intended, or reasonably foreseen PCE industrial and commercial use.

EPA is not proposing to incorporate the descriptions of known, intended or reasonably foreseen conditions of use in Unit III.B.1.a through e into the regulatory text as definitions because these conditions of use represent those evaluated in the 2020 Risk Evaluation for PCE whereas the regulatory text applies to all TSCA consumer and industrial/commercial uses. EPA requests comment on whether EPA should promulgate definitions for those conditions of use evaluated in the 2020 Risk Evaluation for PCE that would not be prohibited, and, if so, whether the descriptions in this unit are consistent with the conditions of use evaluated in the 2020 Risk Evaluation for PCE and whether they provide a sufficient level of detail to improve the clarity and readability of the regulation if EPA were to promulgate a regulation that contains a list of the industrial and commercial conditions of use evaluated in the 2020 Risk Evaluation for PCE.

EPA further notes that this proposed rule does not apply to any substance excluded from the definition of ''chemical substance'' under TSCA section 3(2)(B)(ii) through (vi). Those exclusions include, but are not limited to, any pesticide (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide; and any food, food additive, drug, cosmetic, or device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (FFDCA), when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic or device.

2. Description of Unreasonable Risk Under the Conditions of Use

EPA has determined that PCE presents an unreasonable risk of injury to human health under the conditions of use based on acute and chronic non-cancer risks and chronic cancer risks (Ref. 2). As described in the TSCA section 6(b) 2020 Risk Evaluation for PCE, EPA identified non-cancer adverse effects from acute and chronic inhalation and dermal exposures to PCE, and cancer from chronic inhalation and dermal exposures to PCE (Ref. 1). EPA identified neurotoxicity as the most robust and sensitive endpoint for non-cancer adverse effects from acute inhalation and dermal exposures and as the most robust and sensitive endpoint for non-cancer adverse effects from chronic inhalation and dermal exposures for all conditions of use (Ref. 1). Additional risks associated with other adverse effects (*e.g.,* kidney, liver, immune system, and developmental toxicity) were identified for acute and chronic exposures. EPA also concluded, based on EPA's Guidelines for Carcinogen Risk Assessment (Ref. 41), that PCE is likely to be carcinogenic to humans by all routes of exposure and calculated cancer risks from chronic inhalation and dermal exposures. Unit VI.A. summarizes the health effects and the magnitude of exposures (Ref. 1).

To make the unreasonable risk determination for PCE, EPA evaluated exposures to workers, ONUs, children of workers at dry cleaners, consumer users, and bystanders to consumer use using reasonably available monitoring and modeling data for inhalation and dermal exposures (Ref. 2). EPA conducted a screening level analysis to assess potential risks from the air and water pathways to fenceline communities. A discussion of EPA's analysis and the expected effects of this rulemaking on fenceline communities is in Unit VI.A.

For the 2020 Risk Evaluation for PCE, EPA considered PESS. EPA identified the following groups as PESS: workers, ONUs, children of workers at dry cleaners, consumers, bystanders, developing fetuses (and by extension, women of childbearing age), and those with certain pre-existing health conditions, higher body fat content, or particular genetic polymorphisms (Ref. 1). All PESS are included in the quantitative and qualitative analyses described in the risk evaluation, and were considered in the determination of unreasonable risk for PCE. As discussed in Unit II.D. and Unit VI.A., the 2020 Risk Evaluation for PCE excluded the air and water exposure pathways to the general population from the published

risk evaluations and may have caused some risks to be unaccounted for in the risk evaluation. EPA considers these receptors a subset of the general population and categorizes them as fenceline communities; they may also be considered PESS. See Unit VI.A. for further discussion on assessing and protecting against risk to fenceline communities.

3. Description of TSCA Section 6 Requirements for Risk Management

EPA examined the TSCA section 6(a) requirements (listed in Unit III.A.) to identify which ones have the potential to eliminate the unreasonable risk for PCE. This Unit summarizes the TSCA section 6 considerations for issuing regulations under TSCA section 6(a). Unit V. outlines how EPA applied these considerations specifically to managing the unreasonable risk from PCE.

As required, EPA developed a proposed regulatory action and one or more primary alternative regulatory actions, which are described in Units IV.A. and IV.B., respectively. To identify and select a regulatory action, EPA considered the two routes of exposure driving the unreasonable risk, inhalation and dermal, and the exposed populations. For occupational conditions of use (see Unit III.B.1.f.), EPA considered how it could directly regulate manufacturing (including import), processing, distribution in commerce, industrial and commercial use, or disposal to address the unreasonable risk. EPA does not have direct authority to regulate consumer use. Therefore, EPA considered how it could exercise its authority under TSCA to regulate the manufacturing (including import), processing, and/or distribution in commerce of PCE at different points in the supply chain to eliminate exposures or restrict the availability of PCE and PCE-containing products for consumer use in order to address the unreasonable risk.

As required by TSCA section 6(c)(2), EPA considered several factors, in addition to identified unreasonable risk, when selecting among possible TSCA section 6(a) requirements. To the extent practicable, EPA factored into its decisions: (i) The effects of PCE on health and the environment; (ii) The magnitude of exposure to PCE of human beings and the environment; (iii) The benefits of PCE for various uses; and (iv) The reasonably ascertainable economic consequences of the rule. In evaluating the reasonably ascertainable economic consequences of the rule, EPA considered: (i) The likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health; (ii) The costs and benefits of the proposed regulatory action and one or more primary alternative regulatory actions considered; and (iii) The cost effectiveness of the proposed regulatory action and of the one or more primary alternative regulatory actions considered. See Unit VI. for further discussion related to TSCA section 6(c)(2)(A) considerations, including the statement of effects of the proposed rule with respect to these considerations.

EPA also considered the regulatory authority under TSCA and other statutes such as the OSH Act, Consumer Product Safety Act (CPSA), and other EPA-administered statutes to examine: (1) Whether there are opportunities for all or part of risk management action on PCE to be addressed under other statutes, such that a referral may be warranted under TSCA sections 9(a) or 9(b); or (2) Whether TSCA section 6(a) regulation could include alignment of requirements and definitions in and under existing statutes to minimize confusion to the regulated entities and the general public.

In addition, EPA followed other TSCA requirements such as considering the availability of alternatives when contemplating prohibition or a substantial restriction (TSCA section 6(c)(2)(C), as outlined in Unit V.B.), and setting proposed compliance dates in accordance with the requirements in TSCA section 6(d)(1) (described in the proposed and alternative regulatory actions in Unit IV.).

To the extent information was reasonably available, when selecting regulatory actions, EPA considered pollution prevention and the hierarchy of controls adopted by OSHA and NIOSH, with the goal of identifying risk management control methods that are permanent, feasible, and effective. EPA also considered how to address the unreasonable risk while providing flexibility to the regulated entities where appropriate. EPA considered the information presented in the 2020 Risk Evaluation for PCE, as well as additional input from stakeholders (as described in Unit III.A.), and anticipated compliance strategies from regulated entities.

Taken together, these considerations led EPA to the proposed regulatory action and primary alternative regulatory actions described in Unit IV. Additional details related to how the requirements in this unit were incorporated into development of those actions are in Unit V.

As demonstrated by the number of distinct programs addressed in this rulemaking and the structure of this proposed rule in addressing them independently, EPA generally intends the rule's provisions to be severable from each other. EPA expects to provide additional detail on severability in the final rule once the Agency has considered public comments and finalized the regulatory language.

IV. Proposed and Alternative Regulatory Actions

This unit describes the proposed regulatory action by EPA so that PCE will no longer present an unreasonable risk of injury to health. In addition, as indicated by TSCA section 6(c)(2)(A), EPA must consider the costs and benefits and the cost-effectiveness of the proposed regulatory action and one or more primary alternative regulatory actions. In the case of PCE, the proposed regulatory action is described in Unit IV.A. and the two alternative regulatory actions considered are described in Unit IV.B. An overview of the proposed regulatory action and two alternative regulatory actions for each condition of use is in Unit IV.C. The rationale for the proposed and alternative regulatory actions and associated compliance timeframes are discussed in this unit and in more detail in Unit V.A.

A. Proposed Regulatory Action

EPA is proposing under TSCA section 6(a) to: Prohibit most industrial and commercial uses and the manufacture (including import), processing, and distribution in commerce of PCE for those uses, outlined in Unit IV.A.1.a.; Prohibit the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use, outlined in Unit IV.A.1.b.; Prohibit the manufacture (including import), processing, distribution in commerce, and commercial use of PCE in dry cleaning and spot cleaning through a 10-year phaseout, outlined in Unit IV.A.1.c.; Require strict workplace controls, including a PCE WCPP, which would include requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact with PCE, for 16 occupational conditions of use not prohibited, outlined in Unit IV.A.2.; Require prescriptive workplace controls for laboratory use, outlined in Unit IV.A.3.; Establish recordkeeping and downstream notification requirements, outlined in Unit IV.A.4; and Provide a 10-year time limited exemption under TSCA section 6(g) for certain critical or essential emergency uses of PCE for which no technically and economically feasible safer alternative is available, outlined in Unit IV.A.5. As the manufacture and processing of PCE presents an unreasonable risk to health in the

United States, the manufacture and processing of PCE for export would also be prohibited or restricted in accordance with TSCA section 12(a)(2).

1. Prohibitions of Manufacturing, Processing, Distribution in Commerce, and Use

a. Prohibition of Certain Industrial and Commercial Uses and Manufacturing, Processing, and Distribution in Commerce of PCE for Those Uses

EPA is proposing to prohibit the manufacturing, processing, distribution in commerce, and use of PCE for industrial and commercial uses, except for those uses which would continue under the WCPP (as described in Unit IV.A.2.), and laboratory use (as described in Unit IV.A.3.). The proposed prohibitions under TSCA would not apply to any use of PCE that is excluded from TSCA's definition of ''chemical substance'' under TSCA section 3(2)(B)(ii) through (vi). This proposed prohibition would include a prohibition on the manufacturing, processing, distribution in commerce, and use of PCE for the following industrial and commercial uses:

- As a processing aid in pesticide, fertilizer and other agricultural chemical manufacturing;
- In specialty DOD uses (oil analysis and water pipe repair);
- In solvent-based paints and coatings;
- As solvent for aerosol spray degreaser/cleaner;
- As solvent for cold cleaning;
- In other textile processing;
- In wood furniture manufacturing;
- As a solvent for aerosol lubricants;
- In wipe cleaning;
- In other spot cleaning and spot removers, including carpet cleaning;
- In automotive care products (*e.g.,* engine degreaser and brake cleaner);
- In non-aerosol cleaner;
- In metal (*e.g.,* stainless steel) and stone polishes;
- In foundry applications;
- In welding;
- For mold release;
- As a solvent for penetrating lubricants and cutting tool coolants;
- For photographic film;
- In inks and ink removal products (based on printing);
- In inks and ink removal products (based on photocopying); and
- In metal mold cleaning, release and protectant products.

EPA is also proposing to prohibit the following condition of use, which is the upstream processing condition of use for some of the prohibited industrial and commercial uses: processing into formulation, mixture or reaction product in other chemical products and preparations. EPA is also proposing to phase out the use of PCE at industrial and commercial dry cleaning facilities as described in Unit IV.A.1.c.

EPA has considered the sensitive nature of the DOD applications for which EPA received monitoring data for the 2020 Risk Evaluation for PCE, including for the industrial and commercial use in specialty DOD uses (oil analysis and water pipe repair). The Agency understands that DOD has no current data that indicate PCE is required for these specialty uses and EPA has not identified any other entities using PCE in this way. Because there are no known entities engaged in this condition of use, EPA believes a prohibition is reasonable and would prevent any future entities from engaging in this use. EPA is therefore proposing to prohibit the manufacturing, processing, distribution in commerce, and use of PCE for the industrial and commercial use in specialty DOD uses (oil analysis and water pipe repair).

As discussed in Units III.B.3. and V.A., based on consideration of alternatives under TSCA section 6(c)(2)(C), uncertainty relative to the feasibility of exposure reduction to sufficiently address the unreasonable risk across the broad range of work environments and activities, and the irreversible health effects associated with PCE exposures, EPA has determined that prohibition is the best way to address the unreasonable risk from PCE driven in part by the conditions of use identified in this unit. As noted in Unit III.B.1.f., this proposal does not apply to any substance excluded from the definition of ''chemical substance'' under TSCA section 3(2)(B)(ii) through (vi). EPA requests comment on the impacts, if any, a prohibition on the processing of PCE into a formulation, mixture or reaction product in other chemical products and preparations, or other aspects of this proposal, may have on the production and availability of any pesticide or other substance excluded from the TSCA definition of ''chemical substance.''

EPA is proposing to stagger the compliance dates for the proposed prohibitions described in this unit, such that the requirements would come into effect in 12 months for manufacturers, 15 months for processers, 18 months for distributing to retailers, 21 months for all other distributors (including retailers), and 24 months for industrial and commercial users after the publication date of the final rule. When proposing these compliance dates as required under TSCA section 6(d), EPA considered irreversible health effects and risks associated with PCE exposure. EPA has no reasonably available information indicating that the proposed compliance dates are not practicable for the activities that would be prohibited, or that additional time is needed for products to clear the channels of trade. However, EPA requests comment on whether additional time is needed, for example, for products to clear the channels of trade, or for implementing the use of substitutes; comments should include documentation such as the specific use of the chemical throughout the supply chain; concrete steps taken to identify, test, and qualify substitutes for those uses (including details on the substitutes tested and the specific certifications that would require updating); and estimates of the time required to identify, test, and qualify substitutes with supporting documentation. EPA also requests comment on whether these are the appropriate types of information for use in evaluating compliance requirements, and whether there are other considerations that should apply. EPA may finalize significantly shorter or longer compliance timeframes based on consideration of public comments.

Additionally, EPA recognizes that there may be instances where an ongoing use of PCE that has implications for national security or critical infrastructure as it relates to other Federal agencies (*e.g.,* DOD, NASA) is identified after the PCE rule is finalized, but the final rule prohibits that use. For instances like that, EPA requests comments on an appropriate, predictable, process that could expedite reconsideration for uses that Federal agencies or their contractors become aware of after the final rule is issued using the tools available under TSCA, aligning with the requirements of section 6(g). One example of an approach could be the establishment by rulemaking of a Federal agency category of use that would require implementation of the WCPP and periodic reporting to EPA on details of the use as well as progress in discontinuing the use or finding a suitable alternative. To utilize the category of use a Federal agency would petition EPA, supported by documentation describing the specific use (including documentation of the specific need, service life of any relevant equipment, and specific identification of any applicable regulatory requirements or

certifications, as well as the location and quantity of the chemical being used); the implications of cessation of this use for national security or critical infrastructure (including how the specific use would prevent injuries/fatalities or otherwise provide life-supporting functions); exposure control plan; and, for Federal agency uses where similar adoption by the commercial sector may be likely, concrete steps taken to identify, test, and qualify substitutes for the uses (including details on the substitutes tested and the specific certifications that would require updating; and estimates of the time required to identify, test, and qualify substitutes with supporting documentation). EPA requests comment on whether these are the appropriate types of information for use in evaluating this type of category of use, and whether there are other considerations that should apply. EPA would make a decision on the petition within 30 days and publish the decision in the **Federal Register** shortly after. Additionally, during the year following the petition, EPA would take public comment on the approved petition and no later than 180 days after submitting the petition to EPA, the requesting agency would submit monitoring data indicating compliance with the WCPP at each relevant location as well as documentation of efforts to identify or qualify substitutes. In the absence of that confirmatory data, the utilization of the generic Federal agency category of use would expire within one year of the date of receipt by EPA of the petition. EPA could undertake a section 6(g) rulemaking for those instances where the Federal agency could not demonstrate compliance with the WCPP. This is just one example of a potential process. EPA requests comments on a process that could expedite reconsideration for uses that Federal agencies or their contractors become aware of after the final rule is issued.

b. Prohibition of Manufacturing, Processing and Distribution in Commerce of PCE for Consumer Use

In the 2020 Risk Evaluation for PCE, EPA evaluated consumer use of PCE:

- In cleaners and degreasers (other);
- In automotive care products (brake cleaner);
- In automotive care products (parts cleaner);
- In aerosol cleaner (vandalism mark and stain remover);
- In non-aerosol cleaner (*e.g.,* marble and stone polish);
- In lubricants and greases (cutting fluid);
- In lubricants and greases (lubricants and penetrating oils);
- In adhesives for arts and crafts (including industrial adhesive, arts and crafts adhesive, gun ammunition sealant);
- In adhesives for arts and crafts (livestock grooming adhesive);
- In adhesives for arts and crafts (column adhesive, caulk and sealant);
- In solvent-based paints and coatings (outdoor water shield (liquid));
- In solvent-based paints and coatings (coatings and primers (aerosol));
- In solvent-based paints and coatings (rust primer and sealant (liquid));
- In solvent-based paints and coatings (metallic overglaze);
- In metal (*e.g.,* stainless steel) and stone polishes;
- In inks and ink removal products;
- In welding; and
- In metal mold cleaning, release and protectant products.

The consumer uses evaluated in the 2020 Risk Evaluation for PCE constitute all known, intended, and reasonably foreseen consumer uses of PCE. EPA determined that all of these consumer uses drive unreasonable risk of injury to health. As such, for purposes of this risk management rulemaking, ''consumer use'' refers to all consumer uses, including all known, intended, and reasonably foreseen consumer uses of PCE. EPA is proposing to prohibit the manufacturing, processing, and distribution in commerce of PCE for all consumer use. EPA is proposing to phase out consumer use in dry cleaning solvent (*i.e.,* exposure to clothing or articles recently dry cleaned with PCE as described in Unit III.B.1.d.ii.) by phasing out the use of PCE at industrial and commercial dry cleaning facilities as described in Unit IV.A.1.c.; thus, consumer use of clothing and articles that have been commercially dry cleaned with PCE would not be subject to the prohibitions and compliance timeframes described in this unit.

As discussed in Units III.B.3. and V.A., based on consideration of the severity of the hazards of PCE in conjunction with the limited options available to adequately address the identified unreasonable risk to consumers and bystanders under TSCA section 6(a), EPA is proposing to address the unreasonable risk from consumer use by prohibiting the manufacturing (including import), processing, and distribution in commerce of PCE for consumer use in order to remove PCE and products containing PCE from the market, thereby effectively eliminating instances of consumer use.

Additionally, EPA is proposing to prohibit retailers from distributing in commerce PCE, including any PCE-containing products, in order to prevent products intended for industrial and commercial use under the WCPP outlined in Unit IV.A.2. from being purchased by consumers. A retailer is any person or business entity that distributes or makes available products to consumers, including through e-commerce internet sales or distribution. If a person or business entity distributes or makes available any product to at least one consumer, then it is considered a retailer (as EPA proposes to define that term in 40 CFR 751.5). For a distributor not to be considered a retailer, the distributor must distribute or make available chemical substances solely to commercial or industrial end-users or businesses. Prohibiting manufacturers (including importers), processors, and distributors from distributing PCE, or any products containing PCE, to retailers would prevent retailers from making these products available to consumers, which would help address that part of the unreasonable risk driven by consumer use of PCE.

EPA is proposing that the prohibition described in this unit would take effect in 12 months for manufacturers, 15 months for processers, 18 months for distributing to retailers, and 21 months for all other distributors (including retailers) after the publication date of the final rule in the **Federal Register**. EPA considered irreversible health effects and risks associated with PCE exposure when proposing compliance dates. EPA has no reasonably available information indicating these proposed compliance dates are not practicable for the activities that would be prohibited, or that additional time is needed for products to clear the channels of trade. However, EPA requests comment on whether additional time is needed, for example, for products to clear the channels of trade. EPA may finalize significantly shorter or longer compliance timeframes based on consideration of public comments.

c. Prohibition and Phaseout of PCE in Dry Cleaning

EPA is proposing to prohibit the manufacturing, processing, distribution in commerce, and industrial and commercial use of PCE for dry cleaning and spot cleaning, including in 3rd generation (dry-to-dry machines with refrigerated condenser) and 4th/5th generation (dry-to-dry machines with refrigerated condenser and carbon adsorber process controls) machines.

As discussed in Units III.B.3. and V.A., based on a consideration of alternatives under TSCA section 6(c)(2)(C), uncertainty relative to the feasibility of exposure reduction to sufficiently address the unreasonable risk across the broad range of work environments and activities, and the irreversible health effects associated with PCE exposures, EPA has determined that prohibition is the best way to address the unreasonable risk. A prohibition on the manufacturing, processing, distribution in commerce, and industrial and commercial use of PCE in dry cleaning and spot cleaning would address the unreasonable risk for the following conditions of use evaluated in the 2020 Risk Evaluation and described further in Unit III.B.1:

- Industrial and commercial use in dry cleaning and spot cleaning post-2006 dry cleaning;
- Industrial and commercial use in dry cleaning and spot cleaning 4th/5th generation only dry cleaning; and
- Consumer use in dry cleaning solvent (*i.e.,* exposure to clothing or articles recently dry cleaned with PCE).

EPA recognizes that the transition to an alternative dry cleaning process or solvent could require significant time and investment from dry cleaning facilities; therefore, EPA is proposing a phaseout period to take place following the publication date of the final rule. The phaseout would start with a prohibition on the use of PCE in any dry cleaning machine acquired 6 months or later after the publication date of the rule, followed by a prohibition on the use of PCE in 3rd generation machines 3 years after the publication date of the rule. Full implementation of the phaseout would be achieved with a prohibition on the use of PCE in all dry cleaning and spot cleaning, including in 4th and 5th generation machines, 10 years after the publication date of the final rule and a prohibition on the manufacturing, processing, and distribution in commerce of PCE for use in dry cleaning solvent 10 years after the publication date of the final rule. When proposing these compliance dates, EPA considered reasonably available information, including market research, existing State actions restricting the use of PCE in dry cleaning (Title 17, California Code of Regulations 39109 and 93110; Minnesota HF 91; 6 NYCRR Part 232), and engagement with industry, trade associations, and State and local agencies. Based on this reasonably available information, EPA understands that the use of PCE in dry cleaning is currently declining and that very few PCE machines are being produced or sold in the U.S. market (Ref. 33). As described more fully in the Economic Analysis (Ref. 3), EPA assumes dry cleaning machines are retired 15 to 25 years after the manufactured date. Therefore, EPA assumes most dry cleaning machines manufactured and installed before 2005, such as for 3rd generation machines, would be beyond their projected useful life by the proposed phaseout dates outlined in this Unit. A 3-year phaseout of the use of PCE in 3rd generation dry cleaning machines takes into consideration the age of existing 3rd generation dry cleaning machines as well as public comments submitted on the proposed amendments to the PCE Dry Cleaning NESHAP (December 27, 2021, 86 FR 73207) recommending a 3- to 5-year compliance timeframe at minimum to account for supply issues related to those machines. A 10-year phaseout of the use of PCE in dry cleaning and spot cleaning takes into account that, while the average projected useful lifespan of dry cleaning machines is 15 to 25 years, the purchase of new PCE dry cleaning machines has been in decline. As described more fully in the Economic Analysis, EPA estimates that 6,000 dry cleaners still use PCE and estimates that about 60 machines are expected to still be in use at the end of the 10-year phaseout period given the declining trend of use and age of machines. EPA believes that the proposed 6-month and 3-year compliance dates for the start of the phaseout, and the proposed 10-year compliance date for full implementation of the phaseout, are consistent with requirements in TSCA section 6(d)(1)(C) and (D), respectively, to specify mandatory compliance dates for the start of phaseout requirements that are as soon as practicable but not later than 5 years after the date of promulgation of the rule, and to specify mandatory compliance dates for full implementation of phaseout requirements that are as soon as practicable. EPA also believes that these compliance dates provide for a reasonable transition period, consistent with TSCA section 6(d)(1)(E). EPA has no reasonably available information indicating that the proposed compliance dates are not practicable for the activities that would be prohibited. However, EPA requests comment on the amount of time needed, for example, for dry cleaners to transition to an alternative process or solvent. EPA also requests comment regarding the number of entities that could potentially close as well as associated costs with a 10-year phaseout of PCE for use in dry cleaning as identified in this unit. EPA may finalize significantly shorter or longer compliance timeframes based on consideration of public comments.

d. De Minimis Level

To aid the regulated community with implementing the prohibitions, and to account for de minimis levels of PCE as an impurity in products, EPA is proposing that products containing PCE at concentrations less than 0.1% by weight are not subject to the prohibitions described in this unit. EPA has determined that the prohibitions are only necessary for products containing PCE at levels equal to or greater than 0.1% by weight in order to eliminate the unreasonable risk of injury resulting from inhalation and dermal exposures from PCE-containing products during occupational and consumer conditions of use. EPA's description for how allowing for a concentration of PCE up to 0.1% would address the unreasonable risk associated with PCE-containing products and rationale for this regulatory approach are in Unit V.A. EPA requests comment on allowing this de minimis level of PCE in products to account for impurities.

2. Workplace Chemical Protection Program (WCPP)

a. Overview

As described in Unit III.B.3., under TSCA section 6(a), EPA is required to issue a regulation applying one or more of the TSCA section 6(a) requirements to the extent necessary so that the unreasonable risk of injury to health or the environment from a chemical substance is no longer presented. The TSCA section 6(a) requirements provide EPA the authority to limit or restrict a number of activities, alone or in combination, including the manufacture, processing, distribution in commerce, commercial use, and disposal of the chemical substance. Given this authority, EPA may find it appropriate in certain circumstances to propose requirements under a WCPP for certain occupational (*i.e.,* manufacturing, processing, industrial and commercial use, and disposal) conditions of use. A WCPP for PCE would encompass the inhalation exposure limit and action level, Direct Dermal Contact Control (DDCC) requirements, and the associated implementation requirements described in this unit to ensure that the chemical substance no longer presents unreasonable risk. Under a WCPP, owners or operators would have some flexibility, within the parameters outlined in this unit, regarding how they prevent exceedances of the

identified EPA exposure limit thresholds or prevent direct dermal contact. In the case of PCE, meeting the EPA exposure limits and implementing the DDCC requirements for certain occupational conditions of use would address unreasonable risk to potentially exposed persons from inhalation and dermal exposure.

EPA uses the term ''potentially exposed person'' in this unit and in the regulatory text to include workers, ONUs, employees, independent contractors, employers and all other persons in the work area where PCE is present and who may be exposed to PCE under the conditions of use for which a WCPP would apply. EPA's intention is to require a comprehensive WCPP that would address the unreasonable risk from PCE to potentially exposed persons directly handling the chemical or in the area where the chemical is being used.

Similarly, the 2020 risk evaluation for PCE did not distinguish between employers, contractors, or other legal entities or businesses that manufacture, process, distribute in commerce, use, or dispose of PCE. EPA uses the term ''owner or operator'' to describe the entity responsible for implementing the WCPP for workplaces where an applicable condition of use is occurring and PCE is present. The term includes any person who owns, leases, operates, controls, or supervises such a workplace.

An ECEL is a risk-based inhalation exposure threshold. The ECEL would be accompanied by monitoring, training, recordkeeping and other requirements to help ensure that the threshold is not exceeded. With an ECEL, regulated entities have some flexibility, within certain parameters outlined in this unit, for preventing exceedances of the identified exposure threshold. Therefore, EPA generally refers to the ECEL and ancillary requirements as a non-prescriptive approach. In the case of PCE, the exposure threshold identified by EPA for certain occupational conditions of use would mitigate unreasonable risk from inhalation exposure driven by those conditions of use for potentially exposed persons.

DDCC requirements are process-based approaches to prevent direct dermal contact with PCE and associated implementation requirements described in this unit to ensure that the chemical substance no longer presents unreasonable risk from dermal exposure. As with the ECEL, DDCC requirements allow regulated entities some flexibility within certain parameters outlined in this unit for preventing direct dermal contact with PCE. In the case of PCE, EPA has preliminarily determined that preventing direct dermal contact through DDCC requirements for certain conditions of use would mitigate unreasonable risk from dermal exposure driven by those conditions of use for potentially exposed persons.

This unit includes a summary of the proposed PCE WCPP, including a description of the ECEL; proposed implementation requirements and an EPA ECEL action level; proposed monitoring requirements; a description of potential exposure controls, which consider the hierarchy of controls; information that may be used to inform respirator selection; and additional requirements proposed for recordkeeping, and worker training, participation, and notification. This unit also describes proposed DDCC requirements for PCE, including potential exposure controls, which consider the hierarchy of controls; proposed PPE as it relates to dermal protection; and additional requirements proposed for recordkeeping. This unit also describes compliance timeframes for these proposed requirements.

b. Existing Chemical Exposure Limit (ECEL)

i. *ECEL and ECEL action level.* To reduce exposures in the workplace and address the unreasonable risk of injury to health resulting from inhalation exposures to PCE identified under the occupational conditions of use in the TSCA 2020 Risk Evaluation for PCE, EPA is proposing an ECEL of 0.14 parts per million (ppm) (0.98 mg/m3) for inhalation exposures to PCE as an 8-hour TWA. This ECEL is based on the occupational chronic, non-cancer human equivalent concentration (HEC) for neurotoxicity (Ref. 10). EPA has determined, as a matter of risk management policy, that ensuring exposures remain at or below the ECEL would eliminate the contribution to the unreasonable risk of injury to health for PCE resulting from inhalation exposures in an occupational setting. EPA is proposing to establish requirements to meet an ECEL as part of the WCPP for:

- Manufacturing (domestic manufacturing);
- Manufacturing (import);
- Processing as a reactant/intermediate;
- Processing into formulation, mixture, or reaction product in cleaning and degreasing products;
- Processing into formulation, mixture, or reaction products in paint and coating products;
- Processing into formulation, mixture, or reaction products in adhesive and sealant products;
- Processing by repackaging;
- Industrial and commercial use as solvent for open-top batch vapor degreasing;
- Industrial and commercial use as solvent for closed-loop batch vapor degreasing;
- Industrial and commercial use as solvent for in-line conveyorized vapor degreasing;
- Industrial and commercial use as solvent for in-line web cleaner vapor degreasing;
- Industrial and commercial use in maskant for chemical milling;
- Industrial and commercial use in solvent-based adhesives and sealants; and
- Industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing.

Each owner or operator of a workplace where these conditions of use occur would be responsible for compliance with the ECEL and the associated requirements. EPA's description for how the requirements related to an ECEL would address the unreasonable risk resulting from inhalation exposures and the rationale for this regulatory approach are outlined in Units III.B.3. and V.A.

If ambient exposures are kept at or below the 8-hour ECEL of 0.14 ppm, EPA expects that a potentially exposed person in the workplace would be protected against non-cancer effects resulting from occupational exposures, as well as excess risk of cancer (Ref. 10).

EPA is also proposing to establish an ECEL action level of 0.07 ppm as an 8-hour TWA for PCE. Air concentrations at or above the action level would trigger more frequent periodic monitoring of exposures to PCE, as described in this unit. EPA is proposing to adopt the action level approach in implementing the TSCA ECEL, consistent with the action level approach utilized by OSHA in the implementation of OSHA standards, although the values differ due to differing statutory authorities. As explained by OSHA, due to the variable nature of employee exposures, compliance with an action level provides employers with greater assurance that their employees will not be exposed to concentrations above the PELs (Ref. 42). EPA agrees with this reasoning and, like OSHA, expects the inclusion of an ECEL action level will stimulate innovation within industry to reduce exposures to levels below the action level. Therefore, EPA has identified a need for an action level for

PCE and is proposing a level that would be half the 8-hour ECEL, which is in alignment with the precedented approach established under most OSHA standards. EPA is soliciting comment regarding an ECEL action level that is half the ECEL and any associated provisions related to the ECEL action level when the ECEL is significantly lower than the OSHA PEL.

In summary, EPA is proposing that each owner or operator of a workplace subject to the ECEL must ensure that no person is exposed to airborne concentration of PCE in excess of 0.14 ppm (0.98 mg/m3) as an 8-hour TWA (ECEL), with an action level identified as 0.07 ppm (0.47 mg/m3) (ECEL action level). For conditions of use for which the requirements to meet an ECEL are being proposed, EPA expects that the regulated community can detect the ECEL and ECEL action level as they are above the threshold of PCE air sampling analytical methods that are widely available in commerce, currently in use, and approved by OSHA and NIOSH, which can range from ≤0.5 parts per billion (ppb) to 9 ppm (Ref. 10). The Agency has also identified personal breathing zone air sampling devices with a minimum limit of quantitation and level of detection below the ECEL action level (Ref. 43). EPA is requesting comment on issues around the viability of current analytical methods and detection limits for occupational perchloroethylene sampling and/or monitoring methods. EPA's methodology and inputs for the ECEL value are directly derived from the peer reviewed analysis in the December 2020 Risk Evaluation, which was also subject to public comment. As with all aspects of this rulemaking, the public is welcome to comment on the methodology for the ECEL value.

EPA expects that many workplaces already have stringent controls in place that reduce exposures to PCE; for some workplaces, EPA understands that these existing controls may already reduce PCE air concentration levels to near or below the ECEL. As discussed further in Unit V.A.1., for some conditions of use for which EPA is proposing the ECEL, data were submitted during the risk evaluation that indicate inhalation exposures may already be near or below the ECEL for some facilities, indicating that such facilities may already be in compliance with the proposed ECEL. As noted previously in this unit, EPA expects that, if inhalation exposures for affected occupational conditions of use are kept at or below the ECEL, potentially exposed persons reasonably likely to be exposed in the workplace would be protected from the unreasonable risk. EPA is also proposing to require owners or operators to comply with additional requirements under the WCPP that would be needed to ensure successful implementation of the ECEL.

ii. *Monitoring requirements.*

Overview. Monitoring requirements are a key component of implementing EPA's proposed WCPP. Initial monitoring for PCE is critical for establishing a baseline of exposure for potentially exposed persons; similarly, periodic exposure monitoring assures continued compliance so that potentially exposed persons in the workplace are not exposed to levels that would result in an unreasonable risk of injury. Periodic exposure monitoring frequency could change if certain conditions are met, which are described in this unit. Additionally, in some cases, a change in workplace conditions with the potential to impact exposure levels would warrant additional monitoring, which is also described. To ensure compliance with monitoring activities, EPA proposes exposure monitoring recordkeeping requirements outlined in this unit.

Initial exposure monitoring. Under the proposed regulation, each owner or operator of a workplace where any condition of use listed earlier in this unit is occurring would be required to perform initial exposure monitoring to determine the extent of exposure of potentially exposed persons to PCE. Initial monitoring would notify owner or operators of the magnitude of possible exposures to their potentially exposed persons with respect to their unique work conditions and environments. The results of the initial exposure monitoring would determine the frequency of future periodic monitoring, whether additional exposure controls are necessary (such as engineering controls, administrative controls, and/or respiratory protection), and whether the owner or operator would need to demarcate a regulated area as described in this unit.

EPA is proposing to require each owner or operator to establish an initial baseline monitoring sample to determine the magnitude of exposure for all persons who may be exposed to PCE within 6 months after the date of publication of the final rule in the **Federal Register** or within 30 days of introduction of PCE into the workplace, whichever is later. Where PCE is present in the workplace, each owner or operator would be required to determine each potentially exposed person's exposure by either taking a personal breathing zone air sample of each potentially exposed person or taking personal breathing zone air samples that are representative of each potentially exposed person's exposure performing the same or substantially similar operations in each work shift, in each job classification, and in each work area (hereinafter identified as an ''exposure group''). Representative 8-hour TWA exposures must be determined based on one or more samples representing full-shift exposures for each shift for each person in each job classification in each work area. Monitoring samples must be taken when and where the operating conditions are best representative of each potentially exposed person's full-shift exposures. EPA expects that owners and operators would attempt to monitor a baseline for all of the tasks during the same timeframe; however, EPA understands that certain tasks occur less frequently, and EPA is soliciting comments regarding the timing of the initial exposure monitoring so that it would be representative of all tasks involving PCE where exposures may approach the ECEL. If the owner or operator chooses a representative sample, such sampling must include persons that are the closest to the source of PCE, so that the monitoring results are representative of the most highly exposed persons in the workplace. EPA is also soliciting comments regarding use of area sampling instead of personal breathing zone as a representative sample of exposures.

EPA also recognizes that some entities may already have exposure monitoring data. If the owner or operator has monitoring data conducted within five years prior to the effective date of the final rule and the monitoring satisfies all other requirements of this section, including the requirement that the data represents the highest PCE exposures likely to occur under reasonably foreseeable conditions of use, the owner or operator may rely on such earlier monitoring results for the initial baseline monitoring sample.

Periodic exposure monitoring. EPA is proposing to require each owner or operator to conduct, for those exposure groups that exceed the following airborne concentration levels, the following periodic monitoring:

- If all samples taken during the initial exposure monitoring reveal a concentration below the ECEL action level (<0.07 ppm 8-hour TWA), the owner or operator must repeat the periodic exposure monitoring at least once every five years.
- If the most recent exposure monitoring indicates that airborne exposure is above the ECEL (>0.14 ppm 8-hour TWA), the owner or operator

must repeat the periodic exposure monitoring within 3 months of the most recent exposure monitoring.

- If the most recent exposure monitoring indicates that airborne exposure is at or above the ECEL action level (≥0.07 ppm 8-hour TWA) but at or below the ECEL (≤0.14 ppm 8-hour TWA), the owner or operator must repeat the periodic exposure monitoring within 6 months of the most recent exposure monitoring.
- If the most recent (non-initial) exposure monitoring indicates that airborne exposure is below the ECEL action level, the owners or operators must repeat such monitoring within 6 months of the most recent monitoring until two consecutive monitoring measurements, taken at least seven days apart, are below the ECEL action level (<0.07 ppm 8-hour TWA), at which time the owner or operator must repeat the periodic exposure monitoring at least once every 5 years.

Additionally, in instances where an owner or operator does not manufacture, process, use, or dispose of PCE for a condition of use for which the WCPP is proposed over the entirety of time since the last required periodic monitoring event, EPA is proposing that the owner or operator would be permitted to forgo the next periodic monitoring event. However, documentation of cessation of use of PCE would be required and periodic monitoring would be required to resume should the owner or operator restart any of the conditions of use listed in unit IV.A.2. for which the WCPP is proposed.

The proposed periodic monitoring requirements are also outlined in Table 1. EPA requests comment on the timeframes for periodic monitoring outlined in this unit. EPA may finalize significantly shorter or longer compliance timeframes based on consideration of public comments.

TABLE 1—PERIODIC MONITORING REQUIREMENTS

Air concentration condition	Periodic monitoring requirement
If all initial exposure monitoring is below the ECEL action level (<0.07 ppm 8-hour TWA)	Periodic exposure monitoring is required at least once every five years.
If the most recent exposure monitoring indicates that airborne exposure is above the ECEL (>0.14 ppm 8-hour TWA).	Periodic exposure monitoring is required within 3 months of the most recent exposure monitoring.
If the most recent exposure monitoring indicates that airborne exposure is at or above the ECEL action level but at or below the ECEL (≥0.07 ppm 8-hour TWA, ≤0.14 ppm 8-hour TWA).	Periodic exposure monitoring is required within 6 months of the most recent exposure monitoring.
If the two most recent (non-initial) exposure monitoring measurements, taken at least seven days apart within a 6 month period, indicate exposure is below the ECEL action level (<0.07 ppm 8-hour TWA).	Periodic exposure monitoring is required within 5 years of the most recent exposure monitoring.
If the owner or operator engages in a condition of use for which WCPP ECEL would be required but does not manufacture, process, use, or dispose of PCE in that condition of use over the entirety of time since the last required monitoring event.	The owner or operator may forgo the next periodic monitoring event. However, documentation of cessation of use of PCE is required and periodic monitoring would be required when the owner or operator resumes the condition of use.

Additional exposure monitoring. In addition to the initial and periodic exposure monitoring, EPA is proposing that each owner or operator conduct additional exposure monitoring whenever a change in the production, process, control equipment, personnel, or work practices may reasonably be expected to result in new or additional exposures at or above the ECEL action level, or when the owner or operator has any reason to believe that new or additional exposures at or above the ECEL action level have occurred. In the event of start-up, shutdown, spills, leaks, ruptures or other breakdowns that may lead to employee exposure, EPA is proposing that each owner or operator must conduct additional initial exposure monitoring to potentially exposed persons (using personal breathing zone sampling) after the cleanup of the spill or repair of the leak, rupture or other breakdown. An additional exposure monitoring event may result in an increased frequency of periodic monitoring. For example, if the initial monitoring results from a workplace are above the ECEL action level, but below the ECEL, periodic monitoring is required every 6 months. If additional monitoring is performed because increased exposures are suspected, and the results are above the ECEL, subsequent periodic monitoring would have to be performed every 3 months. The required additional exposure monitoring should not delay implementation of any necessary cleanup or other remedial action to reduce the exposures to persons in the workplace.

Other monitoring requirements. For each monitoring event, EPA is proposing to require owners or operators ensure that their methods be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of PCE. Also, EPA is proposing to require use of appropriate sampling and analytical methods used to determine PCE exposure, including as relevant: (A) Use of an analytical method already approved by EPA, OSHA or NIOSH, or another analytical method that has been demonstrated to meet the proposed accuracy requirement at an appropriate level of detection for the ECEL and ECEL action level; (B) Compliance with the Good Laboratory Practice Standards at 40 CFR part 792. Additionally, EPA is proposing to require owners and operators to re-monitor within 15 working days after receipt of the results of any exposure monitoring when results indicate non-detect or air monitoring equipment malfunction, unless an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist reviews the monitoring results and determines re-monitoring is not necessary.

EPA is also proposing to require that each owner or operator maintain exposure monitoring records that include the following information for each monitoring event:

(A) Dates, duration, and results of each sample taken;

(B) All measurements that may be necessary to determine the conditions (*e.g.,* work site temperatures, humidity, ventilation rates, monitoring equipment type and calibration dates) that may affect the monitoring results.

(C) Name, workplace address, work shift, job classification, and work area of the person monitored; documentation of all potentially exposed persons whose exposures the monitoring is intended to represent if using a representative sample; and type of respiratory protective device worn by the monitored person, if any.

(D) Use of appropriate sampling and analytical methods, such as analytical methods already approved by EPA, OSHA or NIOSH, or compliance with an analytical method verification procedure.

(E) Compliance with the Good Laboratory Practice Standards at 40 CFR part 792.

(F) Information regarding air monitoring equipment, including: type, maintenance, calibrations, performance tests, limits of detection, and any malfunctions.

iii. *Incorporation of the hierarchy of controls.* EPA is proposing to require owners or operators to implement the WCPP in accordance with the hierarchy of controls and encourages the use of pollution prevention to control exposures whenever practicable. Pollution prevention, also known as source reduction, is any practice that reduces, eliminates, or prevents pollution at its source (*e.g.,* elimination and substitution). Similarly, the hierarchy of controls includes, in order of preference, elimination, substitution, engineering controls, and administrative controls, prior to relying on PPE as a means of controlling exposures (Ref. 8). EPA is proposing to require owners or operators to reduce inhalation exposures below the ECEL in accordance with the hierarchy of controls. EPA expects that, for conditions of use for which EPA is proposing a WCPP, compliance at most workplaces would be part of an existing industrial hygiene program. Workplaces that cannot feasibly eliminate the source of PCE emissions or replace PCE with a substitute would have to use engineering and/or administrative controls to implement process changes to reduce exposures to the extent feasible, following the hierarchy of controls (Ref. 8). If an owner or operator chooses to replace PCE with a substitute, EPA recommends that they carefully review the available hazard and exposure information on the potential substitutes to avoid a substitute chemical that might later be found to present unreasonable risks or be subject to regulation (sometimes referred to as a ''regrettable substitution'').

If an effort to identify and implement feasible exposure controls such as elimination, substitution, engineering controls, and administrative controls are not sufficient to reduce exposures to or below the ECEL for all persons in the workplace, EPA proposes to require each owner or operator to use such controls to reduce PCE concentrations in the workplace to the lowest levels achievable and, only after levels cannot be further reduced, supplement these controls using respiratory protection before persons are permitted to enter a regulated area, as described in this unit. In such cases, EPA would require that the owner or operator provide those persons exposed or who may be exposed to PCE by inhalation above the ECEL with respirators sufficient to ensure that their exposures do not exceed the ECEL, as described in this unit. EPA also proposes to require that each owner or operator document their evaluation of elimination, substitution, engineering and administrative exposure control strategies, and if applicable the reasons why they found these strategies infeasible to control exposures below the ECEL, in an exposure control plan as described in this unit. In addition, a regulated entity would be prohibited from rotating work schedules of potentially exposed persons to comply with the ECEL 8-hour TWA. EPA may require more, less, or different documentation regarding exposure control strategies in the final rule based on consideration of public comments.

iv. *Regulated area.* Based on the exposure monitoring, EPA is proposing to require that owners or operators of workplaces subject to a WCPP demarcate any area where airborne concentrations of PCE exceed or are reasonably expected to exceed the ECEL. Regulated areas would be demarcated using administrative controls, such as warning signs or highly visible signifiers, in multiple languages as appropriate (*e.g.,* based on languages spoken by potentially exposed persons), placed in conspicuous areas, and documented through training and recordkeeping. The owner or operator would be required to restrict access to the regulated area from any potentially exposed person that lacks proper training, is not wearing required PPE as described in this unit or is otherwise unauthorized to enter. EPA is proposing to require owners and operators demarcate a regulated area beginning 9 months after the date of publication of the final rule, or within 3 months after receipt of any exposure monitoring that indicates exposures exceeding the ECEL. EPA is soliciting comment on requiring warning signs to demarcate regulated areas, such as the requirements found in OSHA's General Industry Standard for Beryllium (29 CFR 1910.1024(m)(2)).

v. *Notification of monitoring results.* EPA proposes that the owner or operator must, within 15 working days after receipt of the results of any exposure monitoring, notify each person whose exposure is represented by that monitoring in writing, either individually to each potentially exposed person or by posting the information in an appropriate and accessible location accessible to all persons whose exposure is represented by the monitoring, such as public spaces or common areas, outside the regulated area. This notice must include the exposure monitoring results, identification and explanation of the ECEL and ECEL action level in plain language, any corresponding required respiratory protection, if applicable, the quantity, location, manner of PCE use and identified releases of PCE that could result in exposure to PCE, and whether the airborne concentration of PCE exceeds the ECEL limit. The notice must also include a description of actions taken by the owner or operator to reduce inhalation exposures to or below the ECEL, if applicable, or refer to a document available to the potentially exposed persons which states the actions to be taken to reduce exposures, and be posted in multiple languages if necessary (*e.g.,* notice must be in a language that the potentially exposed person understands, including a non-English language version representing the language of the largest group of workers who cannot readily comprehend or read English).

c. Direct Dermal Contact Control Requirements

i. *Direct dermal contact.* DDCC requirements are a process-based set of provisions to address unreasonable risk driven by dermal exposure by preventing direct dermal contact in the workplace. In order to address the unreasonable risk driven by dermal exposure to PCE, DDCC requirements would include controls to separate, distance, physically remove, or isolate all person(s) from direct handling of PCE or from skin contact with surfaces that may be contaminated with PCE (*i.e.,* equipment or materials on which PCE may be present) under routine conditions in the workplace (hereafter referred to as direct dermal contact). For purposes of DDCC requirements, direct dermal contact with PCE does not include vapor exposures through the skin, although EPA recommends and encourages owners and operators to implement control measures to prevent or reduce dermal exposures to airborne PCE vapors. The 2020 Risk Evaluation for PCE identified that unreasonable risk to workers is also driven by the dermal exposure, specifically from direct skin contact with PCE; risk exceeding the benchmark was identified even when considering use of chemically resistant gloves in most commercial and

industrial conditions of use. EPA's description for how the requirements related to DDCC would address the unreasonable risk resulting from dermal exposures and the rationale for this regulatory approach is outlined in Units III.B.3. and V.A.

Similar to the ECEL, under DDCC requirements, EPA is proposing to require owners and operators implement dermal exposure controls in accordance with the hierarchy of controls. EPA also recommends and encourages the use of pollution prevention as a means of controlling exposures whenever practicable. In addition to the conditions of use for which EPA is proposing to require a WCPP ECEL, EPA is also proposing WCPP DDCC requirements for the following conditions of use: recycling and disposal.

Within certain parameters outlined in this unit, DDCC requirements are non-prescriptive to allow more flexibility to owners and operators to choose their controls to prevent direct dermal contact when compared with prescriptive requirements for specific controls. Each owner or operator of a workplace engaging in a condition of use for which DDCC requirements are proposed would be responsible for compliance with the DDCC requirements and recordkeeping.

As discussed briefly in Unit IV.A.1. and further in Unit V.A.1., EPA expects that many workplaces already have stringent controls in place that reduce dermal exposures to PCE; for some workplaces, EPA understands that these existing controls may already prevent or reduce direct dermal contact with PCE.

ii. *Incorporation of the hierarchy of controls.* As with the requirements to meet an ECEL, EPA is proposing to require owners or operators to implement DDCC requirements in accordance with the hierarchy of controls and encourages the use of pollution prevention to control exposures whenever practicable. EPA recognizes that some owners or operators may have industrial hygiene practices already preventing direct dermal contact with PCE in the workplace. For workplaces that cannot feasibly eliminate the source of PCE dermal exposure or replace PCE with a substitute, workplaces would have to use engineering and/or administrative controls to implement process changes to prevent direct dermal contact with PCE to the extent feasible. If an owner or operator chooses to replace PCE with a substitute, EPA recommends that they carefully review the available hazard and exposure information on the potential substitutes to avoid a regrettable substitution. If an effort to identify and implement feasible exposure controls such as elimination, substitution, engineering controls and administrative controls is not sufficient to prevent direct dermal contact with PCE for potentially exposed persons in the workplace, EPA proposes to require each owner and operator to reduce potential for direct dermal contact with PCE in the workplace by these controls and to supplement these controls using PPE.

Examples of engineering controls that may prevent or reduce the potential for direct dermal contact include automation, physical barriers between contaminated and clean work areas, enclosed transfer liquid lines (with purging mechanisms in place (*e.g.,* nitrogen, aqueous) for operations such as product changes or cleaning), and design of tools (*e.g.,* a closed-loop container system providing contact-free connection for unloading fresh and collecting spent solvents, pneumatic tools, tongs, funnels, glove bags, etc.). Examples of administrative controls that may prevent or reduce the potential for direct dermal contact include adjusting work practices (*i.e.,* implementing policies and procedures) such as providing safe working distances from areas where direct handling of PCE may occur.

EPA requests comment on available methods to measure the effectiveness of engineering and administrative controls in preventing or reducing the potential for direct dermal contact to PCE. EPA is also requesting comment on available monitoring methods, such as charcoal patch testing, as feasible or effective methods to measure potential direct dermal contact with PCE.

EPA proposes to require that owners and operators document their implementation efforts and compliance with DDCC requirements in an exposure control plan or through any existing documentation of the facility's ''Safety and Health Program'' that may already be developed as part of meeting OSHA requirements or other safety and health standards (Ref. 44), as described in Unit IV.A.2.e.

d. Personal Protective Equipment (PPE) Program

Where elimination, substitution, engineering controls, and administrative controls are not feasible to reduce the air concentration to or below the ECEL and/or prevent direct dermal contact with PCE for all potentially exposed persons, EPA is proposing to require implementation of a PPE program in alignment with OSHA's General Requirements for Personal Protective Equipment at 29 CFR 1910.132. Consistent with 29 CFR 1910.132, owners and operators would be required to provide PPE, including respiratory protection and dermal protection selected in accordance with the guidelines described in this unit, that is of safe design and construction for the work to be performed. EPA is proposing to require owners and operators ensure each potentially exposed person who is required by this unit to wear PPE to use and maintain PPE in a sanitary, reliable, and undamaged condition. Owners and operators would be required to select and provide PPE that properly fits each potentially exposed person who is required by this unit to use PPE and communicate PPE selections to each affected person.

As part of the PPE program, EPA is also proposing that owners and operators must comply with OSHA's general PPE training requirements at 29 CFR 1910.132(f) for application of a PPE training program, including providing training on proper use of PPE (*e.g.,* when and where PPE is necessary, proper application, wear, and removal of PPE, maintenance, useful life and disposal of PPE). EPA is proposing that owners and operators would provide PPE training to each potentially exposed person who is required by this unit to wear PPE prior to or at the time of initial assignment to a job involving potential exposure to PCE. Owners and operators would also have to re-train each affected person at least once annually or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use PPE, or when changes in the workplace or in the PPE to be used render the previous training obsolete.

This unit includes a description of the PPE Program, including proposed PPE as it relates to respiratory protection, proposed PPE as it relates to dermal protection, and other proposed requirements such as additional training for respirators and recordkeeping to support implementation of a PPE program.

i. *Respiratory protection.* Where elimination, substitution, engineering, and administrative controls are not feasible to reduce the air concentration to or below the ECEL, EPA proposes to set minimum respiratory PPE requirements based on an entity's most recent measured air concentration and the level of PPE that EPA determined would be needed to reduce exposure to the ECEL. In those circumstances, EPA is proposing to require a respiratory protection PPE program with worksite-specific procedures and elements for

required respirator use. The respiratory protection PPE program proposed by EPA would be based on the most recent exposure monitoring concentration measured as an 8-hour TWA and would be administered by a suitably trained program administrator. EPA is also proposing to require each owner or operator select respiratory protection in accordance with the guidelines described in this unit and 29 CFR 1910.134(a) through (l), except (d)(1)(iii), for proper respirator use, maintenance, fit-testing, medical evaluation, and training. EPA is not proposing to cross reference 29 CFR 1910.134(d)(1)(iii) because the WCPP contains requirements for identifying PCE respiratory hazards in the workplace.

Required Respiratory Protection. EPA is proposing to require each owner or operator supply a respirator, selected in accordance with this unit, to each person who enters a regulated area within 3 months after the receipt of any exposure monitoring that indicates exposures exceeding the ECEL and thereafter must ensure that all persons within the regulated area are using the provided respirators whenever PCE exposures exceed or can reasonably be expected to exceed the ECEL. Given the risks associated with PCE exposure above the ECEL, prompt compliance with the respiratory protection requirements is important, but EPA expects that most owners or operators will need some time after the exposure monitoring results are received to acquire the correct respirators and establish a respiratory protection program, including training, fit-testing, and medical evaluations. EPA believes that 3 months should be sufficient for this purpose. EPA is also proposing that owners or operators who would be required to administer a respiratory protection program must supply a respirator selected in accordance with 29 CFR 1910.134(d)(1) (except (d)(1)(iii)). Additionally, EPA is proposing that the owner or operator must ensure that all filters, cartridges and canisters used in the workplace are labeled and color coded with the NIOSH approval label and that the label is not removed and remains legible. 29 CFR 1910.134(d)(3)(iii), which EPA is proposing to cross-reference, requires either the use of respirators with an end-of-life service indicator certified by NIOSH for the contaminant, in this case PCE, or implementation of a change schedule for canisters and cartridges that ensures that they are changed before the end of their service life. EPA is requesting comment on whether there should be a requirement to replace cartridges or canisters after a certain number of hours, such as the requirements found in OSHA's General Industry Standard for 1,3-Butadiene (29 CFR 1910.1051(h)), or a requirement for a minimum service life of non-powered air-purifying respirators such as the requirements found in OSHA's General Industry Standard for Benzene (29 CFR 1910.1028(g)(3)(D)).

EPA is proposing the following requirements for respiratory protection, based on the exposure monitoring concentrations measured as an 8-hour TWA that exceed the ECEL (0.14 ppm). EPA is proposing to establish minimum respiratory protection requirements, such that any respirator affording a higher degree of protection than the following proposed requirements may be used. While this unit includes respirator selection requirements for respirators of assigned protection factors (APFs) of 1,000 or greater, EPA does not anticipate that respirators beyond APF 25 will be widely or regularly used to address unreasonable risk, particularly when other controls are put in place.

- If the measured exposure concentration is at or below 0.14 ppm: no respiratory protection is required.
- If the measured exposure concentration is above 0.14 ppm and less than or equal to 0.7 ppm (5 times ECEL): Any NIOSH-certified air-purifying quarter mask respirator (APF 5).
- If the measured exposure concentration is above 0.7 ppm and less than or equal to 1.4 ppm (10 times ECEL): Any NIOSH-certified air-purifying half mask or full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters (APF 10).
- If the measured exposure concentration is above 1.4 ppm and less than or equal to 3.5 ppm (25 times ECEL): Any NIOSH-certified air-purifying full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters; any NIOSH-certified powered air-purifying respirator equipped with NIOSH-approved organic vapor cartridges; or any NIOSH-certified continuous flow supplied air respirator equipped with a hood or helmet (APF 25).
- If the measured exposure concentration is above 3.5 ppm and less than or equal to 7.0 ppm (50 times ECEL): Any NIOSH-certified air-purifying full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters; or any NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece and a NIOSH-approved organic vapor cartridge (APF 50).
- If the measured exposure concentration is above 7.0 ppm and less than or equal to 140 ppm (1,000 times ECEL): Any NIOSH-certified supplied air respirator equipped with a half mask or full facepiece and operated in a pressure demand or other positive pressure mode (APF 1,000).
- If the measured exposure concentration is greater than 140 ppm (1,000 times ECEL) or the concentration is unknown: Any NIOSH-certified self-contained breathing apparatus (SCBA) equipped with a full facepiece and operated in a pressure demand or other positive pressure mode; or any NIOSH-certified supplied air respirator equipped with a full facepiece and operated in a pressure demand or other positive pressure mode in combination with an auxiliary SCBA operated in a pressure demand or other positive pressure mode (APF 10,000).

EPA proposes to require that owners and operators document respiratory protection used and PPE program implementation. EPA proposes to require that owners and operators document in the exposure control plan or other documentation of the facility's safety and health program information relevant to respiratory program, including records on the name, workplace address, work shift, job classification, work area, and type of respirator worn (if any) by each potentially exposed person, maintenance, and fit-testing, as described in 29 CFR 1910.134(f), and training in accordance with 29 CFR 1910.132(f) and 29 CFR 1910.134(k).

ii. *Dermal protection.* Where elimination, substitution, engineering controls, and administrative controls are not feasible or sufficient to fully prevent direct dermal contact with PCE, EPA is proposing to require that appropriate dermal PPE be provided by owners and operators to, and be worn by, persons potentially exposed to direct dermal contact with PCE. To accomplish this, EPA is proposing owners and operators follow the dermal PPE requirements for PPE selection laid out in this unit.

Required Dermal Protection. In choosing appropriate dermal PPE, owners and operators would be required to select gloves, clothing, and protective gear (which covers any exposed dermal area of arms, legs, torso, and face) based on specifications from the manufacturer or supplier that demonstrate an impervious barrier to PCE during expected durations of use and normal conditions of exposure within the workplace, accounting for potential chemical permeation or breakthrough

times. In alignment with the OSHA Hand Protection PPE Standard (29 CFR 1910.138), owners and operators would be required to select dermal PPE based on an evaluation of the performance characteristics of the PPE relative to the task(s) to be performed, conditions present, and the duration of use. Further information related to choosing appropriate PPE can be found in the summary of suitable gloves for PCE memo (Ref. 45).

For example, owners and operators can select gloves that have been tested in accordance with the American Society for Testing and Materials (ASTM) F739 ''Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact.'' EPA is proposing that PPE be provided for use for a time period only to the extent and no longer than the time period for which testing has demonstrated that the PPE will be impermeable during expected durations of use and conditions of exposure. EPA is proposing to require that owners and operators also consider other factors when selecting appropriate PPE, including effectiveness of glove type when preventing exposures from PCE alone and in likely combination with other chemical substances used in the work area or when used with glove liners, permeation, degree of dexterity required to perform task, and temperature, as identified in the Hand Protection section of OSHA's Personal Protective Equipment Guidance (Ref. 46).

EPA is proposing that owners and operators would be required to establish, either through manufacturer or supplier-provided documentation or individually prepared 3rd party testing that the selected PPE will be impervious for the expected duration and conditions of exposure, such as using the format specified in ASTM F1194–99(2010) ''Standard Guide for Documenting the Results of Chemical Permeation Testing of Materials Used in Protective Clothing Materials,'' reporting cumulative permeation rate as a function of time, or equivalent manufacturer- or supplier- provided testing. Owners and operators would also be required to consider likely combinations of chemical substances to which the clothing may be exposed in the work area when selecting the appropriate PPE such that the PPE will prevent direct dermal contact to PCE. EPA is proposing that PPE must be immediately provided and replaced if any person is dermally exposed to PCE longer than the breakthrough time period for which testing has demonstrated that the PPE will be impermeable or if there is a chemical permeation or breakage of the PPE.

Additionally, EPA is proposing to require that owners and operators subject to this rule comply with provisions of 29 CFR 1910.133(b) for requirements on selection and use of eye and face protection. EPA is soliciting comments on the requirements proposed for appropriate PPE selection, the effectiveness of PPE in preventing direct dermal contact with PCE in the workplace, and general absorption and permeation effects to PPE from direct dermal exposure. In addition, EPA understands that some workplaces rinse and reuse PPE after minimal use and is therefore soliciting comments on the impact on effectiveness of rinsing and reusing certain types of PPE, either gloves or protective clothing and gear. EPA also requests comment on the degree to which additional guidance related to use of PPE might be appropriate.

EPA is also proposing that owners and operators retain records of dermal PPE used and program implementation. EPA proposes to require that owners and operators document in the exposure control plan or other documentation of the facility's safety and health program, information relevant to any dermal PPE program, as applicable, including: (A) The name, workplace address, work shift, job classification, and work area of each person reasonably likely to directly handle PCE or handle equipment or materials on which PCE may present and the type of PPE selected to be worn by each of these persons; (B) The basis for specific PPE selection (*e.g.,* demonstration based on permeation testing or manufacturer specifications that each item of PPE selected provides an impervious barrier to prevent exposure during expected duration and conditions of exposure, including the likely combinations of chemical substances to which the PPE may be exposed in the work area); (C) Appropriately sized PPE and training on proper application, wear, and removal of PPE, and proper care/disposal of PPE; (D) Occurrence and duration of any direct dermal contact with PCE that occurs during any activity or malfunction at the workplace that causes direct dermal exposures to occur and/or glove breakthrough, and corrective actions to be taken during and immediately following that activity or malfunction to prevent direct dermal contact to PCE; and (E) Training in accordance with 29 CFR 1910.132(f), including any re-training. EPA may require more, less, or different documentation in the final rule based on consideration of public comments.

e. General WCPP Requirements

i. *Exposure Control Plan.* EPA proposes to require that owners and operators document their exposure control strategy and implementation in an exposure control plan or through adding EPA-required information to any existing documentation of the facility's safety and health program developed as part of meeting OSHA requirements or other safety and health standards. EPA proposes to require that each owner or operator document in the exposure control plan the following:

(A) Identification and rationale of exposure controls used or not used in the following sequence: elimination of PCE, substitution of PCE, engineering controls, and administrative controls to reduce exposures in the workplace to either at or below the ECEL or to the lowest level achievable and to prevent or reduce direct dermal contact with PCE in the workplace;

(B) The exposure controls selected based on feasibility, effectiveness, and other relevant considerations;

(C) If exposure controls were not selected, document the efforts identifying why these are not feasible, not effective, or otherwise not implemented;

(D) Actions taken to implement exposure controls selected, including proper installation, maintenance, training or other steps taken;

(E) Description of any regulated area and how it is demarcated, and identification of authorized persons; and description of when the owner or operator expects exposures may be likely to exceed the ECEL;

(F) Regular inspections, evaluations, and updating of the exposure controls to ensure effectiveness and confirmation that all persons are implementing them as required;

(G) Occurrence and duration of any start-up, shutdown, or malfunction of the facility that causes air concentrations to be above the ECEL or any direct dermal contact with PCE and subsequent corrective actions taken during start-up, shutdown, or malfunctions to mitigate exposures to PCE; and

(H) Availability of the exposure control plan and associated records for potentially exposed persons.

ii. *Workplace Information and Training.* EPA is also proposing to require implementation of a training program in alignment with the OSHA Hazard Communication Standard (29 CFR 1910.1200) and the OSHA General Industry Standard for Methylene

Chloride (29 CFR 1910.1052). To ensure that potentially exposed persons in the workplace are informed of the hazards associated with PCE exposure, EPA is proposing to require that owners or operators of workplaces subject to the WCPP institute a training and information program for potentially exposed persons and assure their participation in the training and information program.

As part of the training and information program, the owner or operator would be required to provide information and comprehensive training in an understandable manner (*i.e.,* plain language) and in multiple language as appropriate (*e.g.,* based on languages spoken by potentially exposed persons) to potentially exposed persons prior to or at the time of initial assignment to a job involving potential exposure to PCE. In alignment with the OSHA Hazard Communication Standard, owners and operators would be required to provide information and training to all potentially exposed persons that includes (A) the requirements of the PCE WCPP and how to access or obtain a copy of the requirements of the WCPP; (B) the quantity, location, manner of use, release, and storage of PCE and the specific operations in the workplace that could result in PCE exposure; (C) principles of safe use and handling of PCE in the workplace, including specific measures the owner or operator has implemented to reduce inhalation exposures to at or below the ECEL or prevent direct dermal contact with PCE, such as work practices and PPE used; (D) the methods and observations that may be used to detect the presence or release of PCE in the workplace (such as monitoring conducted by the owner or operator, continuous monitoring devices, visual appearance or odor of PCE when being released, etc.); and (E) the health hazards associated with exposure with PCE.

In addition to providing training at the time of initial assignment to a job involving potential exposure to PCE, and in alignment with the OSHA General Industry Standard for Beryllium (20 CFR 1910.1024), owners and operators subject to the PCE WCPP would be required to re-train each potentially exposed person annually to ensure they understand the principles of safe use and handling of PCE in the workplace. Owners and operators would also need to update the training as necessary whenever there are changes in the workplace, such as new tasks or modifications of tasks; in particular, whenever there are changes in the workplace that increase exposure to PCE or where potentially exposed persons' exposure to PCE can reasonably be expected to exceed the action level or increase the potential for direct dermal contact with PCE. To support compliance, EPA is proposing that each owner or operator of a workplace subject to the WCPP would be required to provide to the EPA, upon request, all available materials related to workplace information and training.

iii. *Workplace Participation.* EPA encourages owners or operators to consult with persons that have potential for exposure on the development and implementation of exposure control plans and PPE/respirator programs. EPA is proposing to require owners or operators to provide potentially exposed persons or their designated representatives regular access to the exposure control plans, exposure monitoring records, and PPE program implementation and documentation. To ensure compliance in workplace participation, EPA is proposing that the owner or operator document the notice to and ability of any potentially exposed person that may reasonably be affected by PCE inhalation exposure or direct dermal contact with PCE to readily access the exposure control plans, facility exposure monitoring records, PPE program implementation, or any other information relevant to PCE exposure in the workplace. EPA is requesting comment on how owners and operators can engage with potentially exposed persons on the development and implementation of an exposure control plan and PPE program.

iv. *Recordkeeping.* To support and demonstrate compliance, EPA is proposing that each owner or operator of a workplace subject to WCPP retain compliance records for five years. EPA is proposing to require records to include:

(A) the exposure control plan;

(B) PPE program implementation and documentation, including as necessary, respiratory protection and dermal protection used and related PPE training; and

(C) information and training provided to each person prior to or at the time of initial assignment and any re-training.

In addition, EPA is proposing that owners and operators subject to the WCPP ECEL requirements maintain records to include:

(D) The exposure monitoring records;

(E) Notification of exposure monitoring results; and

(F) To the extent that the owner or operator relies on prior exposure monitoring data, records that demonstrates that it meets all of the requirements of this section.

The owners and operators, upon request by EPA, would be required to make all records that are maintained as described in this unit available to EPA for examination and copying in accordance with EPA requirements. All records required to be maintained by this unit could be kept in the most administratively convenient form (electronic or paper).

v. *Compliance timeframes.* EPA is proposing to require each owner or operator of a workplace subject to an ECEL conduct initial baseline monitoring according to the process outlined in this unit by 6 months after date of publication of the final rule in the **Federal Register** or within 30 days of introduction of PCE into the workplace if PCE use commences at least 6 months after the date of publication. EPA is proposing to require each owner or operator ensure that the airborne concentration of PCE does not exceed the ECEL for all potentially exposed persons within 9 months after the date of publication of the final rule in the **Federal Register**, or beginning 4 months after introduction of PCE into the workplace if PCE use commences at least 6 months after the date of publication. EPA is also proposing to require owners and operators demarcate and maintain a regulated area wherever exposures exceed or can reasonably be expected to exceed the ECEL beginning 9 months after the date of publication of the final rule in the **Federal Register**, or beginning 4 months after introduction of PCE into the workplace if PCE use commences at least 6 months after the date of publication. If applicable, EPA is also proposing that each owner or operator must provide respiratory protection sufficient to reduce inhalation exposures to below the ECEL to all potentially exposed persons in the regulated area within 3 months after receipt of the results of any exposure monitoring that indicates exposures exceeding the ECEL or, if using monitoring data conducted within five years prior to the effective date of this rule that satisfies all other requirements of this section, within 9 months after the date of publication of the final rule in the **Federal Register**. Regulated entities should then proceed accordingly to implement an exposure control plan within 12 months after date of publication of the final rule in the **Federal Register**. EPA requests comment relative to the ability of owners or operators to conduct initial monitoring within 6 months after date of publication of the final rule in the **Federal Register**, and anticipated timelines for any procedural

adjustments needed to comply with the requirements outlined in this unit, including establishment of a respiratory protection program and development of an exposure control plan.

With regard to the compliance timeframe for those occupational conditions of use which are subject to DDCC requirements, EPA is proposing to require each owner and operator of a workplace subject to DDCC establish the process outlined in this unit by 12 months after publication of the final rule in the **Federal Register**. EPA requests comment relative to the ability of owners or operators to implement such processes within 12 months of publication of the final rule in the **Federal Register**, and anticipated timelines for any procedural adjustments needed to comply with the requirements outlined in this unit. EPA may finalize significantly shorter or longer compliance timeframes based on consideration of public comments.

3. Prescriptive Controls

a. Overview

In contrast to the proposed non-prescriptive requirements of the ECEL and DDCC where regulated entities would have flexibility to select controls in accordance with the hierarchy of controls to comply with the parameters outlined in this unit, EPA may also find it appropriate in certain circumstances to require specific prescriptive controls for certain occupational conditions of use. In the 2020 Risk Evaluation for PCE, EPA identified certain workplace controls that reduce exposures from PCE adequate to address the unreasonable risk driven by inhalation exposures from the industrial and commercial use of PCE in laboratory chemicals. Therefore, EPA is proposing to require specific prescriptive controls for the industrial and commercial use of PCE in laboratory chemicals, as described in this unit. This unit describes proposed requirements for a fume hood and dermal PPE for the industrial and commercial use of PCE in laboratory chemicals, including additional requirements proposed for recordkeeping. This unit also describes compliance timeframes for these proposed requirements.

b. Workplace Requirements for Laboratory Use

To reduce exposures in the workplace and address the unreasonable risk of injury to health resulting from dermal exposures to PCE identified for the industrial and commercial use as a laboratory chemical, EPA is proposing to require dermal PPE in combination with comprehensive training for tasks particularly related to the use of PCE in a laboratory setting as specified in this unit for each potentially exposed person to direct dermal contact with PCE. Additionally, EPA is proposing to require the use of fume hoods in workplaces engaged in the laboratory chemical condition of use to codify the assumption of existing good laboratory practices that EPA relied upon as a key basis for its evaluation of risk from this condition of use (Ref. 1). Each owner or operator of a workplace where the industrial and commercial use of PCE as a laboratory chemical occurs would be responsible for compliance with the requirements outlined in this unit. EPA's description for how these requirements would address the unreasonable risk and the rationale for this regulatory approach is outlined in Unit III.B.3. and Unit V.A.

EPA is proposing to require dermal PPE, including impermeable gloves and protective clothing, in combination with comprehensive training for tasks where there is potential for direct dermal contact with PCE (see Unit IV.A.2.d.). In selecting and providing appropriate dermal PPE and providing PPE training, owners and operators would be required to follow the PPE program and dermal protection requirements laid out in Unit IV.A.2.d.ii. Unlike DDCC, this proposed provision would not require owners and operators to use elimination, substitution, engineering controls, and administrative controls, prior to relying on PPE, as a means of controlling exposures in accordance with the hierarchy of controls.

For laboratory fume hoods, EPA is proposing to require each owner or operator of a workplace engaged in the laboratory chemical condition of use to ensure fume hoods are in use and functioning properly to minimize exposures to potentially exposed persons in the area where PCE is used as a laboratory chemical. EPA suggests owners or operators refer to OSHA's 29 CFR 1910.1450, appendix A National Research Council Recommendations Concerning Chemical Hygiene in Laboratory, for ventilation system characteristics and practices to minimize exposures to workers in the area. As noted in these non-mandatory recommendations, which are based on the National Research Council's 2011 edition of ''Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards,'' recommended practices for laboratory chemical hoods include, but are not limited to, regularly inspecting and maintaining the ventilation system, ensuring a negative pressure differential between the amount of air exhausted from the laboratory and the amount supplied to the laboratory to prevent uncontrolled chemical vapors from leaving the laboratory, and preventing laboratory air from recirculating back into the laboratory (Ref. 47). EPA requests comment on whether it should incorporate in the rule best practices to ensure proper and adequate performance of laboratory fume hoods, such as those identified in OSHA's 29 CFR 1910.1450, Appendix A National Research Council Recommendations Concerning Chemical Hygiene in Laboratory.

To support and demonstrate compliance, EPA is proposing that each owner or operator of a laboratory workplace subject to the requirements of this unit retain compliance records for five years. EPA is proposing to require records to include: (A) PPE program implementation and documentation as outlined in this unit; and (B) Implementation of a properly functioning fume hood using manufacturer's instructions for installation, use, and maintenance of the fume hood, including inspections, tests, development of maintenance procedures, the establishment of criteria for acceptable test results, and documentation of test and inspection results. Every five years, the owner or operator would be required to update these records.

EPA is proposing to require that each owner or operator of a workplace engaged in the industrial and commercial use of PCE as a laboratory chemical ensure fume hoods are in use and functioning properly and dermal PPE is provided to all potentially exposed persons to direct dermal contact with PCE according to the process outlined in this unit within 12 months after publication of the final rule. EPA requests comment relative to the ability of owners or operators to implement laboratory chemical fume hood and dermal PPE related requirements within 12 months of publication of the final rule, and anticipated timelines for any procedural adjustments needed to comply with the requirements outlined in this unit. EPA may finalize significantly shorter or longer compliance timeframes based on consideration of public comments.

4. Other Requirements

a. Recordkeeping

In addition to the recordkeeping requirements for the WCPP and prescriptive controls outlined in this unit, for conditions of use that are not otherwise prohibited under this

proposed regulation, EPA is also proposing that manufacturers, processors, distributors, and commercial users maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this proposed regulation; and to maintain such records for a period of 5 years from the date the record is generated. EPA is proposing that this requirement begin at the effective date of the rule (60 days following publication of the final rule in the **Federal Register**). Recordkeeping requirements would ensure that owners or operators can demonstrate compliance with the regulations if necessary. EPA may require more, less, or different documentation in the final rule based on consideration of public comments.

b. Downstream Notification

For conditions of use that are not otherwise prohibited under this proposed regulation, EPA is proposing that manufacturers (including importers), processors, and distributors, excluding retailers, of PCE and PCE-containing products provide downstream notification of the prohibitions through the Safety Data Sheets (SDS) required by OSHA under 29 CFR 1910.1200(g) by adding to sections 1(c) and 15 of the SDS the following language:

After [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] this chemical/product cannot be distributed in commerce to retailers for any use. After [DATE 21 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], this chemical/product is and can only be distributed in commerce or processed for the following purposes: Processing as a reactant/intermediate; Processing into formulation, mixture or reaction product in cleaning and vapor degreasing products; Processing into formulation, mixture or reaction product in paint and coating products; Processing into formulation, mixture or reaction product in adhesive and sealant products; Processing by repackaging; Recycling; Industrial and commercial use as solvent in vapor degreasing; Industrial and commercial use in maskant for chemical milling; Industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing; Industrial and commercial use in laboratory chemicals; Industrial and commercial use in solvent-based adhesives and sealants; Industrial and commercial use in dry cleaning in 3rd generation machines until [DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]; Industrial and commercial use in dry cleaning and related spot cleaning until [DATE 10 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]; and Disposal.

The intention of downstream notification is to spread awareness throughout the supply chain of the restrictions on PCE under TSCA as well as provide information to commercial end users about allowable uses of PCE.

To provide adequate time to update the SDS and ensure that all products in the supply chain include the revised SDS, EPA is proposing a 2-month period for manufacturers and a 6-month period for processors and distributers to implement the proposed SDS changes following publication of the final rule.

EPA requests comments on the appropriateness of identified compliance timeframes for recordkeeping and downstream notification requirements described in this unit.

5. TSCA Section 6(g) Exemptions

Under TSCA section 6(g)(1), EPA may grant an exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use of a chemical substance or mixture if EPA makes one of three findings required by the statute. TSCA section 6(g)(1)(A) permits such an exemption if EPA finds that the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure. TSCA section 6(g)(1)(B) permits such an exemption if EPA finds that compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure. Finally, TSCA section 6(g)(1)(C) allows for an exemption if EPA finds that the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

TSCA section 6(g)(2) requires EPA to analyze the need for the exemption, and to make public the analysis and a statement on how the analysis was taken into account when proposing an exemption under TSCA section 6(g). Based on discussions with and information provided by the National Aeronautics and Space Administration (NASA), EPA has analyzed the need for an exemption for certain uses of PCE in an emergency in the furtherance of NASA's mission and is proposing to grant it. This unit presents the results of that analysis.

Pursuant to TSCA section 6(g)(3), if an exemption is finalized, EPA may by rule later extend, modify, or eliminate the exemption, on the basis of reasonably available information and after adequate public justification, if EPA determines the exemption warrants a change. EPA will initiate this rulemaking process at the request of any regulated entity benefiting from such an exemption. The Agency is open to engagement throughout the duration of any 6(g) exemption, and emphasizes that to ensure continuity in the event of an extension or modification, such a request should come at least 2 years prior to the expiration of an exemption.

a. Analysis of the Need for TSCA Section 6(g)(1)(A) Exemption for Certain NASA Uses in an Emergency for Which no Technically or Economically Feasible Safer Alternative is Available

EPA considered a TSCA section 6(g) exemption for emergency use of PCE in the furtherance of NASA's mission. For certain specific conditions of use, EPA proposes that use of PCE by NASA and its contractors in an emergency be exempt from the requirements of this rule because it is a critical or essential use provided that (1) there is an emergency; and (2) NASA selected PCE because there are no technically and economically feasible safer alternatives available during the emergency.

NASA operates on the leading edge of science seeking innovative solutions to future problems where even small volumes of an otherwise prohibited chemical substance could be vital to crew safety and mission success. During interagency review, NASA expressed concerns that there will likely be circumstances where a specific, EPA-prohibited condition of use may be identified by NASA during an emergency as being needed in order to avoid or reduce situations of harm or immediate danger to human health, or the environment, or avoid imperiling NASA space missions. In such cases, it is possible that no technically and economically feasible safer alternative would be available that meets the stringent technical performance requirements necessary to remedy harm or avert danger to human health, the environment, or avoid imperiling NASA space missions.

An emergency is a serious and sudden situation requiring immediate action to remedy harm or avert danger to human health, the environment, or to avoid imperiling NASA space missions. In NASA's case, there may be instances where the emergency use of PCE for specific conditions of use is critical or essential to remedying harm or averting danger to human health, the environment, or avoiding imperiling NASA space missions. Because of the

immediate and unpredictable nature of emergencies described in this unit and of the less forgiving environments NASA operates in that offer little to no margin for error, it is likely that, at the time of finalization of this proposal, alternatives to emergency PCE use may not be available in a timely manner to avoid or reduce harm or immediate danger (Ref. 48). In this way, these emergencies for particular conditions of use meet the criteria for an exemption under TSCA section 6(g)(1)(A), because the emergency use of PCE for listed conditions of use is critical or essential and no technically and economically feasible safer alternative will be available in a timely manner, taking into consideration hazard and exposure.

In support of the TSCA section 6(g)(1)(A) emergency use exemption, NASA submitted detailed criteria which they must use to screen, qualify, and implement materials to be used in spacecraft equipment, as well as historical case studies that outline the loss of life and loss of assets in the discharge of previous missions. In one of several examples detailed, the Apollo I command module fire that claimed the lives of three American astronauts demonstrated the need for careful testing and continuity of materials (Ref. 48). Moreover, due to NASA's rigorous safety testing requirements under various environmental conditions, technically and economically feasible safer alternatives may not be readily available during emergencies and may require certain conditions of use of PCE to alleviate the emergency.

In another example, NASA identified a scenario concerning a mission to the International Space Station (ISS) whereby, during a launch evolution, the countdown was paused immediately prior to launch (T–2 minutes). NASA engineers identified a clogged filter and supply line as the primary issue, which required immediate attention (*i.e.,* line flushing and filter cleaning). In this type of emergency scenario, an already approved chemical substance rated for space system applications is necessary to immediately remedy the situation. Although PCE was not used in this particular incident, if it were needed, in the future to address such an emergency, then the proposed exemption would allow for its lawful use—the countdown would resume and the launch would occur. Conversely, without an exemption under the specific condition of use (*e.g.,* industrial and commercial use in wipe cleaning), NASA's use of PCE would be otherwise prohibited, which would put NASA in an untenable position of having to choose to either violate the law or place the mission (and potentially the health and safety of its employees involved in the mission) at risk.

The identification and qualification of compatible materials in the context of aviation is iterative and involves expansive collaboration between original equipment manufacturers, federal agencies, and qualifying institutions. This is equally, if not more so, the case in the context of human space flight operations undertaken by NASA (Ref. 48). NASA's mission architecture requirements often are developed many years in advance of an actual launch occurring. As part of mission planning, space systems are designed, full scale mock-ups are built, and mission critical hardware is constructed using materials qualified for spaceflight. Once NASA's mission architecture requirements are developed, NASA may need to retain emergency access to PCE because its alternatives may not have yet gone through NASA's rigorous certification process before their use. Allowing NASA to retain emergency use of PCE would reduce the chances that this rulemaking will hinder future space missions for which mission architecture infrastructure is being developed or is already built. While NASA considers alternatives to the chemical substances it currently uses in its space system designs, NASA has not yet identified technically and economically feasible alternatives to proven chemistries in many current applications. While EPA acknowledges that the use of PCE in emergency situations may be necessary in the near term, it is also EPA's understanding that NASA will continue its work to identify and qualify alternatives to PCE. Thus, EPA is proposing an exemption duration of 10 years.

b. Proposed Exemption for Certain Emergency Uses of PCE in the Context of Human Space Flight

For the reasons discussed in this Unit, EPA is proposing a 10-year exemption for emergency use of PCE in furtherance of NASA's mission for the following specific conditions of use: Industrial and commercial use as solvent for cold cleaning; Industrial and commercial use in wipe cleaning. EPA is also proposing to include additional requirements as part of the exemption, pursuant to TSCA section 6(g)(4), including required notification and controls for exposure, to the extent feasible: (1) NASA and its contractors must provide notice to the EPA Administrator of each instance of emergency use within 15 days and; (2) NASA and its contractors would have to comply with the WCPP described in Unit IV.A.2 to the extent feasible.

EPA is proposing to require that NASA notify EPA within 15 days of the emergency use. The notification would include a description of the specific use of PCE in the context of one of the conditions of use for which this exemption is being proposed, an explanation of why the use described qualifies as an emergency, and an explanation with regard to the lack of availability of technically and economically feasible alternatives.

EPA expects NASA and its contractors have the ability to implement a WCPP as described in Unit IV.A.2. for the identified uses in the context of an emergency, to some extent even if not to the full extent of WCPP implementation. Therefore, EPA is proposing to require that during emergency use, NASA must comply with the WCPP to the extent technically feasible in light of the particular emergency. Under the proposed exemption, NASA and its contractors would still be subject to the proposed general recordkeeping requirements discussed in Unit IV.A.4.

EPA requests comment on this TSCA section 6(g) exemption for continued emergency use of PCE in the furtherance of NASA's mission as described in this unit, and whether any additional conditions of use should be included, in particular for any uses qualified for space flight for which no technically and economically feasible safer alternative is available. Additionally, EPA requests comment on what would constitute sufficient justification of an emergency.

B. Alternative Regulatory Actions

As indicated by TSCA section 6(c)(2)(A)(iv)(II) through (III), EPA must consider and publish a statement based on reasonably available information with respect to the reasonably ascertainable economic consequences of the rule, including consideration of the costs and benefits and the cost effectiveness of the proposed regulatory action and one or more primary alternative regulatory actions considered by the Agency. This unit includes a description of the primary alternative regulatory action and the second alternative regulatory action considered by the Agency. An overview of the proposed regulatory action and two alternative regulatory actions for each condition of use is in Unit IV.C.

1. Primary Alternative Regulatory Action Considered

The primary alternative regulatory action described in this document and

considered by EPA combines prohibitions, requirements for a WCPP, and prescriptive controls to address the unreasonable risk from PCE driven by the various conditions of use. While in some ways it is similar to the proposed regulatory action, the primary alternative regulatory action described in this document differs from the proposed regulatory action by providing for a WCPP, including requirements to meet an ECEL or DDCC, for some conditions of use that would be prohibited under the proposed regulatory action. The primary alternative regulatory action also considers prescriptive workplace controls where existing engineering controls, administrative controls, and PPE may already address the unreasonable risk for some conditions of use that would be subject to a WCPP under the proposed regulatory action. The primary alternative regulatory action additionally includes longer compliance timeframes for prohibitions and implementation of WCPP and prescriptive controls, as described in this unit. EPA requests comment on this primary alternative regulatory action and whether any elements of this primary alternative regulatory action described in this unit should be considered as EPA develops the final regulatory action. EPA is requesting comment on whether to consider a regulatory alternative that would subject more conditions of use to a WCPP, instead of prohibition, than those currently contemplated in the primary alternative regulatory action. EPA also requests monitoring data and detailed descriptions of PCE involving activities for these conditions of use to determine whether these additional conditions of use could comply with the WCPP such that risks are no longer unreasonable. EPA also requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

a. Prohibitions

The primary alternative regulatory action considered by EPA would prohibit the manufacturing, processing, distribution in commerce, and use for the following industrial and commercial uses, which EPA is also proposing to prohibit as part of the proposed regulatory action: industrial and commercial use as solvent for cold cleaning; industrial and commercial use in other textile processing; industrial and commercial use in wood furniture manufacturing; industrial and commercial use as a solvent for aerosol lubricants; industrial and commercial use in wipe cleaning; industrial and commercial use in other spot cleaning and spot removers, including carpet cleaning; industrial and commercial use in automotive care products (*e.g.,* engine degreaser and brake cleaner); industrial and commercial use in non-aerosol cleaner; industrial and commercial use in metal (*e.g.,* stainless steel) and stone polishes; industrial and commercial use in foundry applications; industrial and commercial use as a solvent for penetrating lubricants and cutting tool coolants; industrial and commercial use in welding; industrial and commercial use for mold release; commercial use for photographic film; commercial use in inks and ink removal products (based on printing); commercial use in inks and ink removal products (based on photocopying); and commercial use in metal mold cleaning, release and protectant products. Additionally, the primary alternative regulatory action would prohibit the manufacture, processing, and distribution of PCE for consumer use. As shown in Unit IV.C., which presents an overview of the proposed regulatory action and two alternative regulatory actions for each condition of use, the primary alternative action described in this document would prohibit fewer occupational conditions of use than the proposed regulatory action.

Regarding compliance timeframes, the primary alternative regulatory action would include longer timeframes for implementation of the prohibitions than the proposed regulatory action. Under the primary alternative action, the prohibitions would generally take effect 6 months later than in the proposed regulatory action. Under a compliance timeframe that is 6 months longer than the proposed regulatory action, the prohibitions for the manufacturing, processing, distribution in commerce, and use of PCE for certain occupational conditions of use described in this unit would take effect 18 months for manufacturers, 21 months for processers, 24 months for distributing to retailers, 27 months for all other distributors (including retailers), and 30 months for industrial and commercial uses after the publication date of the final rule. With regard to the compliance timeframe for the manufacturing, processing, and distribution in commerce for consumer use (other than consumer use of clothing and articles that have been commercially dry cleaned with PCE), under the primary alternative regulatory action, prohibitions described in this unit would take effect in 18 months for manufacturers, 21 months for processors, 24 months for distributing to retailers, and 27 months for all other distributors (including retailers) after the publication date of the final rule.

Like the proposed action, the primary alternative regulatory action would also phaseout the manufacturing, processing, distribution in commerce, and commercial use of PCE for dry cleaning and spot cleaning, including in 3rd generation (dry-to-dry machines with refrigerated condenser) and 4th/5th generation (dry-to-dry machines with refrigerated condenser and carbon adsorber process controls) machines. However, the timeframes for the phaseout differ between the proposed action and the primary alternative action, described later in this unit. As described in Unit IV.A.3., a prohibition on these conditions of use would address the unreasonable risk driven by the following uses: industrial and commercial use in dry cleaning and spot cleaning post-2006 dry cleaning; industrial and commercial use in dry cleaning and spot cleaning 4th/5th generation only dry cleaning; and consumer use in dry cleaning solvent.

With regards to the prohibition of dry cleaning conditions of use, under the primary alternative regulatory action, the following phaseout timeline would take effect after the publication date of the final rule: prohibition on the use of PCE in dry cleaning machines acquired 12 months after the publication date of the final rule; a prohibition on the use of PCE in 3rd generation machines 5 years after the publication date of the final rule; a prohibition on the use of PCE in dry cleaning and spot cleaning 15 years after the publication date of the final rule; and a prohibition on the manufacturing, processing, and distribution in commerce of PCE for use in dry cleaning solvent 15 years after the publication date of the final rule.

b. Workplace Chemical Protection Program (WCPP)

The primary alternative regulatory action described in this document would require a WCPP, including requirements to meet an ECEL and DDCC, for the following conditions of use: industrial and commercial use in laboratory chemicals; processing into formulation, mixture, or reaction product in other chemical products and preparations; industrial and commercial use as a processing aid in pesticide, fertilizer and other agricultural chemical manufacturing; industrial and commercial use in specialty DOD uses (oil analysis and water pipe repair); industrial and commercial use in solvent-based paints and coatings; and industrial and commercial use as

solvent for aerosol spray degreaser/cleaner. As described in Unit V.A., uncertainties regarding (i) the feasibility of implementing workplace safety control measures in open-systems or when worker activities require manual application or removal of PCE or PCE-containing products, (ii) availability of alternatives, or (iii) whether the use is ongoing or phased out led EPA to propose that most of these conditions of use be prohibited. EPA does not have sufficient information to confidently conclude that these conditions of use can meet requirements of a WCPP for PCE. Therefore, EPA requests comment on the ways in which PCE may be used in these conditions of use, including whether activities may take place in a closed system and the degree to which users of PCE in these sectors could successfully implement an ECEL, DDCC, and ancillary requirements described in Unit IV.A. For the industrial and commercial use in laboratory chemicals, EPA is soliciting comment on non-prescriptive requirements of an ECEL and DDCC as compared to the prescriptive workplace controls of fume hood and dermal PPE EPA is proposing in Unit IV.A.3.

As with the compliance timeframes considered as part of the primary alternative action for prohibition, the primary alternative regulatory action also includes longer compliance timeframes for implementation of a PCE WCPP. Under the primary alternative action, the requirements for the WCPP would take effect 6 months later than in the proposed regulatory action. Under a compliance timeframe that is 6 months longer than the proposed regulatory action, the requirements for owners and operators to conduct initial baseline monitoring would take effect 12 months after the date of publication of the final rule in the **Federal Register**. The requirements for each owner or operator to provide respiratory protection to all potentially exposed persons in the regulated area would be within 3 months after receipt of the results of any exposure monitoring or within 15 months after date of publication of the final rule in the **Federal Register**. Regulated entities would be required to implement an exposure control plan within 18 months after date of publication of the final rule in the **Federal Register**. EPA requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

c. Prescriptive Controls

The primary alternative regulatory action described in this document would require prescriptive workplace PPE controls for the following conditions of use (which are all conditions of use for which EPA is proposing WCPP as part of the proposed regulatory action): manufacturing (domestic manufacturing); manufacturing (import); processing as a reactant/intermediate; processing into formulation, mixture or reaction product in cleaning and degreasing products; processing into formulation, mixture or reaction products in paint and coating products; processing into formulation, mixture, or reaction product in adhesive and sealant products; processing by repackaging; recycling; industrial and commercial use as a solvent for open-top batch vapor degreaser; industrial and commercial use as solvent for closed-loop batch vapor degreasing; industrial and commercial use as solvent for in-line conveyorized vapor degreasing; industrial and commercial use as solvent for in-line web cleaner vapor degreaser; industrial and commercial use in maskant for chemical milling; and industrial and commercial use as processing aid in catalyst regeneration in petrochemical manufacturing; and disposal. Additionally, the primary alternative regulatory action described in this document would require a concentration limit for the industrial and commercial use in solvent-based adhesives and sealants.

i. *Prescriptive controls—PPE.* In the 2020 Risk Evaluation for PCE, EPA identified gloves that would reduce dermal exposures to PCE. Under the primary alternative regulatory action, EPA considered requiring dermal PPE as described in Unit IV.A.2.c. This approach differs from the proposed regulatory action because it does not require the use of elimination, substitution, engineering controls and administrative controls or work practices, in accordance with the hierarchy of controls, to the extent feasible as a means of controlling dermal exposures to comply with the DDCC. Rather, this approach would require dermal PPE and training to prevent direct dermal contact with PCE as described in Unit IV.A.2.c.iv. EPA is soliciting comment on prescribing specific dermal PPE, such as gloves, for each condition of use that should be considered as EPA develops the final regulatory action.

For inhalation exposures in the 2020 Risk Evaluation for PCE, EPA identified APFs for respirators that would mitigate the unreasonable risk for the conditions of use. However, as described in Unit V.A., EPA has uncertainty that the respirator APF identified in the 2020 Risk Evaluation for PCE for each condition of use is appropriate for the wide variety of workplaces that may be engaged in each condition of use, as each workplace has unique characteristics that impact PCE air concentration levels. For example, EPA expects that some users may already have existing controls in place that reduce PCE air concentration levels below the ECEL (Refs. 49, 50), whereas other users of the same condition of use have different workplace controls that result in air concentration levels above the ECEL. Under the primary alternative regulatory action, EPA considered setting minimum respiratory PPE requirements based on an entity's measured air concentration and the level of PPE needed to reduce exposures to the ECEL, as described in Units IV.A.2.d.i. This approach differs from the proposed regulatory action because it does not require the use of elimination, substitution, engineering controls and administrative controls or work practices, in accordance with the hierarchy of controls, to the extent feasible as a means of controlling inhalation exposures to comply with the ECEL. Rather, this approach would require respirators where inhalation exposures exceed the ECEL based on exposure monitoring. In addition to minimum respiratory PPE requirements, the primary alternative regulatory action would require initial monitoring within 12 months after publication of the final rule and periodic monitoring once every five years to determine the respiratory protection needed as described in Unit IV.A.2. as well as establishment of a regulated area as described in Unit IV.A.2., establishment of PPE program as described in Unit IV.A.2. and notification of monitoring results as described in Unit IV.A.2., with modifications to not require implementation of all feasible exposure controls according to the hierarchy of controls. EPA is soliciting comment on prescribing specific respirators or APFs for respirators for each condition of use that should be considered as EPA develops the final regulatory action.

EPA understands that many workplaces already have engineering controls or administrative controls in place that reduce exposures to PCE, in particular highly standardized and industrialized workplaces or where PCE is used in a closed system. However, EPA does not have reasonably available information on engineering controls and

administrative controls that would mitigate unreasonable risk across a wide variety of workplaces for most occupational conditions of use. EPA is requesting comment on specific controls that mitigate the unreasonable risk from PCE and that could be included as part of a prescriptive workplace controls requirement, which could be considered as EPA develops the final regulatory action. Specifically, EPA is soliciting comment on combinations of specific engineering controls, administrative controls, and PPE that would reduce inhalation exposures to at or below the ECEL of 0.14 ppm as an 8-hour TWA or prevent direct dermal contact with PCE for all workplaces where such controls would be required. Examples of controls and workplace practices include a vapor recovery system (*e.g.,* carbon adsorption system or condenser), enclosed transfer liquid lines (with purging mechanisms in place (*e.g.,* nitrogen, aqueous), equipment such as portable scrubber units to minimize vapor, ventilation units that mitigate vapor escape, and limiting frequency and duration of exposure to PCE. For vapor degreasing, EPA understands that the European Union and Germany have established requirements for reducing emissions of volatile organic compounds, such as the Solvent Emissions Directive and the German 2 BlmSchV standard for use of chlorinated hydrocarbons in surface cleaning. EPA is soliciting comment on the extent to which such requirements could reduce inhalation exposures to at or below the ECEL of 0.14 ppm as an 8-hour TWA.

As with the compliance timeframes considered as part of the primary alternative action for prohibition and WCPP, the primary alternative regulatory action includes longer compliance timeframes for implementation of prescriptive PPE controls. Under the primary alternative action, the requirements for prescriptive controls would take effect 6 months later than in the proposed regulatory action. Under a compliance timeframe that is 6 months longer than the proposed regulatory action, the requirements for owners and operators to provide dermal PPE and training would take effect 18 months after the publication date of the final rule. For respirator selection and demarcating a regulated area, the requirements for owners and operators to conduct initial baseline monitoring would take effect 12 months after the date of publication of the final rule and requirements to provide a respirator and demarcate a regulated area would take effect 18 months after the publication date of the final rule. EPA is requesting comment on the compliance timeframe needed to implement engineering controls, administrative controls, and PPE that reduce inhalation exposures to at or below the ECEL of 0.14 ppm as an 8-hour TWA or prevent direct dermal contact with PCE for all regulated entities.

ii. *Prescriptive controls—concentration limit.* To reduce exposures in the workplace and address the unreasonable risk of injury to health from PCE for the industrial and commercial use in solvent-based adhesives and sealants, EPA considered setting a concentration limit of PCE in adhesive and sealant products. The primary alternative regulatory action described in this document would limit the concentration of PCE in adhesive and sealant products to 1% by weight. Any percentage of PCE greater than 1% by weight would be prohibited for the industrial and commercial use of solvent-based adhesive and sealants products. Additionally, the primary alternative regulatory action would prohibit the import, processing, and distribution in commerce of adhesive and sealant products containing PCE at concentrations greater than 1% by weight. EPA has uncertainty that a concentration limit would reduce inhalation exposures such that PCE no longer presents an unreasonable risk, and therefore did not propose a concentration limit as the preferred option, as described in this Unit.

In the 2020 Risk Evaluation for PCE, EPA identified adhesive and sealant products containing PCE at concentrations ranging from as low as 0.1% PCE by weight to as high as 100% PCE by weight, including several industrial adhesive products with concentrations of PCE below 1% by weight. In considering a concentration limit as a regulatory action to address the unreasonable risk from inhalation and dermal exposures for the industrial and commercial use of solvent-based adhesives and sealants, EPA reviewed the dermal exposure modeling in the 2020 Risk Evaluation for PCE and conducted additional analysis of inhalation exposure data for adhesive products containing PCE below 1% PCE by weight (Ref. 51). Based on the dermal exposure modeling in the 2020 Risk Evaluation for PCE, EPA determined that limiting the concentration of PCE in adhesive and sealant products to 1% would address the unreasonable risk resulting from dermal exposures (Ref. 52). In additional analysis of inhalation exposure data for adhesives in support of risk management, EPA estimated inhalation exposures to PCE from adhesives containing PCE at concentrations ranging from 0.1% to 0.9% using four different approaches. In the analysis, inhalation exposure estimates for central tendency in all four approaches resulted in exposures below the ECEL. However, high-end exposure estimates varied across the four approaches, with two approaches resulting in high-end exposure estimates below the ECEL and two approaches resulting in high-end exposure estimates above the ECEL.

The inhalation exposure estimates provided in the additional inhalation analysis are a result of several key assumptions and uncertainties, as described in the memo (Ref. 51). EPA therefore has uncertainties regarding whether a concentration limit of 1% PCE in adhesives and sealants would address the unreasonable risk resulting from inhalation exposures in occupational settings. Therefore, EPA is requesting comment on a combination of the 1% concentration limit for adhesives and sealants with specific engineering controls, administrative controls, or respiratory protection that would reduce inhalation exposures to PCE at or below the ECEL of 0.14 ppm as an 8-hour TWA. Additionally, EPA is requesting comment on a combination of a concentration limit with WCPP requirements as described in Unit IV.A.2. EPA also requests monitoring data, formulations used, and detailed descriptions of PCE involving activities for the industrial and commercial use in solvent-based adhesives and sealants to determine whether a concentration limit would reduce inhalation exposures such that risks are no longer unreasonable.

As part of the primary alternative regulatory action, the concentration limit of 1% by weight of PCE for adhesive and sealant products would only be for products intended for industrial and commercial use. As described in Unit IV.B.1.a., the primary alternative regulatory action would prohibit the manufacture, processing, and distribution of PCE for consumer use, including consumer use in adhesives for arts and crafts (including industrial adhesive, arts and crafts adhesive, gun ammunition sealant, livestock grooming adhesive, column adhesive, caulk and sealant). EPA examined the Consumer Exposure Model for the 2020 Risk Evaluation for PCE and found that, when adjusting parameters for product mass and duration of use to the highest values based on consumer product data in the 2020 Risk Evaluation for PCE for consumer adhesive conditions of use, limiting the concentration of PCE to 1% by weight in consumer use of products

would not eliminate the unreasonable risk from PCE resulting from inhalation and dermal exposures (Ref. 53).

Regarding compliance timeframes under the primary alternative action, the prohibitions for the import, processing, distribution in commerce, and use of adhesive and sealant products containing PCE at concentrations greater than 1% by weight described in this unit would take effect 18 months for importers, 21 months for processers, 24 months for distributing to retailers, 27 months for all other distributors (including retailers), and 30 months for industrial and commercial uses after the publication date of the final rule.

2. Second Alternative Regulatory Action Considered

The second alternative regulatory action, as with the proposed regulatory action and the primary alternative regulatory action, is a combination of prohibition and a WCPP to address the unreasonable risk from PCE driven by the various conditions of use. While in most ways it is similar to the proposed regulatory action, the second alternative regulatory action differs from the proposed regulatory action by prohibiting some conditions of use that would have requirements for a WCPP under the proposed regulatory action. Additionally, the second alternative regulatory action proposes a TSCA section 6(g) time-limited exemption from prohibition for the industrial and commercial use of PCE as maskant for chemical milling and the industrial and commercial use of PCE for vapor degreasing. The second alternative regulatory action also includes shorter compliance timeframes for prohibitions and a WCPP, as described in this unit. EPA requests comment on this second alternative regulatory action and whether any elements of this second alternative regulatory action described in this unit should be considered as EPA develops the final regulatory action. EPA also requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

a. Prohibitions

The second alternative action would prohibit more occupational conditions of use than the proposed regulatory action. In addition to the conditions of use that EPA is proposing to prohibit in the proposed regulatory action, the second alternative regulatory action described in this action would also prohibit the following conditions of use: processing into formulation, mixture or reaction product in paint and coating products; processing into formulation, mixture, or reaction product in cleaning and degreasing products; processing into formulation, mixture or reaction product in adhesive and sealant products; industrial and commercial use as solvent for open-top batch vapor degreasing; industrial and commercial use as solvent for closed-loop batch vapor degreasing; industrial and commercial use as solvent for in-line conveyorized vapor degreasing; industrial and commercial use as solvent for in-line web cleaner vapor degreasing; industrial and commercial use in solvent-based adhesives and sealants; and industrial and commercial use in maskants for chemical milling. Additionally, the second alternative regulatory action would prohibit the manufacture, processing, and distribution of PCE for consumer use.

Like the proposed action, the second alternative regulatory action would also prohibit the manufacturing, processing, distribution in commerce, and commercial use of PCE for dry cleaning and spot cleaning, including in 3rd generation (dry-to-dry machines with refrigerated condenser) and 4th/5th generation (dry-to-dry machines with refrigerated condenser and carbon adsorber process controls) machines. However, the timeframes for the phaseout differ between the proposed action and the second alternative action, described later in this unit. As described in Unit IV.A.3., a prohibition on these conditions of use would address the unreasonable risk driven by the following uses: industrial and commercial use in dry cleaning and spot cleaning post-2006 dry cleaning; industrial and commercial use in dry cleaning and spot cleaning 4th/5th generation only dry cleaning; and consumer use in dry cleaning solvent.

Regarding compliance timeframes, the second alternative regulatory action would include more stringent timeframes for implementation of prohibition than the proposed regulatory action. Additionally, EPA would not stagger the compliance dates for manufacturers, processors, and distributors. The prohibitions for the manufacturing, processing, distribution in commerce, and use for certain industrial and commercial uses described in this unit would take effect 12 months after the publication date of the final rule. With regard to the compliance timeframe for the manufacturing, processing, and distribution in commerce for consumer use, under the second alternative regulatory action, prohibitions described in this unit would take effect 12 months after the publication date of the final rule. With regard to prohibition of dry cleaning conditions of use, under the second alternative regulatory action, the following would occur: prohibition on the use of PCE in dry cleaning machines acquired after the effective date of the final rule; a prohibition on the use of PCE in 3rd generation machines 6 months after the publication date of the final rule; a prohibition on the use of PCE in dry cleaning and spot cleaning 5 years after the publication date of the final rule; and a prohibition on the manufacturing, processing, and distribution in commerce of PCE for use in dry cleaning solvent 5 years after the publication date of the final rule.

b. TSCA Section 6(g) Exemptions

Under TSCA section 6(g)(1), EPA may grant an exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use of a chemical substance or mixture if EPA makes one of three findings required by the statute, as outlined in Unit IV.A.5. TSCA section 6(g)(2) requires EPA to analyze the need for the exemption, and to make public the analysis and a statement on how the analysis was taken into account when proposing an exemption under TSCA section 6(g). Based on discussions with and information provided by industry stakeholders, consultation with the DOD and NASA, and Panel recommendations in the SBAR Panel Report (Ref. 33), EPA has analyzed the need for three different exemptions and would grant two if the second alternative regulatory action described in this document is adopted in the final rule. This unit presents the results of that analysis.

i. *Analysis of the need for a TSCA section 6(g)(1)(B) exemption for industrial and commercial use of PCE in maskant for chemical milling essential for national security and critical infrastructure.* EPA has conducted an analysis of the application of this rulemaking to the industrial and commercial use of PCE in maskant for chemical milling and found that a TSCA section 6(g) exemption may be warranted if the second alternative regulatory action considered by EPA is adopted, in its entirety or in relevant part, in the final rule. Based on discussions with and information provided by industry stakeholders, EPA understands that PCE-based maskant is used in commercial and defense aerospace programs that are essential for national security and critical infrastructure (Refs. 54, 55). For example, one facility that comprises 85% of the U.S. market for PCE-based maskant chemical milling uses PCE in the Boeing fuselage manufacturing program for the 737, 747, 767, and 777

and also in defense products for the Bell V–280 Valor, Boeing P–8, Sikorsky CH–53K, Boeing KC–46, and Northrop Grumman B–21. Based on information submitted by industry, the purpose of maskant in chemical milling is to remove excess weight of aluminum not required for structural integrity in commercial and defense products. This process is performed on aluminum aircraft ''skins,'' which are large metal sheets or panels. PCE is used at the beginning of the chemical milling process as a temporary diluent for maskant applied to aircraft skins to prevent chemical milling of certain areas. After application, the maskant cover is scribed in specific locations and dry maskant is pulled or removed, exposing aluminum metal, while the PCE evaporates and is captured into a recovery system. Information submitted by stakeholders notes that PCE does not remain on the airplane skins when the skins are etched nor at any other point after the chemical milling stage of fabrication.

According to information submitted by industry, PCE-based maskant is required to meet certain performance requirements that other alternatives are unable to meet. For example, PCE-based maskant meets several Boeing Aircraft process specifications such as ''Chemical Milling Aluminum Alloys'' (BAC 5772), ''Maskant Trimming of Fatigue Critical Hardware'' (BAC 5986), ''Phosphoric Acid Anodizing of Aluminum for Structural Bonding'' (BAC 5555), and ''Appearance Control of Clad Aluminum Exterior Skins'' (Boeing D6–9002). These process specifications are mandatory for suppliers as part of the quality system that aircraft production certificate holders are required to establish under 14 CFR 21.137. Additionally, PCE-based maskant also meets other industry performance requirements such as Stretch Forming, Laser Scribe Compatible, and General Parts Protection.

Representatives from the facility that comprises 85% of the U.S. market for PCE-based maskant chemical milling have described to EPA how efforts to develop new maskant have been ongoing for over 30 years but have not yet found a substitute that meets all of the necessary performance requirements (Ref. 54). PCE-based maskant also allows for solvent capture and recycling. The same company has recaptured and recycled more than 95% of the PCE used for more than 29 years, the remaining PCE being captured using special filters, mats, and non-recoverable mediums that are disposed of by a company that specializes in providing environmental services for controlled chemicals (Ref. 55).

As discussed in this unit and in the Alternatives Assessment (Ref. 56), substitute chemicals for maskant for chemical milling may not meet the performance requirements of maskant needed for chemical milling of aluminum aircraft skins for commercial and defense purposes and thus may not be technically feasible as alternatives. Therefore, EPA has preliminarily determined that if PCE-based maskant were not available, or if industry cannot meet the requirements of the WCPP in the proposed regulatory action or of the prescriptive controls considered as the primary alternative regulatory action, there would be a significant disruption to national security and critical infrastructure. In addition, due to availability concerns, EPA has preliminarily determined that a ban on the manufacture, processing, and distribution in commerce of PCE-based maskant could also significantly disrupt national security and critical infrastructure. A prohibition on the use of PCE for chemical milling of aluminum aircraft skins could affect the ability to make available new military aircraft on schedule, and consequently, potentially affect DOD's capability and readiness. Such a prohibition would also affect the availability of new civilian aircraft and thus have negative impacts on civilian aviation. Aviation has been designated by the Department of Homeland Security as a key subsector in the Transportation Systems Sector, one of 16 designated critical infrastructure sectors.

Based on the expected significant disruption to national security and critical infrastructure, a TSCA section 6(g) exemption may be warranted if the proposed and primary alternative regulatory actions are not suitable to address the unreasonable risk driven by this condition of use. Therefore, as part of the second alternative regulatory action, EPA would grant a 10-year exemption from prohibition for the industrial and commercial use of PCE as maskant for chemical milling. EPA believes that the information provided by industry on the time needed to identify and qualify substitutes supports a 10-year exemption period. Further, the industry submitter has provided information demonstrating that engineering controls are already in place to lower, to the extent possible, exposure concentrations to PCE and to limit occupational exposures, including supplementing with PPE during tasks that may result in greater exposure. Based on the information submitted, EPA understands that existing controls ensure airborne concentrations of PCE are generally kept below 1 ppm as an 8-hour TWA (below the existing regulatory and voluntary occupational exposure limits described in Units II.C.4. and 5.). While EPA acknowledges that the airborne concentration may exceed the ECEL, the exemption as part of the second alternative regulatory action would include the following provisions to ensure that exposures are reduced to the lowest levels achievable:: the proposed general recordkeeping requirements discussed in Unit IV.A.4.i., documentation of the engineering controls and PPE used to reduce potentially exposed persons' exposure to the extent possible, and records that demonstrate compliance with the exemption conditions, including the condition that PCE only be used for chemical milling of aluminum aircraft skins.

EPA requests comments on all aspects of the section 6(g) exemption from the prohibition on industrial and commercial use of PCE in maskant for chemical milling as part of the second alternative regulatory option, including information on the extent to which this industry could meet the requirements of the proposed WCPP or prescriptive controls, whether compliance with specific elements of the proposed WCPP should also be required during the period of the exemption, and the time period of the exemption pursuant to TSCA section 6(g)(3).

ii. *Analysis of the need for a TSCA section 6(g)(1)(B) exemption for industrial and commercial use of PCE in vapor degreasing essential for national security and critical infrastructure.* EPA has conducted an analysis of the application of this rulemaking to the industrial and commercial use of PCE in vapor degreasing and found that a TSCA section 6(g) exemption may be warranted if the second alternative regulatory action considered by EPA is adopted, in its entirety or in relevant part, in the final rule. EPA received a request for a section 6(g) exemption from prohibition for the use of PCE in vapor degreasing of aerospace parts from a manufacturer of commercial jetliners and defense, space, and security systems (Refs. 57, 58). The aerospace parts have commercial, DOD, and NASA uses (Ref. 59); as the requester describes, they manufacture and procure these parts and have identified that PCE vapor degreasing is necessary due to technical challenges with other alternative substitute chemicals or methods.

The requester has spent many years developing, qualifying, and implementing alternative materials and

processes to replace PCE vapor degreasing with aqueous cleaning where technically viable. According to the requester, while the transition to aqueous cleaning has been successful for many detail parts, there are technical challenges with alternative substitute chemicals and processes for the vast majority of complex aerospace machining parts and actuation systems, such as structural components, gears, and other parts that make up drive units and control mechanisms. The requester states that PCE vapor degreasing is the best cleaning method to pre-clean most complex machining parts and actuation systems because it does not allow the transfer of contaminates from one part to another. The requester notes that, for those parts approved for aqueous cleaning, the parts so cleaned must be carefully segregated to avoid cross-contamination, which substantially increases the required processing time.

The requester notes that an adequate transition period for this technically challenging aerospace use requires substantial investment and time to develop viable alternatives. The requester is currently in the process of identifying a replacement solvent that can adequately clean, cause no harm to parts, and is not an equally toxic material to PCE. Based on the submitted request, conversion from vapor degreasing to aqueous cleaning is a capital-intensive investment that the requester expects would require several years to plan, permit, construct, and install. Additionally, the requester notes that the aerospace industry needs to ensure that aerospace parts meet DOD and other Federal Aviation Administration (FAA) specifications to ensure safety of flight. For example, in order to replace the chemical with an alternative, the requester notes that they must identify, test, and select an alternative that meets technical requirements derived from FAA mandated standards for a typical part used in a commercial aircraft, such as specifications for specific gravity (ASTM D 792), Water Absorption (ASTM D 750), and other test requirements, which may be a lengthy process (Ref. 60). According to the information submitted, certification with FAA could take at least nine months for individual parts of components or up to several years for major subsystems or complete aircraft (Ref. 60). The requester also notes that while they do not know the extent that their supply chain has transitioned away from use of PCE in vapor degreasing, PCE has been used in vapor degreasing to meet required levels of cleanliness of certain supplied parts by long-standing design specifications that are incorporated into contracts of a complex supply chain. The requester also told EPA the suppliers are not required to inform the requester of the process they use to clean parts that the supplier provides to the requester, and the requester therefore may not know which solvent a supplier has selected for vapor degreasing or what factors were considered when selecting cleaning systems. According to the requester, material declarations and auditing processes to validate usage may be burdensome, considering that a large portion of the requester's supply chain includes small suppliers. Due to the concerns raised with transitioning to aqueous cleaning or another new cleaning method, the requester has requested that EPA exempt use of PCE in vapor degreasing of aerospace parts for 10 years.

As discussed in this unit, information submitted by the requester indicates that substitute chemicals for vapor degreasing of aerospace parts may not be technically feasible at this time for meeting the cleanliness standards of certain parts as required by DOD and FAA specifications or other specifications included in existing contracts within the supply chain. According to the requester, more time is needed for companies to make the capital-intensive transition from PCE vapor degreasing to aqueous cleaning for those parts that can be cleaned using the aqueous method. In addition, the requester states that they are continuing to work towards identifying a replacement solvent that is able to adequately clean complex machining parts and actuation systems parts without harming them, and that is not a regrettable substitution. Therefore, EPA has preliminarily determined that if the use of PCE for vapor degreasing were not available in the near term for aerospace parts, or if industry could not meet the requirements of the WCPP as proposed or of the prescriptive controls considered as the primary alternative regulatory action, compliance with such requirements would significantly disrupt national security and critical infrastructure. In addition, due to availability concerns, EPA has preliminarily determined that a ban on the manufacture, processing, and distribution in commerce of PCE for vapor degreasing of aerospace parts could also significantly disrupt national security and critical infrastructure. A prohibition on the use of PCE for vapor degreasing of aerospace parts in the near term could negatively affect DOD's capability and readiness, which includes the ability to adequately maintain aircraft. Such a prohibition could also negatively affect the maintenance of civilian aircraft and potentially have impacts on the safety of civilian flight.

For the reasons discussed in this unit, EPA would grant a 10-year exemption from prohibition as part of the second alternative regulatory action for the industrial and commercial use of PCE in vapor degreasing for aerospace parts. EPA believes that the information provided by the requester on the time needed to identify and qualify substitutes supports a 10-year exemption period. Further, the requester has provided information demonstrating that engineering controls are in place to lower, to the extent possible, exposure concentrations and limit occupational exposures to PCE. The exemption would also include the following conditions: the proposed general recordkeeping requirements discussed in Unit IV.A.4.i., documentation of the engineering controls used to reduce potentially exposed persons' exposure, and records to demonstrate compliance with the exemption conditions, including the condition that PCE only be used in vapor degreasing for aerospace parts where other alternatives present technical feasibility or cleaning performance challenges to meet DOD and FAA specifications or other long-standing design specifications that are included in existing contracts.

EPA requests comments on all aspects of the exemption request and proposed exemption from the prohibition on use of PCE in vapor degreasing as part of the second alternative regulatory action, including information on the extent to which this industry could meet the requirements of the proposed WCPP or prescriptive controls and whether compliance with specific elements of the proposed WCPP should also be required during the period of the exemption. EPA is requesting comment on whether vapor degreasing of parts and components for non-aerospace applications should also be exempt from prohibition as part of the second alternative regulatory action for the industrial and commercial use of PCE in vapor degreasing.

To facilitate EPA's consideration of exemptions for other sectors, comments in support of additional exemptions should include detailed explanations of why and how long exemptions would be needed. Additionally, EPA is soliciting comment on whether it should specify the type of vapor degreasing operation, such as closed-loop batch vapor degreasing, that would

be exempt from prohibition as part of the second alternative regulatory action for the industrial and commercial use of PCE in vapor degreasing for aerospace parts and whether it should consider different exemption timeframes for different types of vapor degreasing operations.

iii. *Analysis of the need for a TSCA section 6(g) exemption for industrial and commercial use of PCE in dry cleaning.* Following Panel recommendations in the SBAR Panel Report (Ref. 33), EPA has considered a TSCA section 6(g) exemption for the use of PCE in dry cleaning and has not found that a TSCA section 6(g) exemption is warranted. As discussed in Units IV.A.1.c. and V.A.1., based on consideration of the irreversible health effects associated with PCE exposures, the uncertainty that this sector can comply with a WCPP and reduce exposures sufficiently to address the unreasonable risk, and reasonably available information that indicates that alternatives, such as high flash point hydrocarbons and wet cleaning, are available, EPA determined that a prohibition would be the most appropriate way to eliminate the identified risks that drive the unreasonable risk to health resulting from the following conditions of use: industrial and commercial use in dry cleaning and spot cleaning post-2006 dry cleaning; industrial and commercial use in dry cleaning and spot cleaning 4th/5th generation only dry cleaning; and consumer use in dry cleaning solvent (*i.e.,* exposure to clothing or articles recently dry cleaned with PCE). EPA has uncertainty regarding whether industrial and commercial dry cleaning and spot cleaning users can comply with the provisions of the WCPP, including reducing air concentration to below the ECEL and complying with the WCPP implementation measures such as periodic monitoring, a PPE program, and developing an exposure control plan that reduces exposures in a manner aligns with the hierarchy of controls where PPE is the least preferred option. This uncertainty includes considerations of worker tasks that may occur in open-systems or may require manual application or exposure to PCE or PCE-containing products (*e.g.,* manual stain removal, garment unloading, or transferring solvent from storage container to machine that EPA understands are common tasks at dry cleaning facilities) and difficulties related to respiratory protection, as described in Unit V.A. Based on reasonably available information, including market research, existing State actions restricting the use of PCE in dry cleaning, and engagement with industry, trade associations, and State and local agencies, EPA has determined that a phaseout period of five to fifteen years, as is included in the proposed regulatory action and alternative regulatory actions, are reasonable compliance timeframes to allow dry cleaners time to transition away from PCE. EPA requests comments on all aspects of this analysis of a need for an exemption under TSCA section 6(g), including information on the whether the specific use may be critical or essential, the availability of technically and economically feasible safer alternatives, and the time needed to implement alternatives.

c. Workplace Chemical Protection Program (WCPP)

The second alternative regulatory action considered by EPA would require a WCPP as described in Unit IV.A. for the following conditions of use: manufacturing (domestic manufacturing); manufacturing (import); processing as a reactant/intermediate; processing by repackaging; recycling; industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing; and disposal. As with the proposed regulatory action, under the second alternative regulatory action, recycling and disposal would not be subject to the WCPP ECEL requirements. As with the compliance timeframes considered as part of the second alternative regulatory action for prohibition, the second alternative regulatory action also includes shorter compliance timeframes for implementation of the PCE WCPP than the proposed regulatory action. Under the second alternative action, the requirements for WCPP would take effect 3 months sooner than in the proposed regulatory action. Under a compliance timeframe that is 3 months shorter than the proposed regulatory action, the requirements for owners and operators to conduct initial baseline monitoring would take effect 3 months after the date of publication of the final rule in the **Federal Register**. Each owner or operator would be required to provide respiratory protection to all potentially exposed persons in the regulated area within 3 months after receipt of the results of any exposure monitoring or within 6 months after date of publication of the final rule in the **Federal Register**. Regulated entities would be required to implement an exposure control plan within 9 months after date of publication of the final rule in the **Federal Register**. EPA requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

d. Prescriptive Controls

The second alternative regulatory action considered by EPA would require fume hood and dermal PPE for the industrial and commercial use as a laboratory chemical, as described in Unit IV.A.3. As with the compliance timeframes considered as part of the second alternative action for prohibition and WCPP, the second alternative regulatory action also includes shorter compliance timeframes for implementation of prescriptive controls. Under the second alternative action, the requirements for prescriptive controls would take effect 3 months sooner than in the proposed regulatory action. Under a compliance timeframe that is 3 months shorter than the proposed regulatory action, requirements that owners and operators provide dermal PPE and a fume hood would take effect 9 months after the publication date of the final rule.

C. Overview of conditions of Use and Proposed Regulatory Action and Alternative Regulatory Actions.

Table 2 is a side-by-side depiction of the proposed regulatory action with the primary and second alternative actions for each condition of use identified as driving the unreasonable risk (Ref. 2). The purpose of this table is to succinctly convey to the public the major differences between the proposed regulatory action and the alternative regulatory actions; as such the actions in each column are truncated and do not reflect all the details of the proposed and alternative regulatory actions, including differences in timeframes. The proposed and alternative regulatory actions are described more fully in Units IV.A. and B.

TABLE 2—OVERVIEW OF CONDITIONS OF USE DRIVING UNREASONABLE RISK AND PROPOSED REGULATORY ACTION AND ALTERNATIVE REGULATORY ACTIONS

Condition of use driving unreasonable risk determination	Action		
	Proposed regulatory action	Primary alternative action	Second alternative action
Industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing.	PCE WCPP	Prescriptive Controls (PPE)	PCE WCPP.
Industrial and commercial use in laboratory chemicals	Prescriptive Controls (fume hood, dermal PPE).	PCE WCPP	Prescriptive Controls (fume hood, dermal PPE).
Industrial and commercial use in paints and coatings in maskants for chemical milling.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.[1]
Industrial and commercial use as solvent for open-top batch vapor degreaser.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.[1]
Industrial and commercial use as solvent for closed-loop batch vapor degreaser.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.[1]
Industrial and commercial use as solvent for in-line conveyorized vapor degreaser.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.[1]
Industrial and commercial use as solvent for in-line web cleaner vapor degreaser.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.[1].
Industrial and commercial use as a processing aid in pesticide, fertilizer and other agricultural chemical manufacturing.	Prohibit	PCE WCPP	Prohibit.
Industrial and commercial use in specialty DOD uses (oil analysis and water pipe repair).	Prohibit	PCE WCPP	Prohibit.
Industrial and commercial use in solvent-based adhesives and sealants.	PCE WCPP	Prescriptive Controls (Concentration limit).	Prohibit.
Industrial and commercial use in solvent-based paints and coatings.	Prohibit	PCE WCPP	Prohibit.
Industrial and commercial use as solvent for aerosol spray degreaser/cleaner.	Prohibit	PCE WCPP	Prohibit.
Industrial and commercial use in dry cleaning and spot cleaning post-2006 dry cleaning.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in dry cleaning and spot cleaning 4th/5th gen only dry cleaning.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use as solvent for cold cleaning.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in other textile processing.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in wood furniture manufacturing.	Prohibit	Prohibit	Prohibit.
Commercial use for photographic film	Prohibit	Prohibit	Prohibit.
Industrial and commercial use as a solvent for aerosol lubricants.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in wipe cleaning	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in other spot cleaning and spot removers, including carpet cleaning.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in automotive care products (*e.g.,* engine degreaser and brake cleaner).	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in non-aerosol cleaner	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in metal (*e.g.,* stainless steel) and stone polishes.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in foundry applications	Prohibit	Prohibit	Prohibit.
Commercial use in inks and ink removal products (based on printing).	Prohibit	Prohibit	Prohibit.
Industrial and commercial use in welding	Prohibit	Prohibit	Prohibit.
Industrial and commercial use for mold release	Prohibit	Prohibit	Prohibit.
Commercial use in inks and ink removal products (based on photocopying).	Prohibit	Prohibit	Prohibit.
Commercial use in metal mold cleaning, release and protectant products.	Prohibit	Prohibit	Prohibit.
Industrial and commercial use as a solvent for penetrating lubricants and cutting tool coolants.	Prohibit	Prohibit	Prohibit.
Consumer use in dry cleaning solvent	Prohibit[2]	Prohibit[2]	Prohibit.[2]
Consumer use in automotive care products (parts cleaner).	Prohibit[2]	Prohibi[2]	Prohibit.[2]
Consumer use in lubricants and greases (lubricants and penetrating oils).	Prohibit[2]	Prohibit[2]	Prohibit.[2]
Consumer use in adhesives for arts and crafts (including industrial adhesive, arts and crafts adhesive, gun ammunition sealant).	Prohibit[2]	Prohibit[2]	Prohibit.[2]
Consumer use in adhesives for arts and crafts (livestock grooming adhesive).	Prohibit[2]	Prohibit[2]	Prohibit.[2]
Consumer use in adhesives for arts and crafts (column adhesive, caulk and sealant).	Prohibit[2]	Prohibit[2]	Prohibit.[2]

TABLE 2—OVERVIEW OF CONDITIONS OF USE DRIVING UNREASONABLE RISK AND PROPOSED REGULATORY ACTION AND ALTERNATIVE REGULATORY ACTIONS—Continued

Condition of use driving unreasonable risk determination	Action		
	Proposed regulatory action	Primary alternative action	Second alternative action
Consumer use in solvent-based paints and coatings (coatings and primers (aerosol)).	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in solvent-based paints and coatings (metallic overglaze).	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in welding	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in metal mold cleaning, release and protectant products.	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in cleaners and degreasers (other)	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in automotive care products (brake cleaner).	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in aerosol cleaner (vandalism mark and stain remover).	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in non-aerosol cleaner (*e.g.,* marble and stone polish).	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in lubricants and greases (cutting fluid)	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in solvent-based paints and coatings (outdoor water shield (liquid)).	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in solvent-based paints and coatings (rust primer and sealant (liquid)).	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in metal (*e.g.,* stainless steel) and stone polishes.	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Consumer use in inks and ink removal products	Prohibit [2]	Prohibit [2]	Prohibit.[2]
Manufacturing (domestic manufacturing)	PCE WCPP	Prescriptive Controls (PPE)	PCE WCPP.
Manufacturing (import)	PCE WCPP	Prescriptive Controls (PPE)	PCE WCPP.
Processing as a reactant/intermediate	PCE WCPP	Prescriptive Controls (PPE)	PCE WCPP.
Processing into formulation, mixture or reaction product in paint and coating products.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.
Processing into formulation, mixture or reaction product in cleaning and degreasing products.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.
Processing into formulation, mixture or reaction product in other chemical products and preparations.	Prohibit	PCE WCPP	Prohibit.
Processing into formulation, mixture or reaction product in adhesive and sealant products.	PCE WCPP	Prescriptive Controls (PPE)	Prohibit.
Repackaging	PCE WCPP	Prescriptive Controls (PPE)	PCE WCPP.
Recycling	PCE WCPP	Prescriptive Controls (dermal PPE).	PCE WCPP.
Disposal	PCE WCPP	Prescriptive Controls (dermal PPE).	PCE WCPP.

[1] TSCA section 6(g) exemption, including the manufacture (including import), processing, and distribution for this condition of use.
[2] Prohibit manufacture (including import), processing, and distribution in commerce for the consumer use.

V. Rationale for the Proposed Regulatory Action and Alternative Regulatory Actions

This unit describes how the considerations described in Unit III.B.3. were applied when selecting among the TSCA section 6(a) requirements to arrive at the proposed and alternative regulatory actions described in Unit IV.

A. Consideration of Risk Management Requirements Available Under TSCA Section 6(a)

1. Proposed Regulatory Action

a. Prohibition

EPA considered a prohibition as a regulatory option and is proposing it for certain occupational conditions of use (Unit IV.A.). Prohibition is the preferred option for occupational conditions of use where greater uncertainty exists relative to a sector's ability to comply with provisions of the proposed PCE WCPP, such as an ECEL or DDCC. EPA's 8-hour TWA ECEL for PCE is significantly lower than the OSHA PEL and there is a degree of uncertainty as to whether chemical users under the conditions of use in some sectors will be able to comply with such a level and thus whether the unreasonable risk would be addressed. This uncertainty includes consideration of the difficulties related to respiratory protection, which are discussed in more detail in Unit V.A.1.b., and which include how respirators may present communication problems, vision problems, worker fatigue, and reduced work efficiency (63 FR 1152, January 8, 1998) as well as consideration for that fact that not all workers may be able to wear respirators. Similarly, there is also uncertainty regarding certain chemical users' ability to prevent direct dermal contact with PCE, in particular during use in open-systems or when worker activities require manual application or removal of PCE or a PCE-containing product through rags, aerosols, spray guns, roll applicators, fingers, hands, or other materials. Additionally, prohibition is the preferred option for occupational conditions of use where reasonably available information suggests minimal ongoing use or when feasible safer alternatives are reasonably available. The uncertainties related to whether users under certain conditions of use could comply with the requirements of a PCE WCPP, combined with the severity of the risks of PCE, the prevalence of alternative processes and products (Unit V.B), and in some cases reasonably available information indicating a use is no longer ongoing (Refs. 56, 3), has led EPA to propose prohibitions for most industrial and

commercial uses of PCE, as well as for the upstream manufacturing, processing, and distribution in commerce for those uses. EPA requests comment regarding the number of businesses and other entities that could potentially close as well as associated costs with a prohibition of PCE for the industrial and commercial conditions of use identified in Unit IV.A.1.

As outlined in Unit IV.A.1., EPA is proposing to phase out the use of PCE in dry cleaning and associated spot cleaning at dry cleaning facilities. While EPA recognizes the exposure reductions and significant investments in equipment improvements made by dry cleaners, as described by SERs and summarized in the SBAR Panel Report (Ref. 33), EPA has determined that the industrial and commercial uses of PCE in dry cleaning and the consumer use of PCE in dry cleaning drive the unreasonable risk for PCE, and is proposing that prohibition is the most appropriate approach to eliminate the unreasonable risk. Following the Panel recommendations in the SBAR report (Ref. 33), EPA is providing an assessment on the impact of the rule on the dry cleaning industry in the Economic Analysis (Ref. 3), summarized here. Based on consultation with stakeholders, EPA understands that the use of PCE in dry cleaning is currently declining. Stakeholders, including State and Local Agencies and trade associations, have noted an overall year-to-year decline in the use of PCE in dry cleaning and many expect PCE to phase out naturally or decrease to extremely low numbers as older machines are retired and alternative solvents are adopted (Ref. 61). As described more fully in the Economic Analysis, EPA assumes dry cleaning machines are retired 15 to 25 years after the manufactured date. Therefore, EPA assumes most dry cleaning machines manufactured and installed before 2005, such as for 3rd generation machines, would be beyond their projected useful life by the proposed phaseout dates outlined in Unit IV.A.1. Additionally, reasonably available information on the current use of alternatives to PCE in dry cleaning, including cost, effectiveness, and safety, indicate suitable alternatives are available (Refs. 61, 62). As described more fully in the Economic Analysis, EPA expects that multi-solvent or hydrocarbon dry cleaning machines are likely to be the most common alternatives to PCE dry cleaning. However, other alternatives, such as wet cleaning, are available (Refs. 27, 28, 29, 30, 31).

EPA determined prohibition would not be suitable for the remaining occupational conditions of use, such as processing as a reactant/intermediate and several types of processing into a formulation, mixture, or reaction product; and industrial and commercial uses as a solvent for cleaning and degreasing in vapor degreasers, particularly for aerospace and defense applications, in maskant for chemical milling, in solvent-based adhesives and sealants, as a processing aid in catalyst regeneration in petrochemical manufacturing, and as a laboratory chemical. EPA made this determination based on compelling reasons to not prohibit the activity and identification of a different regulatory action that would address the unreasonable risk. For example, prohibition may not be suitable for conditions of use that may complement the Agency's efforts to address climate-damaging HFCs under the AIM Act, or have national security or other significance for critical sectors, where EPA identified strict workplace controls could be implemented for these uses to address the unreasonable risk as described in Unit V.A.1.b. Additionally, prohibition may not be suitable for conditions of use where alternative substances to PCE are more or equally hazardous, in particular for other solvents undergoing risk evaluation and risk management under TSCA section 6. For example, for processing as a reactant/intermediate, PCE and trichloroethylene (TCE) are both used as feedstock in the manufacture of HFC–134a although they are not drop in substitutes. As another example, PCE, TCE, 1-bromopropane, methylene chloride, and trans-1,2-dichloroethylene are solvents used in vapor degreasing and have or are currently undergoing risk evaluation or risk management under TSCA. In selecting among the TSCA section 6(a) requirements for the proposed approach for conditions of use where alternative substances to PCE may include other solvents undergoing risk evaluation and risk management under TSCA section 6, EPA considered whether technically and economically feasible alternatives that benefit health or the environment will be reasonably available as a substitute.

For these conditions of use, EPA determined restrictions under a PCE WCPP were more suitable for addressing the unreasonable risk to the extent necessary so that PCE no longer presents such risk, while also allowing flexibility for regulated entities to continue operations, as described in this unit and in Unit IV.A.

Regarding industrial, commercial, and consumer uses of PCE, TSCA section 6(a)(2) provides EPA with the authority to prohibit or otherwise restrict the manufacture (including import), processing, or distribution in commerce of a substance or mixture ''for a particular use'' to ensure that a chemical substance no longer presents unreasonable risk. For this rule, EPA proposes that ''for a particular use'' includes consumer use more broadly, as well as industrial and commercial use, which encompasses all known, intended, and reasonably foreseen uses of PCE. Given the severity and ubiquitous nature of the risks identified in the 2020 Risk Evaluation for PCE for all industrial, commercial, and consumer uses evaluated, and noting that those conditions of use evaluated in the Risk Evaluation encompass all known, intended, and reasonably foreseen uses of PCE, EPA proposes that prohibiting manufacture (including import), processing, and distribution in commerce of PCE for most industrial and commercial use and all consumer use is reasonable and necessary to eliminate the unreasonable risk of PCE, including by precluding retailers from selling PCE and PCE-containing products to consumers. EPA believes that any retailer selling PCE-containing products to consumers would be selling products for one of the consumer uses EPA evaluated in the 2020 Risk Evaluation for PCE and found to drive the unreasonable risk for PCE. Other regulatory options that would restrict the manufacture (including import), processing, and distribution in commerce of PCE for consumer use, such as setting a concentration limit, would not adequately address the identified unreasonable risk driven by consumer use. EPA's proposed requirements to address unreasonable risk to consumers and bystanders to consumer use are described in Unit IV.A.

A key consideration regarding consumer use is the role of retailers and other distributors. A retailer, as EPA has defined in 40 CFR 751.103 (and proposes to define in 40 CFR 751.5), is any entity that makes available a chemical substance or mixture to consumer end users, including e-commerce internet sales or distribution. Previously, in the 2019 methylene chloride TSCA section 6(a) risk management rule addressing consumer use of methylene chloride in paint and coating removal (40 CFR part 751, subpart B), EPA prohibited retailers from distributing in commerce paint and coating removers containing methylene chloride (see 40 CFR 751.105(b) and (c)). To meet the same goal of protecting consumers from accessing PCE-containing products that

could pose unreasonable risk, for a broader range of consumer conditions of use, EPA considered and is proposing a similar provision to ensure that retailers will not be able to purchase PCE for sale or distribution to consumers and will not be able to sell or distribute PCE to consumers, including making available to consumers products containing PCE. For these reasons, as described in Unit IV.A., EPA's proposal to address unreasonable risk from PCE includes prohibition on the distribution in commerce of PCE to and by retailers.

To support implementation of the proposed prohibitions EPA also considered, and is proposing, a de minimis level for products containing PCE to account for impurities that do not drive the unreasonable risk. EPA conducted an analysis using the methodology in the 2020 Risk Evaluation for PCE to estimate whether there is a weight fraction of PCE in industrial/commercial and consumer products below which the industrial/commercial and consumer uses of those products, respectively, would not drive the unreasonable risk from PCE. EPA examined the Consumer Exposure Model for the 2020 Risk Evaluation for PCE and found that, when adjusting parameters for product mass and duration of use to the highest values based on consumer product data in the 2020 Risk Evaluation for PCE, consumer use of products that are 0.124% PCE or less by weight would not drive the unreasonable risk from PCE (Ref. 53). To identify a concentration limit of PCE in industrial/commercial products that would not drive the unreasonable risk from PCE, EPA also conducted an analysis using the Brake Servicing Near-Field/Far-Field exposure model in the 2020 Risk Evaluation for PCE and calculated that a PCE concentration of 0.7% in aerosol brake degreasing products would achieve exposure concentrations at or below the ECEL based on a near-field 8-hour TWA of 0.145 ppm at the 95th percentile (Ref. 45). Based on these analyses, EPA is proposing to exclude from prohibition products containing PCE at less than 0.1% by weight, as described in Unit IV.A. EPA has identified uncertainties with a concentration limit of 0.1% addressing the unreasonable risk. For example, the Brake Services Near-Field/Far-Field exposure model is based on a scenario for occupational brake cleaning and may less accurately estimate exposures from other applications where exposures may be different than those predicted by the model, for example due to higher PCE application rates or lower ventilation rates. However, a concentration limit of 0.1% provides a margin of error to account for the uncertainties associated with the 0.7% concentration limit identified in the analysis using the Brake Servicing Near-Field/Far-Field exposure model. EPA is requesting comment on the de minimus concentration limit of PCE in products or formulations, and provides more information on consideration of a concentration limit in Unit V.A.3. Details of the proposed prohibitions are described in more detail in Unit IV.A.

b. Workplace Chemical Protection Program (WCPP)

One option EPA considered for occupational conditions of use was establishing requirements for a PCE WCPP, which would include a combination of requirements to the extent necessary to address unreasonable risk driven by inhalation and dermal exposures in the workplace. A PCE WCPP would encompass restrictions on certain occupational conditions of use and could include provisions for an ECEL, DDCC, and ancillary requirements to support implementation of these exposure limits. Due to the low exposure level and stringent requirements in the PCE WCPP that would be necessary to address the unreasonable risk from PCE, EPA identified only a relatively small number of conditions of use where the Agency expected a PCE WCPP could be successfully implemented.

Existing Chemical Exposure Limit. One requirement considered by EPA to include in a PCE WCPP to address unreasonable risk driven by inhalation exposures to PCE for occupational conditions of use was establishing an ECEL and related implementation measures, such as exposure monitoring. As described in Unit IV.A., the PCE WCPP would be non-prescriptive, in the sense that regulated entities would not be required to use specific controls prescribed by EPA to achieve the exposure concentration limit. Rather, it would be a performance-based exposure limit that would enable owners or operators to determine how to most effectively meet the exposure limit based on conditions at their workplace, consistent with the hierarchy of controls.

A central component of the PCE WCPP is the exposure limit. Exposures remaining at or below the ECEL would address any unreasonable risk of injury to health driven by inhalation exposures for occupational conditions of use.

In the case of PCE, EPA has calculated the ECEL to be 0.14 parts per million (ppm) (0.98 mg/m^3) for inhalation exposures as an 8-hour TWA in workplace settings, based on the chronic, non-cancer HEC for neurotoxicity (CNS) (Ref. 10). This is the concentration at which an adult human, including a member of a susceptible subpopulation, would be unlikely to suffer adverse effects if exposed for a working lifetime. The differences between the ECEL and the OSHA PEL are discussed in more detail in Unit II.C.1.b. EPA chose the chronic non-cancer neurotoxicity endpoint for PCE as the basis for this exposure limit because it is the most sensitive of the endpoints identified, and therefore will be protective of both acute and chronic non-cancer and chronic cancer inhalation endpoints over the course of a working day and lifetime.

In deciding whether an ECEL and related required implementation measures would appropriately address the unreasonable risk driven by occupational inhalation exposures for specific conditions of use, EPA considered factors related to work activities that may make it difficult to comply with an ECEL, particularly at the low air concentration level EPA has identified. Once EPA identified the appropriate risk-based inhalation limit to address identified unreasonable risk, EPA carefully considered the appropriateness of such an exposure control program for each occupational condition of use of PCE, in the context of the unreasonable risk. Examples include conditions of use with work activities that may take place in the field, making it challenging to establish a regulated area and conduct monitoring; work activities that may take place in open systems that require manual contact with the chemical substance; work activities that may take place in small, enclosed spaces, creating challenges for implementing engineering controls or using respiratory PPE; work activities that require a high range of motion or for some other reason create challenges for the implementation of respiratory PPE; and the type of PPE that would be needed under the PCE WCPP to meet the ECEL in the absence of, or in addition to, other feasible exposure controls, based on analysis in the 2020 Risk Evaluation for PCE describing expected exposures with and without use of PPE.

EPA also considered the feasibility of exposure reduction sufficient to address the unreasonable risk, including in facilities currently complying with the OSHA PEL for PCE or implementing other recommended OELs such as the ACGIH TLV. While EPA acknowledges the regulated community's expected familiarity with OSHA PELs generally, as well as facilities' past and ongoing

actions to implement the PCE PEL, the value of EPA's exposure limit is almost three orders of magnitude lower than the OSHA PEL (The differences between the ECEL and the OSHA PEL are discussed in more detail in Unit II.C.4; more information on other OELs is in Unit II.C.5.). This creates a degree of uncertainty as to whether facilities engaging in most conditions of use could meet the ECEL (and associated action level) and whether they could do so without relying primarily on the use of PPE (which is the least preferred option in the hierarchy of controls), and, therefore, whether exposures could be reduced in a manner aligned with the hierarchy of controls.

EPA understands that this uncertainty extends to the feasibility of respirators as well. Although respirators, specifically SCBAs, could reduce exposures to levels that protect against non-cancer and cancer risks, not all workers may be able to wear respirators. Individuals with impaired lung function due to asthma, emphysema, or chronic obstructive pulmonary disease, for example, may be physically unable to wear a respirator. OSHA requires that a determination regarding the ability to use a respirator be made by a physician or other licensed health-care professional, and annual fit testing is required for tight-fitting, full-face piece respirators to provide the required protection. Individuals with facial hair, such as beards or sideburns that interfere with a proper face-to-respirator seal, cannot wear tight fitting respirators. In addition, respirators may also present communication problems, vision problems, worker fatigue, and reduced work efficiency (63 FR 1152, January 8, 1998). According to OSHA, ''improperly selected respirators may afford no protection at all (for example, use of a dust mask against airborne vapors), may be so uncomfortable as to be intolerable to the wearer, or may hinder vision, communication, hearing, or movement and thus pose a risk to the wearer's safety or health.'' (63 FR 1189–1190).

Direct dermal contact control requirements. Another requirement considered by EPA to include in a PCE WCPP to address unreasonable risk driven by dermal exposures to PCE for occupational conditions of use was requiring DDCC. DDCC under the PCE WCPP would be a process-based requirement to prevent direct dermal contact in the workplace by separating, distancing, physically removing, or isolating potentially exposed persons from direct handling of PCE or from contact with equipment or materials on which PCE may exist under routine conditions. Similar to the ECEL, DDCC is non-prescriptive, in the sense that it would not require a specific control to prevent direct dermal contact; rather, it would enable regulated entities to determine how to most effectively separate, distance, physically remove, or isolate potentially exposed persons from direct dermal contact with PCE based on what works best for their workplace, in accordance with the hierarchy of controls.

In deciding whether DDCC would appropriately address the unreasonable risk driven by dermal exposures, EPA considered factors related to work activities that may make it difficult to eliminate direct dermal contact. Examples include work activities that may take place in open systems that require manual handling of PCE, such as application or removal of PCE or a PCE-containing product through rags, aerosols, spray guns, roll applicators, fingers, hands, or other materials; or work activities that require a high range of motion or for some other reason create challenges for the implementation of dermal PPE.

EPA also considered whether exposures could be reduced in a manner aligned with the hierarchy of controls and considered the type of PPE that would be needed under the PCE WCPP DDCC to prevent direct dermal contact if elimination, substitution, engineering controls, and administrative controls are not sufficient to prevent direct dermal contact. The 2020 Risk Evaluation for PCE describes expected exposures with and without use of PPE; even if chemically resistant gloves are used in combination with basic workplace training and specific activity training for tasks where dermal exposure can be expected to occur, EPA found that dermal exposures would continue to pose risk concerns for most conditions of use. However, the 2020 Risk Evaluation for PCE identifies several uncertainties regarding the dermal exposures modeled. For example, the 2020 Risk Evaluation for PCE does not consider the frequency, type, and effectiveness of gloves or other types of PPE used or specific workplaces. In addition, the 2020 Risk Evaluation for PCE does not specify the specific activity training beyond procedure for glove removal and disposal.

In consideration of the whole of the 2020 Risk Evaluation for PCE, including the uncertainties, EPA has preliminarily determined that preventing direct dermal contact to PCE through DDCC requirements, including requirements to reduce exposures in a manner aligned with the hierarchy of controls, workplace specific training, and, if necessary, dermal PPE which covers any exposed skin (including hands, legs, torso, and face), and PPE training, as described in Unit IV.A.2., for certain occupational conditions of use would address the unreasonable risk from dermal exposure driven by these conditions of use for potentially exposed persons.

PCE WCPP. Taking into account these considerations, EPA is proposing that certain conditions of use would be allowed to continue if regulated entities could ensure exposures remain at or below the ECEL, direct dermal contact is prevented, and other requirements are met in the PCE WCPP. In contrast to considerations that would weigh against the likelihood of a facility within a condition of use to successfully implement WCPP, there are certain considerations that indicate a condition of use would likely be able to achieve effective risk management via WCPP. Based on reasonably available information, including monitoring data (Refs. 50, 49), process descriptions, and information related to considerations described previously in this unit, EPA's confidence that requirements to meet an ECEL and prevent direct dermal contact can be implemented is highest in highly standardized and industrialized settings, such as where PCE is used in a closed system.

For example, one of the conditions of use for which EPA is proposing a WCPP is processing of PCE as a reactant. A large volume of PCE is processed for this condition of use, which primarily goes towards the manufacture of HFC–134a and HFC–125 (Refs. 3, 36). Inhalation monitoring data submitted by industry suggests that PCE exposures in some facilities may already be below levels that would be consistent with the proposed ECEL (Ref. 36). Additionally, the 2020 Risk Evaluation for PCE supports EPA's conclusion that only small reductions in exposure are needed for WCPP ECEL compliance for processing of PCE as a reactant. Based on analysis in the 2020 Risk Evaluation for PCE describing expected exposures with and without use of PPE, EPA identified respirators of APF 25 as the minimum respiratory PPE that is sufficient to mitigate the unreasonable risk driven by inhalation exposures from this condition of use. Also, for dermal exposures, reasonably available information indicates that controls may already be in place at some workplaces to prevent or reduce direct dermal contact with PCE, including enclosed transfer liquid lines with a nitrogen purging mechanism, closed loop samplers, and impervious glove liners

in addition to chemically resistant gloves (Ref. 63).

Another condition of use for which EPA is proposing the WCPP is the industrial and commercial use of PCE as a processing aid in catalyst regeneration in petrochemical manufacturing. EPA understands that most workplaces using PCE in isomerization and catalytic reforming (the two uses of PCE in catalyst regeneration in petrochemical manufacturing) already have stringent controls in place that reduce workplace exposures. As described in public comments and through engagement with the American Fuel and Petrochemical Manufacturers (AFPM), other industry trade associations, and individual firms, petroleum refineries use PCE in continuous, closed processes, where it is completely consumed (Refs. 64, 66, 63). Stakeholders have described how, upon delivery by tote or tank truck at refineries, PCE is directly injected from a tote into a closed processing unit or transferred from a truck into a storage tank that is directly hooked up for direct injection in a closed system. Transfer procedures of PCE are performed pursuant to comprehensive written procedures under strict PPE guidelines including, when appropriate, respirators. Information submitted by AFPM indicates that worker exposure is limited to chemical unloading and transfer procedures, which, for AFPM members, may range from 10 to 35 times per year per site for a 15-minute tote changeout or two to 12 times per year per site for a 30- to 60-minute tank truck transfer (Ref. 64).

While EPA understands that the PCE exposure frequency and duration at petroleum refineries may be less than what was assumed in the risk evaluation, as described in this unit, EPA does not have any recent air monitoring data to confirm that PCE exposures are below the proposed ECEL at petroleum refineries. Based on analysis in the 2020 Risk Evaluation for PCE describing expected exposures with and without use of PPE, EPA identified respirators of APF 10 as the minimum respiratory PPE that would be sufficient to mitigate the unreasonable risk driven by inhalation exposures from this condition of use. Also, for dermal exposures, reasonably available information indicates that controls may already be in place to prevent or reduce direct dermal contact with PCE, such as using PCE in a closed system to limit exposures and implementing comprehensive written procedures with added PPE during transfer procedures.

For both of these conditions of use (processing as a reactant/intermediate and industrial and commercial use in catalyst regeneration in petrochemical manufacturing) the 2020 Risk Evaluation for PCE indicates that only small reductions in exposure would be needed for WCPP compliance. This suggests that, for these conditions of use, the reductions in exposure required to achieve a level that would not result in unreasonable risk may be less than for other conditions of use. This information together with other considerations previously described, including monitoring data indicating exposures near or below the ECEL and other reasonably available information indicating stringent controls may already be in place, adds to EPA's confidence that facilities engaging in these two conditions of use could meet the WCPP requirements.

In addition to EPA's confidence that facilities engaging in these conditions of use could meet the WCPP requirements and thus address the unreasonable risk, EPA found compelling reasons to allow continued use of PCE for these conditions of use because they may complement the Agency's efforts to address climate-damaging HFCs under the AIM Act or have national security or other significance for critical sectors. For processing of PCE as a reactant/intermediate, HFC–134a and HFC–125 are two of the regulated substances identified in the AIM Act. The AIM Act authorizes EPA to address listed HFCs in three main ways: phasing down HFC production and consumption through an allowance allocation program; facilitating sector-based transitions to next-generation technologies; and issuing certain regulations for purposes of maximizing reclamation and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers. EPA anticipates that many entities currently using HFCs with higher global warming potential will transition to alternatives with lower global warming potential as requirements under the AIM Act take effect. HFC–134a and HFC–125, while being regulated substances subject to the overall phasedown in production and consumption of regulated substances under the AIM Act, are likely to be used in blends to facilitate the transition from other HFCs and HFC blends with higher global warming potential in certain applications. By allowing for the continued, controlled use of PCE in the manufacture of HFC–134a and HFC–125, efforts to shift to chemicals or blends with lower global warming potential would not be impeded by this rulemaking. Allowing this use to continue, subject to compliance with the WCPP, would complement industry's ongoing effort to abate the use of HFCs with higher global warming potential.

For the industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing, information submitted to the Agency indicates that isomerization and catalytic reforming processes, which may rely on PCE for catalyst regeneration, are essential to make gasoline that is compliant with environmental regulations, such as the EPA Mobile Source Air Toxics regulations (Ref. 64, 65). Isomerization is a process that reduces the amount of benzene in fuels and catalytic reforming generates hydrogen that is used to remove sulfur compounds (Ref. 64). The resulting products from isomerization and catalytic reforming processes at petroleum refineries are isomerate and reformate, which go into gasoline blends that make up an estimated 45% of the gasoline pool in the United States (Ref. 64). Based on information submitted to the Agency, EPA believes that petroleum refineries can meet the ECEL, and so does not anticipate that there would be a meaningful impact on the price of gasoline. However, if petroleum refineries are unable to meet or are not already meeting WCPP requirements as part of the proposed regulatory action and second alternative regulatory action or the prescriptive controls as part of the primary alternative action, EPA understands that this rulemaking could result in larger impacts to the petroleum refining sector, with potential impacts that could include an increase in the price of gasoline. Therefore, EPA is requesting comment on the extent to which facilities engaged in the industrial and commercial use of PCE as a processing aid in catalyst regeneration in petrochemical manufacturing may already meet the requirements in the proposed and alternative regulatory actions described in Unit IV. to address the unreasonable risk and is soliciting comment on the impact of such requirements on petroleum refining, with special attention to the price of gasoline.

For PCE to be available for the downstream industrial and commercial uses that would continue under a PCE WCPP, it would need to be manufactured (including imported), processed, and distributed in commerce. Likewise, as long as PCE remains in use, it must also be disposed of. Therefore, EPA is proposing requirements to meet a PCE WCPP for manufacture (including import), certain processing conditions of use, and disposal, to allow for a continued supply chain for specified

conditions of use while ensuring that workers are not subject to unreasonable risk from PCE as it moves throughout the supply chain. For recycling and disposal, EPA did not identify human health risk from inhalation exposure as a driver of unreasonable risk and is therefore not proposing to require an ECEL under the PCE WCPP for recycling and disposal activities.

Details of the proposed PCE WCPP, including provisions for the ECEL, DDCC, and prescriptive controls, ancillary required implementation measures, requirements for demonstrating compliance and requirements for distributors, are described in more detail in Unit IV.A.

c. Prescriptive Controls

Another requirement EPA considered to address unreasonable risk for occupational conditions of use was requiring specific controls prescribed by EPA, including engineering controls, administrative controls, and/or PPE. In the 2020 Risk Evaluation for PCE, EPA identified that certain workplace controls could reduce exposures. The prescriptive controls EPA considered (such as respirators and gloves) are based on information in the 2020 Risk Evaluation for PCE. In general, prescriptive controls are not preferred as the primary method of risk management because of uncertainties related to feasibility to reduce exposures to address the unreasonable risk across all workplaces engaged in a condition of use and whether the prescriptive controls will be consistently or properly used. EPA understands that workplaces have unique processes and equipment in place and that varying levels of respiratory protection or dermal PPE may be needed for different workplaces. Additionally, as described in Unit III.A.1. and 2., EPA received input during required consultations and additional engagement that options that align with the hierarchy of controls (*i.e.,* elimination and substitution of hazards in the workplace) should be preferred over prescriptive controls.

EPA determined that specific prescriptive controls (*i.e.,* specific engineering or administrative controls, or PPE) may not be able to eliminate unreasonable risk for some conditions of use when used in isolation. In the 2020 Risk Evaluation for PCE, analysis of occupational exposure scenarios (OES) indicated that many conditions of use still posed risk concerns even with the application of respirators with APF 25 or 50 (Ref. 1). Because of the uncertainty regarding the feasibility of exposure reductions through engineering controls alone, EPA determined that a PCE WCPP ECEL, which would be accompanied by monitoring requirements in tandem with the implementation of engineering controls, administrative controls, and/or PPE as elements of the program, as appropriate, would more successfully reduce exposure so that the unreasonable risk is addressed. Additionally, relying primarily on respirators and gloves to reduce exposures does not consider other more protective controls in the hierarchy, including elimination, substitution, engineering controls, and administrative controls. For occupational conditions of use where compliance with the PCE WCPP ECEL and DDCC is unlikely to be successful, in most cases prohibitions (rather than prescribed controls) would be more appropriate to ensure that PCE does not present unreasonable risk under the conditions of use.

However, based on the 2020 Risk Evaluation for PCE, EPA considered the industrial and commercial use in laboratory chemicals as a strong candidate for prescriptive controls. While inhalation exposures from the industrial and commercial use of PCE as a laboratory chemical did not drive the unreasonable risk determination for PCE, EPA's risk estimates were predicated on its finding that expected safety practices of using PCE in small amounts under a fume hood reduce the potential for inhalation exposures in laboratory settings. To codify assumptions made in the 2020 Risk Evaluation for PCE regarding the use of fume hoods in laboratory settings, EPA is proposing to require fume hoods in laboratory settings that use PCE. This proposed requirement would protect potentially exposed persons in laboratory settings by ensuring that good laboratory practices that reduce the potential for inhalation exposures are consistently applied. Additionally, the 2020 Risk Evaluation for PCE determined that dermal exposures from the industrial and commercial use of PCE as a laboratory chemical drive the unreasonable risk determination for PCE, and analysis in the 2020 Risk Evaluation for PCE indicated that there would still be risk concerns even if chemically resistant gloves are used in combination with specific activity training for tasks where dermal exposure can be expected to occur. However, as described earlier, the 2020 Risk Evaluation for PCE identifies several uncertainties regarding the use of the dermal exposures modeled. For example, the 2020 Risk Evaluation for PCE does not consider the frequency, type, and effectiveness of gloves or other types of PPE used in laboratory settings. In consideration of the whole of the 2020 Risk Evaluation for PCE, including these uncertainties, EPA has preliminarily determined that preventing direct dermal contact with PCE through dermal PPE which covers any exposed skin and PPE training for the industrial and commercial use in laboratory chemicals would address the unreasonable risk from dermal exposure driven by this condition of use for potentially exposed persons. EPA is requesting comment on whether preventing dermal contact with PCE through dermal PPE and training would adequately address the unreasonable risk from dermal exposures for the industrial and commercial use in laboratory chemicals. Additionally, most laboratories are regulated by OSHA under 29 CFR 1910.1450 requirements for occupational exposure to hazardous chemicals in laboratories, and therefore may be more conducive to the implementation of engineering controls such as fume hoods to evacuate vapors and to the proper use and implementation of a dermal PPE program to adequately reduce overall exposure to PCE. The industrial and commercial use of PCE as a laboratory chemical would be necessary to provide for the analysis of monitoring samples required under the ECEL under this proposed regulation.

For certain occupational conditions of use, prescribed engineering controls, administrative controls, and PPE were considered as part of the alternative regulatory action and are described in more detail later in this unit and in Unit IV.B.

2. Alternative Regulatory Actions

EPA acknowledges that, for some of the occupational conditions of use that it is proposing to prohibit, there may be some activities or facilities that could conceivably implement requirements under a PCE WCPP to ensure that exposure remain below an ECEL and prevent direct dermal contact with PCE. In some cases, they may be able to undertake more extensive risk reduction measures than EPA currently anticipates. Therefore, as a primary alternative regulatory action, described in Unit IV.B., EPA is considering and requesting comment on a PCE WCPP—including requirements to ensure exposures remain below an ECEL and prevent direct dermal contact—for some conditions of use of PCE that would be prohibited under the proposed regulatory action. For those conditions of use that would be subject to the PCE WCPP under the primary alternative regulatory action, but not the proposed

regulatory action, EPA was not able to identify reasonably available information such as monitoring data or detailed activity descriptions to indicate with certainty that relevant regulated entities for these conditions of use could mitigate identified unreasonable risk through a PCE WCPP. Due to this uncertainty, EPA is requesting comment on the primary alternative regulatory action and in particular the likelihood of successful compliance with a PCE WCPP, as described in Unit IV.A., for the conditions of use listed for the primary alternative regulatory action of PCE WCPP in Unit IV.B.

EPA understands that some of the workplaces engaged in a condition of use may already have stringent engineering controls, administrative controls, and PPE in place to reduce inhalation and dermal exposures to PCE. As part of the alternative regulatory action, EPA considered prescribed engineering controls, administrative controls, and PPE for some occupational conditions of use. In contrast to the proposed non-prescriptive requirements of the WCPP where regulated entities would have flexibility to select controls in accordance with the hierarchy of controls to comply, EPA understands that requiring specific prescriptive controls for certain occupational conditions of use may provide greater certainty to some facilities that they are addressing the unreasonable risk. However, as summarized in this unit, EPA has uncertainty regarding the feasibility of exposure reductions through specified engineering controls, administrative controls, and/or PPE to address unreasonable risk across all workplaces engaged in certain conditions of use. Prescribing specific engineering controls, administrative controls, or PPE does not consider distinctions in processes, equipment, or workplace layout in all facilities, which may result in varying levels and types of controls needed to reduce inhalation exposures to below the ECEL or to eliminate direct dermal contact. Additionally, as described in Unit V.A.1.b., there is a degree of uncertainty regarding applicability of respirators, including their feasibility and consistency of proper use, especially when exposure monitoring is not regularly conducted. However, as part of the primary alternative regulatory action, EPA is considering PPE and soliciting comment on prescribing specific engineering and administrative controls for some occupational conditions of use. In the 2020 Risk Evaluation for PCE, EPA identified PPE that could reduce exposures and is therefore considering requiring PPE, including respiratory protection and dermal protection, as part of the primary alternative regulatory action for those conditions of use where the proposed regulatory action is a PCE WCPP. Turning to the use of PPE, however, does not consider other more preferable controls in the hierarchy of controls, including elimination, substitution, engineering, and administrative controls. As part of the primary alternative regulatory action, EPA is soliciting comment on prescribing specific engineering or administrative controls that would reduce inhalation and dermal exposures enough to address the unreasonable risk across all workplaces engaged in a condition of use.

While the use of dermal PPE is typical for the use of PCE as a laboratory chemical, EPA recognizes the potential for there to be other exposure controls that could prevent direct dermal contact in a laboratory setting. Therefore, as part of the primary alternative regulatory action, EPA is considering implementation of DDCC as part of a PCE WCPP for the industrial and commercial use of PCE as a laboratory chemical. Similarly, EPA understands there may be exposure controls other than a fume hood that could reduce inhalation exposures in a laboratory setting and is therefore considering an ECEL as part of a PCE WCPP for the industrial and commercial use of PCE as a laboratory chemical.

EPA also considered proposing a TSCA section 6(g) time-limited exemption for conditions of use that are critical to national security and infrastructure. Based on reasonably available information, and as described earlier in Unit IV.B.2.b, EPA has analyzed the need for an exemption and has found that a TSCA section 6(g) exemption may be warranted under the second alternative regulatory action for the industrial and commercial use in maskant for chemical milling and for the industrial and commercial use in vapor degreasing if the workplaces engaged in that condition of use cannot meet the requirements of the proposed regulatory action (PCE WCPP) or primary alternative regulatory action (prescriptive controls) such that those conditions of use would no longer drive the unreasonable risk. A section 6(g) exemption may mean that the unreasonable risk will not be fully addressed. Note that EPA's second alternative regulatory action endeavors to ensure that worker protections are in place to the extent practicable and that EPA is required to have a time limited requirement for any exemptions granted under TSCA section 6(g), necessitating revisiting the need and justification for any exemption beyond the initial timeframe.

Details of the primary alternative regulatory action and second alternative regulatory action are described in more detail in Unit IV.B.

3. Risk Management Requirements Considered but not Proposed

Since it is unlikely that all industrial or commercial facilities with occupational exposures to PCE would be able to implement a WCPP or prescriptive controls, EPA also examined the extent to which a point-of-sale self-certification requirement in order to purchase and subsequently use PCE would further ensure that only facilities able to implement and comply with a WCPP or prescriptive controls are able to purchase and use PCE, and self-certify to that. Under a self-certification requirement, entities would submit a self-certification to the distributor or retailer each time PCE is purchased. The self-certification would consist of a statement indicating that the facility is implementing a WCPP or required prescriptive controls to control exposures to PCE; the self-certification would be signed and presented by a person authorized to do so by the facility owner or operator. Copies of the self-certification would be maintained as records by both the owner or operator and the distributor or retailer where PCE was purchased. However, because of the number and types of entities where users can obtain PCE or PCE-containing products, EPA does not believe the added requirement and subsequent burden of a point-of-sale self-certification requirement for the use of PCE would be an effective tool for preventing facilities that may be unable to comply with the WCPP or prescriptive controls of this proposed rulemaking from accessing PCE or PCE-containing products. As such, EPA is not proposing a self-certification requirement as an additional component of the requirements for addressing the unreasonable risk of occupational exposures to PCE. However, EPA is requesting comment on whether to include a self-certification requirement for purchasing PCE or PCE-containing products. For example, EPA is interested in learning if, for distributors and retailers, such a self-certification requirement would provide greater certainty that any sale of PCE or PCE-containing products would be for uses that are not prohibited and are to a facility implementing the WCPP or required prescriptive controls.

Also, although NIOSH recognizes PCE as an eye irritant (Ref. 67), EPA is not proposing requirements for eye protection from PCE, because eye irritation or injury is not a component of the unreasonable risk EPA has determined is presented by PCE.

In considering prescriptive controls as a regulatory action described in this unit to address the unreasonable risk driven by dry cleaning conditions of use, EPA examined monitoring data from New York State Department of Environmental Conservation (NYSDEC) inspections reports for the years 2013–2015 submitted in July 2020 during the public comment period for the draft 2020 Risk Evaluation for PCE. Previously, EPA rated this information as unacceptable for use in the final 2020 Risk Evaluation for PCE due to lack of critical metadata on sample type and sample duration (Refs. 68, 69). However, during risk management, stakeholders confirmed the missing metadata is short-term duration area monitoring (Refs. 70, 71). EPA analyzed the data to help identify how certain controls may show reductions of PCE concentration in ambient air in air monitoring data and reduce risk from inhalation exposures for PCE dry cleaning (Ref. 45). The analysis of the data show that while certain engineering controls such as 4th generation machines and a vapor barrier room result in lower air concentration of PCE based on area monitoring results, the overall statistics of the data show that PCE air concentrations are generally in exceedance of the ECEL of 0.14 ppm as an 8-hour TWA. It should be noted that there are limitations and uncertainties in using area monitoring data to estimate worker exposure. Based on the results of this analysis and the uncertainties of the data, EPA reasoned that prescriptive engineering controls of requiring 4th generation machines or requiring a vapor barrier room do not adequately address the unreasonable risk driven by inhalation exposures to workers from the industrial and commercial uses of PCE in dry cleaning. An industry stakeholder submitted additional NYSDEC inspection reports for the years 2018–2019 in November 2021. EPA considered the NYSDEC 2018–2019 inspection reports in the Economic Analysis to estimate the age of dry cleaning machines and how much PCE each machine typically uses in a year (Ref. 3).

In place of other regulatory actions, EPA considered limiting the weight fraction of PCE in products and formulations to address the unreasonable risk. As described in Unit V.A.1.a., EPA determined that the unreasonable risk from PCE would not be driven by use of products containing PCE at less than 0.1% by weight. Therefore, EPA is proposing a de minimis level for products containing PCE at levels of less than 0.1% to account for impurities that do not drive the unreasonable risk., as described in Unit IV.A.1.d. However, for most industrial/commercial and consumer conditions of use, the concentration limit of less than 0.1% is so low that it is highly unlikely that PCE would still serve its functional purpose in the product or formulation. EPA thus concluded that a weight fraction would essentially function as a prohibition for most industrial/commercial and consumer conditions of use. EPA therefore did not propose a weight fraction for industrial/commercial and consumer conditions of use. For the industrial and commercial use in solvent-based adhesives and sealants, EPA identified several products available on the market at concentrations of PCE between 0.1% and 1% by weight (Ref. 1). As part of the primary alternative regulatory action, EPA would set a concentration limit of PCE in adhesive and sealant products for industrial and commercial use to 1%, as described in Unit IV.B.1.c.

4. Additional Considerations

After considering the different regulatory options under TSCA section 6(a), alternatives (described in Unit V.B.), compliance dates, and other requirements under TSCA section 6(c), EPA developed the proposed regulatory action described in Unit IV.A. to address the unreasonable risk from PCE to the extent necessary. To ensure successful implementation of this proposed regulatory action, EPA considered other requirements to support compliance with the proposed regulations, such as requiring monitoring and recordkeeping to demonstrate compliance with the PCE WCPP and downstream notification regarding the prohibition on manufacturing, processing, distribution in commerce, and use of PCE, including products containing PCE. These proposed requirements are described in Unit IV.A.

As required under TSCA section 6(d), any rule under TSCA section 6(a) must specify mandatory compliance dates, which shall be as soon as practicable with a reasonable transition period, but no later than 5 years after the date of promulgation of the rule (except in the case of a use exempted under TSCA section 6(g) or for full implementation of ban or phaseout requirements). These compliance dates are detailed in Unit IV.A. and IV.B. EPA may finalize significantly shorter or longer compliance timeframes based on consideration of public comments. Following Panel recommendations in the SBAR report, and described in Unit IV., EPA considered reasonable compliance timeframes in response to SER input and other appropriate factors, such as the average projected useful lifespan of dry cleaning machines, capital costs for new equipment, and ongoing regulations and rulemakings, including the proposed amendments to the PCE dry cleaning NESHAP (January 5, 2022; 87 FR 421) (Ref. 33). Additionally, following Panel recommendations in the SBAR report, EPA considered compliance timelines based on the availability of technically and economically feasible alternatives, as well as any information provided by other agencies that set requirements for certification or standards relevant to degreasing, parts cleaning, or other uses of PCE. Following Panel recommendations in the SBAR report, EPA is requesting comment on any additional appropriate factors for identifying reasonable compliance timeframes and how to weigh the factors for dry cleaning and other industries, as well as differing compliance or reporting requirements or timetables that account for the resources available to small entities.

B. Consideration of Alternatives in Deciding Whether To Prohibit or Substantially Restrict PCE

Under TSCA section 6(c)(2)(C), in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use of a chemical substance or mixture, and in setting an appropriate transition period for such action, EPA must consider, to the extent practicable, whether technically and economically feasible alternatives that benefit human health or the environment, compared to the use so proposed to be prohibited or restricted, will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect. To that end, in addition to an Economic Analysis (Ref. 3), EPA conducted an Alternatives Assessment, using reasonably available information (Ref. 56).

For this assessment, EPA identified and analyzed alternatives to PCE in products relevant to industrial, commercial, and consumer conditions of use proposed to be prohibited or restricted, even if such restrictions are not anticipated to substantially prevent the condition of use. Based on reasonably available information,

including information submitted by industry, EPA understands viable alternatives to PCE may not be available for several conditions of use—for example, the industrial and commercial use in maskant for chemical milling and for the industrial and commercial use in vapor degreasing for certain applications (Refs. 54, 57, 58)—and considered that information to the extent practicable in the development of the regulatory options as described in Unit III.B.3. For some conditions of use, EPA was unable to identify products currently available for sale that contain PCE. EPA is soliciting comments on whether there are products in use or available for sale relevant to these conditions of use that contain PCE at this time, so that EPA can ascertain whether there are alternatives that benefit human health or the environment as compared to such use of PCE. These conditions of use are detailed in the Alternatives Assessment (Ref. 56).

For conditions of use for which products currently containing PCE were identified, EPA identified several hundred commercially available alternative products that do not contain PCE, and listed in the Alternatives Assessment, to the extent practicable, their unique chemical components, or ingredients. For each of these chemical components or ingredients, EPA identified whether it functionally replaced PCE for the product use and screened product ingredients for human health and environmental hazard, as well as identified flammability and global warming potential where information was reasonably available (Ref. 56). EPA then assigned a rating to the human health and environmental hazards, using a methodology described in the Alternatives Assessment document. In general, EPA identified products containing ingredients with a lower hazard screening rating than PCE for certain endpoints, while some ingredients presented higher hazard screening ratings than PCE (Ref. 56). These alternative hazard screening ratings are described in detail in the Alternatives Analysis grouped under common product use categories (Ref. 56). Additionally, based on input provided by SERs during the SBAR Panel, EPA understands that some available alternatives may present problems for certain users. For example, SERs identified concerns with water-based alternatives such as potential termite and mold damage to wood in buildings or water supply limitations due to a drought. SERs also identified concerns with alcohol-based alternatives that present a fire risk, and which may require users to acquire certain permits or comply with restrictions set by State and local agencies, including fire departments. Information regarding potential problems with available alternatives as indicated by SERs during the SBAR Panel is outlined in the SBAR Panel Report (Ref. 33). Following Panel recommendations in the SBAR report, EPA requests public comment about the feasibility of use of alternatives to PCE and their availability for conditions of use that drive the unreasonable risk.

In deciding whether to propose prohibition or other significant restrictions on a condition of use of PCE and in proposing an appropriate transition period for any such action, EPA has therefore, pursuant to TSCA section 6(c)(2)(C), considered, to the extent practicable, whether technically and economically feasible alternatives that benefit human health or the environment, compared to the use proposed to be prohibited or restricted, would be reasonably available as a substitute when a proposed prohibition or other significant restriction would become effective. EPA is additionally requesting comment on the Alternatives Assessment as a whole.

VI. TSCA Section 6(c)(2) Considerations

A. Health Effects of PCE and the Magnitude of Human Exposure to PCE

EPA's analysis of the health effects of PCE and the magnitude of human exposure to PCE are in the 2020 Risk Evaluation for PCE (Ref. 1). A summary is presented here.

The 2020 Risk Evaluation for PCE identified potential health effects of PCE including non-cancer adverse health effects such as neurotoxicity and central nervous system effects, kidney and liver effects, immune system toxicity, reproductive toxicity, and developmental toxicity and cancer hazards from carcinogenicity as well as genotoxicity.

Among the non-cancer adverse health effects, EPA identified visual deficits indicative of neurotoxicity as a primary effect of PCE in humans following acute and chronic inhalation and dermal exposures. Identified symptoms of neurotoxicity include color confusion, changes in visual contrast detection, and alteration of visual-spatial function. Impaired visual and cognitive function and diminished color discrimination are the most sensitive adverse effects driving the unreasonable risk of PCE exposure. Additionally, the 2020 Risk Evaluation for PCE identified that PCE exposure is associated with several types of cancer, including liver tumors, brain gliomas, kidney cancer, and testicular cancer. By the criteria presented in EPA's Guidelines for Carcinogen Risk Assessment (Ref. 41), PCE is characterized as ''likely to be carcinogenic to humans by all routes of exposure'' based on conclusive evidence in mice and rats and suggestive evidence in humans.

Other adverse health effects identified in the 2020 Risk Evaluation for PCE identified include central nervous system depression, kidney nephrotoxicity and proximal tubule nuclear enlargement, liver necrosis and extreme dilation of blood or lymph vessels, reduced sperm quality, reduced red blood cells and hemoglobin, increased immune cells, decreased fetal/placental weight, developmental neurotoxicity, and skeletal effects from chronic exposures (Ref. 1).

Regarding the magnitude of human exposure, one factor EPA considers for the conditions of use that drive unreasonable risk is the size of the exposed population which, for PCE, EPA estimates is 67,675 workers and 22,090 ONUs (Ref. 3). The number of consumers that use the approximately 115 types of products containing PCE each year is unknown.

For the conditions of use that drive the unreasonable risk for PCE, PESS include workers, ONUs, consumer users, and bystanders to consumers using products containing PCE. Children of workers present at dry cleaners are also a PESS group exposed to PCE during industrial and commercial use of PCE in dry cleaning and spot cleaning.

In addition to workers, ONUs, consumers, and bystanders to consumer use directly exposed to PCE, EPA recognizes there is exposure to the general population from air and water pathways for PCE. As mentioned in Unit II.D., EPA has separately conducted a screening approach to assess whether there may be potential risks to the general population from these exposure pathways. While the use of this screening approach indicates that EPA is not able to find that there are no potential risks to fenceline communities, the screening approach was not designed to facilitate the making of an unreasonable risk determination for these communities. This unit summarizes the results of that fenceline analysis. Although EPA is not making a determination of unreasonable risk based on the fenceline screening analysis, the proposed regulatory action described in Unit IV. is expected to reduce the risks identified in the screening approach.

As described in Unit II.D., EPA's analysis methodology was presented to the SACC peer review panel in March 2022, and EPA plans to consider SACC feedback (including the SACC recommendation to EPA to consider multiple years of release data to estimate exposures and associated risks) and make decisions regarding how to assess general population exposures in upcoming risk evaluations, such as for the 1,4-dioxane supplement, the forthcoming 20 High Priority Substances, and manufacturer-requested risk evaluations. For PCE, EPA recognizes that a key input into the fenceline analysis for the ambient air pathway was data on releases from the most recent Toxics Release Inventory (TRI) reporting year and that the use of more than one year of data could result in different conclusions. Accordingly, in this unit EPA presents the results of its water pathway fenceline analysis based on PCE releases to water and its ambient air pathway fenceline analysis based on PCE releases reported to TRI over a single reporting year as well as over multiple years (Refs. 72, 73).

EPA's fenceline analysis for the air pathway for PCE indicates that EPA is not able to conclude that there are no potential risks to fenceline communities, described further in this unit. Additionally, based on the fenceline analysis for the ambient air pathway for PCE, including the strengths, limitations, and uncertainties associated with the information used to inform the analysis, EPA is unable to determine with this analysis whether those risks drive the unreasonable risk of injury to health presented by PCE. Standard cancer benchmarks used by EPA and other regulatory agencies are an increased cancer risk above benchmarks ranging from 1 in 1,000,000 to 1 in 10,000 (*i.e.,* 1×10^{-6} to 1×10^{-4}) depending on the subpopulation exposed (see, *e.g.,* EPA's interpretation set forth in 54 FR 38044 (Sept. 14, 1989) which discusses the use of benchmarks for purposes of Section 112 of the Clean Air Act (CAA); see also EPA's interpretation of the upper bound of acceptable risk and the preferred benchmark described in the Letter of Concern regarding EPA Complaint Nos. 01R–22–R6, 02R–22–R6, and 04R–22 –R6 see page 3 footnotes 5 and 6 and page 6 (Ref. 74)). In this fenceline analysis for the ambient air pathway for PCE, estimates of risk to fenceline communities were calculated using 1×10^{-6} as the benchmark for cancer risk in fenceline communities. While EPA is unable to determine, based on the screening level fenceline analysis, whether risks to the general population drive the unreasonable risk, as a matter of risk management policy EPA considers the range of 1×10^{-6} to 1×10^{-4} as the appropriate benchmark for increased cancer risk for the general population, including fenceline communities. It is preferable to have the air concentration of PCE result in an increased cancer risk closer to the 1×10^{-6} benchmark, with the 1×10^{-4} benchmark generally representing the upper bound of acceptability for estimated excess cancer risk. The benchmark value is not a bright line, and the Agency considers a number of factors when determining unreasonable risk, such as the endpoint under consideration, the reversibility of effect, and exposure-related considerations (*e.g.,* duration, magnitude, or frequency of exposure, or population exposed).

In this unit, EPA presents the results of its ambient air pathway fenceline analysis and the uncertainties associated with the analysis. EPA also describes how the proposal to prohibit the manufacturing (include importing), processing, and distribution in commerce of PCE for most industrial and commercial use and all consumer use, and to prohibit most industrial and commercial use of PCE, is expected to reduce the potential risks identified in the screening analysis to any general population or fenceline communities close to facilities engaging in PCE use. This unit also describes how EPA believes the proposed WCPP requirements may reduce exposures to the general population for facilities identified in the fenceline analysis with expected exposures to fenceline communities that are associated with conditions of use EPA is not proposing to prohibit. EPA therefore does not intend to revisit the air pathway for PCE as part of a supplemental risk evaluation.

There are some uncertainties associated with the fenceline analysis for the air pathway for PCE. The TRI dataset used for the single- and the multi-year fenceline analysis and land use analysis does not include actual release point locations which can affect the estimated concentrations at varying distances modeled. To identify the release location for each facility, EPA used a local-coordinate system based on latitude/longitude coordinates reported in TRI. The latitude/longitude coordinates may represent the mailing address location of the office building associated with a very large facility or some other area of the facility rather than the actual release location (*e.g.,* a specific process stack). This discrepancy between the coordinates reported in TRI and the actual release point could result in an exposure concentration that does not represent the actual distance where fenceline communities may be exposed. The fenceline analysis also evaluated the most ''conservative exposure scenario'' that consists of a facility that operates year-round (365 days per year, 24 hours per day, 7 days per week) in a South Coastal meteorologic region and a rural topography setting (Ref. 73). Therefore, the modeled exposures to receptors may be overestimated if there are fewer exposure days per year or hours per day. Additionally, the ambient air fenceline analysis organizes facilities and associated risks by OES and generally crosswalks each OES with the associated condition of use of PCE (Ref. 73). For some OES, EPA identified the associated conditions of use to the category level in the December 2020 Risk Evaluation for PCE but was unable identify to the conditions of use to the subcategory level due to limited information on activities and use of PCE reported under TRI. Therefore, some OES indicating increased cancer risk from ambient air exposures to PCE in the air fenceline analysis may be associated with one or more conditions of use of PCE.

EPA's single year fenceline analysis for the ambient air pathway, based on methods presented to the SACC, evaluated PCE releases reported to TRI over the 2019 reporting year. This single year fenceline analysis identified 65 facilities with some indication of releases and potential exposure with associated cancer risk to receptors within select distances evaluated from 5 to 1,000 meters from the respective releasing facility. Separately, following SACC feedback, EPA applied a slightly modified pre-screening methodology to evaluate 6 years of PCE release data (2015 through 2020 TRI data as well as the 6-year average of that data) rather than a single year of data for facilities with reported releases in TRI. The multi-year fenceline analysis identified 30 facilities with some indication of releases and potential exposures and associated cancer risk at a distance of 100 meters from the releasing facility. Based on the multi-year fenceline analysis, 12 of these 30 facilities either had risks above the benchmark for cancer at distances farther out to 100 meters when compared to the single year analysis or are facilities that were not captured in the single-year analysis (*e.g.,* did not report in 2019 TRI). Although the multi-year analysis identified several additional facilities with risk estimates above the benchmark for cancer farther out when

compared to the single year analysis or that were not captured in the single-year analysis, the results of overall risk profiles (*i.e.,* OES and corresponding conditions of use with risk estimates above the benchmark for cancer at the distances evaluated) for the single year and multi-year fenceline analyses are the same. While the fenceline analysis identified facilities with some indication of releases and potential exposure with associated increased cancer risk that exceeds the 1×10^{-6} benchmark at a distance of 100 meters from the releasing facility, the analysis did not identify any facilities exceeding the 1×10^{-4} benchmark; the highest risk estimate is in the 1×10^{-5} range (Ref. 73).

EPA conducted a land use analysis to determine if EPA can reasonably expect an exposure to fenceline communities to occur within the modeled distances for facilities where there was an indication of risk in the single year or multi-year fenceline analysis. This review consisted of a visual analysis using aerial imagery and interpreting land/use zoning practices around the facility to identify where residential, industrial/commercial businesses, or other public spaces are present within those radial distances indicating risk (as opposed to uninhabited areas), as well as whether the radial distances lie outside the boundaries of the facility. The land use analysis of the 65 facilities indicating risk in the single-year fenceline analysis identified 24 facilities with expected exposure to fenceline communities. The land use analysis of the 12 additional facilities indicating risk in the multi-year fenceline analysis (*i.e.,* facilities where risk estimates were above the benchmark for cancer at distances farther out when compared to the single-year analysis or facilities that were not captured in the single year analysis) identified 5 additional facilities with expected exposure to fenceline communities. Overall, the land use analysis identified a total of 29 facilities, representing eight OES, with expected exposure to fenceline communities. Those eight OES include: maskant for chemical milling; incorporation into formulation, mixture, or reaction product; industrial processing aid; metalworking fluids; other industrial uses—textile processing; degreasing (batch open-top degreasing; batch closed-loop degreasing; conveyorized vapor degreasing; web vapor degreasing; cold cleaning); manufacturing; and processing as a reactant (Ref. 73).

Under the proposed regulatory action described in Unit IV.A., all of the conditions of use associated with the metalworking fluids and other industrial uses—textile processing OES would be prohibited. EPA is also proposing to prohibit the processing into formulation, mixture or reaction product for other chemical products and preparations that may be associated with the facilities for the incorporation into formulation, mixture or reaction product OES; the industrial and commercial use as a processing aid in pesticide, fertilizer and other agricultural chemical manufacturing that may be associated with the facilities for the processing aid OES; and the industrial and commercial use as solvent for cold cleaning that may be associated with the degreasing OES (batch open-top degreasing; batch closed-loop degreasing; conveyorized vapor degreasing; web vapor degreasing; cold cleaning). As a result, exposures to any fenceline communities from these facilities would be addressed under the prohibitions in the proposed rulemaking.

The remaining facilities with expected exposure to fenceline communities may be associated with the following conditions of use that EPA is not proposing to prohibit: manufacturing; processing as a reactant/intermediate; processing into formulation, mixture or reaction product for cleaning and degreasing products; processing into formulation, mixture, or reaction product for paint and coating products; processing into formulation, mixture, or reaction product for adhesives and sealants; industrial and commercial use as solvent for open-top batch vapor degreasing; industrial and commercial use as solvent for closed-loop batch vapor degreasing; industrial and commercial use as solvent for in-line conveyorized vapor degreasing; industrial and commercial use as solvent for in-line web cleaner vapor degreasing; industrial and commercial use in maskants for chemical milling; and industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing. For these conditions of use that may be associated with facilities that indicate expected exposure to fenceline communities, the proposed rule would require strict workplace exposure controls via implementation of a WCPP as described in Unit IV.A.2. Under the proposed WCPP requirements, facilities would need to monitor PCE air concentrations by taking personal breathing zone air samples of potentially exposed persons, which would allow facilities to better understand and manage the total releases of PCE within the facility and potentially stack and fugitive emissions. Furthermore, under the WCPP requirements, facilities would need to evaluate controls to determine how to reduce releases and exposures to potentially exposed persons in the workplace. EPA anticipates that this analysis would help facilities to determine the most effective ways to reduce exposures (including possible engineering controls or elimination/substitution of PCE) and whether those methods for exposure reduction impact releases, and therefore may reduce the overall risk to fenceline communities. EPA requests comment on whether owners and operators should be required to attest to whether and why the exposure controls they have selected would not result in increased air releases of PCE from the workplace, and keep records of that statement as part of the WCPP exposure control plan.

Under the proposed rule, only 17 conditions of use would continue (see Unit IV.C. for a summary). For many of these conditions of use, EPA expects use to decline over time. For example, the manufacturing and processing into formulation, mixture, or reaction product conditions of use can reasonably be expected to decline because, while manufacturing and processing into a formulation, mixture, or reaction product could continue under a WCPP, downstream distribution and use of formulations, mixtures, or reaction products other than for vapor degreasing, chemical milling, adhesives and sealants, petrochemical manufacturing, and laboratory use would be prohibited. Additionally, EPA expects the industrial and commercial use of PCE as a reactant in the generation of HFC–134a and HFC–125 to also decline over time, in light of the AIM Act requirements to phase down production and consumption of listed HFCs by 85% over the next 15 years. HFC–125 and HFC–134a are two of the regulated substances that are subject to the AIM Act phasedown.

For all 17 conditions of use that would remain ongoing, the proposed rule would require strict workplace exposure controls via implementation of a WCPP or prescriptive workplace controls for laboratory use, as described in Unit IV.A.1. In the instances where efforts to reduce exposures in the workplace to levels below the ECEL could lead to adoption of engineering controls that ventilate more PCE outside, EPA believes this potential exposure would be limited as a result of the existing NESHAP for PCE for these conditions of use under the CAA. Applicable NESHAP include: 40 CFR

part 63, subpart F, Synthetic Organic Chemical Manufacturing Industry; 40 CFR part 63, subpart DD, Off-Site Waste and Recovery Operations; 40 CFR part 63, subpart VVV, Publicly Owned Treatment Works; 40 CFR part 63, subpart VVVVVV, Chemical Manufacturing Area Sources; 40 CFR part 63, subpart GG, Aerospace Manufacturing and Rework Facilities; 40 CFR part 63, subpart T, Halogenated Solvent Cleaning, which impose emission standards and work practice requirements reflecting maximum achievable control technologies and generally available control technologies. The CAA required residual risk reviews for standards reflecting maximum achievable control technologies, and technology reviews are required every 8 years for all NESHAP.

EPA's fenceline analysis for the water pathway for PCE, based on methods presented to the SACC, did not find risks from drinking water, incidental oral ingestion of surface water, or incidental dermal exposure to surface water (Ref. 72). EPA therefore does not intend to revisit the water pathway for PCE as part of a supplemental risk evaluation.

B. Environmental Effects of PCE and the Magnitude of Exposure of the Environment to PCE

EPA's analysis of the environmental effects of PCE and the magnitude of exposure of the environment to PCE are in the 2020 Risk Evaluation for PCE (Ref. 1). The unreasonable risk determination for PCE is based solely on risks to human health; based on the TSCA 2020 Risk Evaluation for PCE, EPA determined that exposures to the environment did not drive the unreasonable risk. A summary is presented here.

The manufacturing, processing, use, and disposal of PCE can result in releases to the environment, including aquatic releases of PCE from facilities that manufacture, use, or process PCE. Fate, exposure, and environmental hazard were evaluated in the 2020 Risk Evaluation for PCE in order to characterize environmental risk of PCE. PCE has low bioaccumulation potential and moderate potential to accumulate in wastewater biosolids, soil, or sediment. Releases of PCE to the environment are likely to volatilize to the atmosphere, where it will slowly photooxidize. It may migrate to groundwater, where it will slowly hydrolyze. Additionally, the bioconcentration potential of PCE is low.

Potential effects of PCE exposure described in the literature for aquatic life include mortality, developmental deformities, immobilization, reproductive effects, growth effects, and biomass effects. EPA concluded that PCE poses a hazard to environmental aquatic organisms, including aquatic invertebrates, fish, amphibians, and aquatic plants (algae). For acute exposures, PCE is a hazard to aquatic invertebrates based on immobilization, to fish based on immobilization of midge larvae at 7.0 mg/L, to fish based on mortality of rainbow trout as the most sensitive species with acute toxicity values as low as 4.8 mg/L, and amphibians based on developmental effects to the wood frog as the most sensitive species with acute toxicity values as low as 7.8 mg/L. For chronic exposures, PCE is a hazard to aquatic invertebrates, with a toxicity value of 0.5 mg/L; and a chronic toxicity value of 0.84 mg/L for fish. PCE is also a hazard for green algae with a toxicity value of 3.6 mg/L. EPA incorporated modeled exposure data from the Exposure and Fate Assessment Screening Tool or E–FAST (Ref. 75), as well as monitored data from the Water Quality Portal (Ref. 76), to characterize the exposure of PCE to aquatic species.

In the 2020 Risk Evaluation for PCE, the indicators evaluated for risk of injury to the environment include immobilization from acute exposure, growth effects from chronic exposure, and mortality to algae (Ref. 1). Based on the 2020 Risk Evaluation for PCE, EPA did not identify risk of injury to the environment that drive the unreasonable risk determination for PCE.

C. Benefits of PCE for Various Uses

PCE is a solvent used in a variety of industrial, commercial, and consumer use applications, including as a feedstock in the production of fluorinated compounds, cleaning and degreasing, adhesives and sealants, paints and coatings, lubricants and greases, processing aid, and other uses. The physical and chemical properties of PCE, such as non-flammability, high volatility, low global warming potential, low vapor pressure, high chloride density, high boiling point, and high solvency of oils, waxes, and greases, as well as relatively low cost, make it a popular and effective solvent for many applications (Refs. 1, 77, 78).

The largest uses of PCE, by production volume, are processing as a reactant and as a solvent in dry cleaning and vapor degreasing (Ref. 1). Based on the 2020 Risk Evaluation for PCE, nearly 65% of the production volume of PCE is used as an intermediate in industrial gas manufacturing and producing fluorinated compounds. The leading fluorocarbons being produced from PCE are HFC–134a and HFC–125, although a small amount of PCE may be used in the production of CFC–113 for applications vital to U.S. security exempted under Title VI of the Clean Air Act Amendments of 1990 (40 CFR part 82), HCFC–123, and HCFC–124. The second largest use of PCE is as a solvent in dry cleaning facilities. PCE effectively dissolves fats, greases, waxes and oils, without harming natural or human-made fibers. However, there appears to be a trend towards alternatives to PCE in dry cleaning and the demand for PCE dry cleaning solvents has steadily declined as a result of the improved efficiency of dry cleaning equipment, increased chemical recycling and the popularity of wash-and-wear fabrics that eliminate the need for dry cleaning (Refs. 79, 1). According to the 2020 Risk Evaluation for PCE, the third largest use of PCE is as a vapor degreasing solvent. PCE can be used to dissolve many organic compounds, select inorganic compounds and high-boiling waxes and resins, making it useful for cleaning contaminated metal parts and other fabricated materials (Ref. 79). Based on market research, EPA understands that use of PCE as a vapor degreasing solvent has declined and estimates there are 88 facilities that use PCE for vapor degreasing nationwide (Ref. 3).

PCE has many other uses, which, based on the 2020 Risk Evaluation for PCE, collectively constitute about 10% of the production volume (Ref. 1). In petrochemical manufacturing, PCE is used as a chloriding agent for reforming and isomerization catalyst process units, which account for approximately 45% of the gasoline pool in the United States (Refs. 66, 63). The high chloride density of PCE minimizes the amount of chemical needed for catalyst regeneration compared to other chloriding agents and the non-flammability is important for process considerations. PCE is also used in maskant for chemical milling, plating, and anodizing processes in the aerospace (military, commercial, and space) and non-aerospace military industries (Ref. 1), as well as in a mission-critical elastomer adhesive used in human-rated rocket motor assembly (including rocket motor subsystem components such as the rocket motor nozzle assembly) (Ref. 59).

D. Reasonably Ascertainable Economic Consequences of the Proposed Rule

1. Likely Effect of the Rule on the National Economy, Small Business, Technological Innovation, the Environment, and Public Health

The reasonably ascertainable economic consequences of this proposed rule include several components, all of which are described in the Economic Analysis for this proposed rule (Ref. 3). With respect to the anticipated effects of this proposed rule on the national economy, EPA considered the number of businesses and workers that would be affected and the costs and benefits to those businesses and workers and did not find that there would be an impact on the national economy (Ref. 3). The economic impact of a regulation on the national economy becomes measurable only if the economic impact of the regulation reaches 0.25% to 0.5% of Gross Domestic Product (GDP). Given the current GDP, this is equivalent to a cost of $40 billion to $80 billion. Therefore, because EPA has estimated that the monetized cost of the proposed rule would range from $14.0 million annualized over 20 years at a 3% discount rate and $14.3 million annualized over 20 years at a 7% discount rate, EPA has concluded that this rulemaking is highly unlikely to have any measurable effect on the national economy (Ref. 3). In addition, EPA considered the employment impacts of this proposed rule, and found that the direction of change in employment is uncertain, but EPA expects the short-term and longer-term employment effects to be small.

There are an estimated 12,202 small entities affected by the proposed option with a per firm and total estimated cost impact of $850 and $10.4 million, respectively. Of the small businesses potentially impacted by this proposed rule, over 99% are expected to have impacts of less than 1% to their firm revenues, 0.1% are expected to have impacts between 1 and 3% to their firm revenues, and 0.2% are expected to have impacts greater than 3% to their firm revenues. EPA estimates that there are currently 6,000 firms currently using PCE dry cleaning machines, but estimates that only 62 would still be using PCE for dry cleaning by the end of the proposed 10-year phaseout. As described further in the Economic Analysis, EPA believes that almost no new PCE machines have been brought into service in recent years and therefore most existing dry cleaning machines using PCE are old and will no longer be in service by the proposed phaseout date. Based on the estimated revenues per firm presented in Table 3–1 of the Economic Analysis and the 6,000 estimated number of dry cleaning firms using PCE as dry cleaning solvent (see section 6.1.5 (A) of the Economic Analysis), the total revenue for dry cleaning firms using PCE as dry cleaning solvent is approximately $3.1 billion. According to IRS (2013) data, profit in this sector is about 4.8% of sales, implying that total profit of firms using PCE as dry cleaning solvent is about $148 million. However, EPA has proposed a 10-year phaseout of PCE in dry cleaning and estimates that only about 60 PCE dry cleaning machines would remain at the end of the phaseout (see section 7.7.3. of the Economic Analysis). This suggests that the proposed option would only affect about $31 million of the industry's total revenue and about $1.5 million of the industry's profit. Many of these firms would likely choose to purchase non-PCE machines or become drop shops (do dry cleaning at another site) rather than close. A detailed sensitivity analysis of varying assumptions on ages of PCE dry cleaning machines and PCE dry cleaning machine life is provided in section 11 of the Economic Analysis. EPA requests comment on these estimated impacts to the dry cleaning industry, including regarding expected closures. In addition to dry cleaners, additional users of PCE (such as in vapor degreasing) could be strongly impacted because they may have no economical alternative to the use of PCE.

With respect to this proposed rule's effect on technological innovation, EPA expects this rulemaking to spur more innovation than it will hinder. A prohibition or significant restriction on the manufacture, processing, and distribution in commerce of PCE for uses covered in this proposed rule may increase demand for safer chemical substitutes. This proposed rule is not likely to have significant effects on the environment because PCE does not present an unreasonable risk to the environment, though this proposed rule does present the potential for small reductions in air emissions and soil contamination associated with improper disposal of products containing PCE. The effects of this proposed rule on public health are estimated to be positive, due to the reduced risk of cancer and other non-cancer endpoints from exposure to PCE.

2. Costs and Benefits of the Proposed Regulatory Action and of the One or More Primary Alternative Regulatory Actions Considered by the Administrator

The costs and benefits that can be monetized for this proposed rule are described at length in in the Economic Analysis (Ref. 3). The monetized costs for this proposed rule are estimated to range from $14.0 million annualized over 20 years at a 3% discount rate and $14.3 million annualized over 20 years at a 7% discount rate. The monetized benefits are estimated to be $10.2 to $46.3 million annualized over 20 years at a 3% discount rate and $4.72 million to $29.4 million annualized over 20 years at a 7% discount rate. Costs do not include possible additional costs from prohibition of all uses of PCE (except for petrochemical processing) due to need to switch processes or chemicals. EPA requests comment on costs that may be incurred by firms using PCE products to identify suitable alternatives, test them for their desired applications, learn how to use them safely and effectively, and implement new processes for using the alternative products.

EPA considered the estimated costs to regulated entities as well as the cost to administer and enforce alternative regulatory actions. The primary and second alternative regulatory actions are described in detail in Unit IV.B. The estimated annualized costs of the primary alternative regulatory action are $14.5 million at a 3% discount rate and $14.7 million at a 7% discount rate over 20 years (Ref. 3). The estimated annualized costs of the second alternative regulatory action are $17.8 million at a 3% discount rate and $19.5 million at a 7% discount rate over 20 years. The monetized benefits of the primary alternative action are estimated to be $10.2 to $46.2 million annualized over 20 years at a 3% discount rate and $4.71 million to $29.3 million annualized over 20 years at a 7% discount rate (Ref. 3). The monetized benefits of the second alternative action are estimated to be $10.2 to $46.4 million annualized over 20 years at a 3% discount rate and $4.73 million to $29.4 million annualized over 20 years at a 7% discount rate. Costs of the second alternative action do not include possible additional costs from prohibition of non-petrochemical processing and chemical milling uses of PCE. These costs for chemical milling could be significant as there is no alternative to the use of PCE in chemical milling for many users. For vapor degreasing, as described in the Economic Analysis, EPA assumes that

there are alternatives to PCE for all users, although switching to some of these alternatives may be very expensive due to required revalidation and possible equipment changes. At least one user has told EPA that they have no alternative to the use of PCE in closed-loop vapor degreasing and at least one other user has requested a 10-year phaseout for the use of PCE in vapor degreasing due to the needs for revalidation and possible equipment changes throughout the supply chain (Ref. 3).

This proposal is expected to achieve health benefits for the American public, some of which can be monetized and others that, while tangible and significant, cannot be monetized. EPA believes that the balance of costs and benefits of this proposal cannot be fairly described without considering the additional, non-monetized benefits of mitigating the non-cancer adverse effects. These effects may include neurotoxicity, kidney toxicity, liver toxicity, immunological and hematological effects, reproductive effects, and developmental effects. The multitude of adverse effects from PCE exposure can profoundly impact an individual's quality of life, as discussed in Unit II.A. (overview), III.B.2. (description of the unreasonable risk), VI.A. (discussion of the health effects), and the 2020 Risk Evaluation for PCE. Chronic adverse effects of PCE exposure include both cancer and the non-cancer effects listed above. Acute effects of PCE exposure could be experienced for a shorter portion of life but are nevertheless significant in nature. The incremental improvements in health outcomes achieved by given reductions in exposure cannot be quantified for non-cancer health effects associated with PCE exposure, and therefore cannot be converted into monetized benefits. The qualitative discussion throughout this rulemaking and in the Economic Analysis highlights the importance of these non-cancer effects. These effects include willingness-to-pay to avoid illness, which includes cost of illness and other personal costs such as pain and suffering. Considering only monetized benefits underestimates the impacts of PCE adverse outcomes and therefore underestimates the benefits of this proposed rule.

3. Cost Effectiveness of the Proposed Regulatory Action and of the 1 or More Primary Alternative Regulatory Actions Considered by the Administrator

Cost effectiveness is a method of comparing certain actions in terms of the expense per item of interest or goal. A goal of this proposed regulatory action is to prevent unreasonable risk resulting from exposure to PCE. The proposed regulatory action would cost $3.0 million per potential prevented cancer case while the primary alternative regulatory action would cost $3.1 million (using the 3% discount rate) and the second alternative regulatory action would cost $3.8 million to achieve the same goals. At a 7% discount rate, the proposed regulatory action would cost $3.0 million per potential prevented cancer case while the primary alternative regulatory action would cost $3.1 million, and the second alternative regulatory action would cost $4.2 million to achieve the same goals. While the proposed regulatory action is lower in cost compared to the other alternative actions, the difference is small (Ref. 3).

VII. TSCA Section 9 Analysis, Section 14, and Section 26 Considerations

A. TSCA Section 9(a) Analysis

TSCA section 9(a) provides that, if the Administrator determines, in the Administrator's discretion, that an unreasonable risk may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA, the Administrator must submit a report to the agency administering that other law that describes the risk and the activities that present such risk. Section 9(a) describes additional procedures and requirements to be followed by EPA and the other Federal agency following submission of any such report. As discussed in this unit, for this proposed rule, the Administrator proposes to exercise his discretion not to determine that the unreasonable risk from PCE under the conditions of use may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA.

In addition, TSCA section 9(d) instructs the Administrator to consult and coordinate TSCA activities with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burdens of duplicative requirements. For this proposed rule, EPA has and continues to coordinate with appropriate Federal executive departments and agencies, including OSHA and the Consumer Product Safety Commission (CPSC), to, among other things, identify their respective authorities, jurisdictions, and existing laws with regard to PCE, which are summarized in this unit.

OSHA requires that employers provide safe and healthful working conditions by setting and enforcing standards and by providing training, outreach, education and assistance. As described in Unit II.C., OSHA, in 1971, established a PEL for PCE of 100 ppm of air as an 8-hour TWA with an acceptable ceiling concentration of 200 ppm and an acceptable maximum peak above the acceptable ceiling concentration for an eight-hour shift of 300 ppm, maximum duration of 5 minutes in any 3 hours. However, the exposure limits established by OSHA are higher than the exposure limit that EPA determined would be sufficient to address the unreasonable risk identified under TSCA from occupational inhalation exposures associated with certain conditions of use. Gaps exist between OSHA's authority to set workplace standards under the OSH Act and EPA's obligations under TSCA section 6 to eliminate unreasonable risk presented by chemical substances under the conditions of use. Health standards issued under section 6(b)(5) of the OSH Act must reduce significant risk only ''to the extent feasible.'' 29 U.S.C. 655(b)(5). To set PELs for chemical exposure, OSHA must first establish that the new standards are economically and technologically feasible (79 FR 61384, 61387, Oct. 10, 2014). But under TSCA section 6(a), EPA's substantive burden is to demonstrate that, as regulated, the chemical substance no longer presents an unreasonable risk, with unreasonable risk being determined without consideration of costs or other nonrisk factors. Thus, if OSHA were to initiate a new action to lower its PEL, the difference in standards between the OSH Act and TSCA may well result in the OSHA PEL being set at a higher level than the exposure limit that EPA determined would be sufficient to address the unreasonable risk under TSCA.

In addition, OSHA may set exposure limits for workers, but its authority is limited to the workplace and does not extend to consumer uses of hazardous chemicals, and thus OSHA cannot address the unreasonable risk from PCE under all of its conditions of use, which include consumer uses. OSHA also does not have direct authority over State and local employees, and it has no authority over the working conditions of State and local employees in States that have no OSHA-approved State Plan under 29 U.S.C. 667.

CPSC, under authority provided to it by Congress in the CPSA, protects the public from unreasonable risk of injury or death associated with the use of consumer products. Under the CSPA, CPSC has the authority to regulate PCE in consumer products, but not in other sectors such as automobiles, industrial

and commercial products, or aircraft, for example. Further, a consumer product safety rule under the CPSA must include a finding that ''the benefits expected from the rule bear a reasonable relationship to its costs,'' 15 U.S.C. 2058(f)(3)(E), whereas EPA must apply TSCA risk management requirements to the extent necessary so that the chemical no longer presents unreasonable risk and only consider costs and benefits of the regulatory action to the extent practicable, 15 U.S.C. 2605(a), (c)(2). Additionally, the 2016 amendments to TSCA reflect Congressional intent to ''delete the paralyzing 'least burdensome' requirement,'' 162 Cong. Rec. S3517 (June 7, 2016), a reference to TSCA section 6(a) as originally enacted, which required EPA to use ''the least burdensome requirements'' that protect ''adequately'' against unreasonable risk, 15 U.S.C. 2605(a) (1976). However, a consumer product safety rule under the CPSA must impose ''the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.'' 15 U.S.C. 2058(f)(3)(F). Analogous requirements, also at variance with recent revisions to TSCA, affect the availability of action CPSC may take under the Federal Hazardous Substances Act (FHSA) relative to action EPA may take under TSCA. 15 U.S.C. 1262.

EPA therefore concludes that TSCA is the only regulatory authority able to prevent or reduce unreasonable risk of PCE to a sufficient extent across the range of conditions of use, exposures and populations of concern. This unreasonable risk can be addressed in a more coordinated, efficient and effective manner under TSCA than under different laws implemented by different agencies. Moreover, the timeframe and any exposure reduction as a result of updating OSHA or CPSC regulations cannot be estimated, while TSCA requires a much more accelerated 2-year statutory timeframe for proposing and finalizing regulatory requirements to address unreasonable risk. Further, there are key differences between the finding requirements of TSCA and those of the OSH Act, CPSA, and FHSA. For these reasons, in the Administrator's discretion, the Administrator has analyzed this issue and does not determine that unreasonable risk from PCE may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA. However, EPA is requesting public comment on this issue (*i.e.,* the sufficiency of an action taken under a Federal law not administered by EPA).

B. TSCA Section 9(b) Analysis

If EPA determines that actions under other Federal laws administered in whole or in part by EPA could eliminate or sufficiently reduce a risk to health or the environment, TSCA section 9(b) instructs EPA to use these other authorities to protect against that risk unless the Administrator determines in the Administrator's discretion that it is in the public interest to protect against such risk under TSCA. In making such a public interest finding, TSCA section 9(b)(2) states: ''the Administrator shall consider, based on information reasonably available to the Administrator, all relevant aspects of the risk . . . and a comparison of the estimated costs and efficiencies of the action to be taken under this title and an action to be taken under such other law to protect against such risk.''

Although several EPA statutes have been used to limit PCE exposure (Ref. 6), regulations under those EPA statutes have limitations because they largely regulate releases to the environment, rather than occupational or consumer exposures. While these limits on releases to the environment are protective in the context of their respective statutory authorities, regulation under TSCA is also appropriate for occupational and consumer exposures and in some cases can provide upstream protections that would prevent the need for release restrictions required by other EPA statutes (*e.g.,* Resource Conservation and Recovery Act (RCRA), CAA, Clean Water Act (CWA)).

The primary exposures and unreasonable risk to consumers, bystanders, workers, and ONUs would be addressed by EPA's proposed prohibitions and restrictions under TSCA section 6(a). In contrast, the timeframe and any exposure reduction as a result of updating regulations for PCE under the CAA, CWA, or RCRA cannot be estimated, nor would they address the direct human exposure to consumers, bystanders, workers, and ONUs from the conditions of use evaluated in the 2020 Risk Evaluation for PCE. More specifically, none of EPA's other statutes (*e.g.,* RCRA, CAA, CWA) can address exposures to workers and ONUs related to the specific activities that result in occupational exposures, for example those associated with RCRA covered disposal requirements. EPA therefore concludes that TSCA is the most appropriate regulatory authority able to prevent or reduce risks of PCE to a sufficient extent across the range of conditions of use, exposures, and populations of concern.

For these reasons, the Administrator does not determine that unreasonable risk from PCE under the conditions of use evaluated in the 2020 TSCA Risk Evaluation for PCE could be eliminated or reduced to a sufficient extent by actions taken under other Federal laws administered in whole or in part by EPA.

C. TSCA Section 14 Requirements

EPA is also providing notice to manufacturers, processors, and other interested parties about potential impacts to CBI that may occur if this rule is finalized as proposed. Under TSCA section 14(b)(4), if EPA promulgates a rule pursuant to TSCA section 6(a) that establishes a ban or phase-out of a chemical substance, the protection from disclosure of any CBI regarding that chemical substance and submitted pursuant to TSCA will be ''presumed to no longer apply,'' subject to the limitations identified in TSCA section 14(b)(4)(B)(i) through (iii). If this rule is finalized as proposed, then pursuant to TSCA section 14(b)(4)(B)(iii), the presumption against protection from disclosure would apply only to information about the specific conditions of use that this rulemaking would prohibit or phase out. Manufacturers or processors seeking to protect such information would be able to submit a request for nondisclosure as provided by TSCA sections 14(b)(4)(C) and 14(g)(1)(E). Any request for nondisclosure would need to be submitted within 30 days after receipt of notice from EPA under TSCA section 14(g)(2)(A). EPA anticipates providing such notice via the Central Data Exchange or CDX.

D. TSCA Section 26 Considerations

In accordance with TSCA section 26(h), EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science. As in the case of the unreasonable risk determination, risk management decisions for this proposed rule, as discussed in Unit III.B.3. and Unit V., were based on a risk evaluation that was subject to public comment and independent, expert peer review, and was developed in a manner consistent with the best available science and based on the weight of the scientific evidence as required by TSCA sections 26(h) and (i) and 40 CFR 702.43 and 702.45.

In particular, the ECEL value incorporated into the WCPP and de

minimis concentration limit are derived from the analysis in the 2020 Risk Evaluation for PCE; they likewise represent decisions based on the best available science and the weight of the scientific evidence (Refs. 10, 45, 53). The ECEL value of 0.14 ppm as an 8-hour TWA is based on the chronic non-cancer HEC for neurotoxicity identified in the 2020 Risk Evaluation for PCE, which is the concentration at which an adult human would be unlikely to suffer adverse effects if exposed for a working lifetime, including susceptible subpopulations. As discussed in Unit V.A.1., EPA used models from the 2020 Risk Evaluation for PCE to derive the proposed de minimis concentration limit, which represents a level below which EPA would not expect product use to drive unreasonable risk.

The extent to which the various information, procedures, measures, methods, protocols, methodologies or models, as applicable, used in EPA's decisions have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for this rulemaking. Additional information on the peer review and public comment process, such as the peer review plan, the peer review report, and the Agency's response to comments, can be found in EPA's risk evaluation docket (Docket ID No.: EPA–HQ–OPPT–2016–0732).

VIII. Requests for Comment

EPA is requesting public comment on all aspects of this proposal, including the proposed and alternative regulatory actions and all individual elements of these, and all supporting analysis. Additionally, within this proposal, the Agency is soliciting feedback from the public on specific issues throughout this proposed rule. For ease of review, this section summarizes those specific requests for comment.

1. EPA is requesting public comment on all elements of the proposed regulatory action and the alternative regulatory actions.

2. EPA is requesting public comment regarding the need for exemptions from the rule (and under what specific circumstances), including exemptions from the proposed regulatory action (*e.g.,* a WCPP) and the primary and second alternative regulatory actions, pursuant to the provisions of TSCA section 6(g).

3. EPA requests comment on all elements of the IRFA, and, in particular, the flexibilities that EPA has identified following input from the SERs during the SBAR process.

4. EPA requests comment on whether EPA should promulgate definitions for the conditions of use covered by the 2020 Risk Evaluation for PCE that would not be prohibited, and, if so, whether the descriptions in this unit are consistent with the conditions of use evaluated in the 2020 Risk Evaluation for PCE and whether they provide a sufficient level of detail to improve the clarity and readability of the regulation.

5. EPA requests comment on the impacts, if any, a prohibition on the processing of PCE into a formulation, mixture or reaction product in other chemical products and preparations, or other aspects of this proposal, may have on the production and availability of any pesticide or other substance excluded from the TSCA definition of ''chemical substance.''

6. EPA requests comment regarding the number of businesses or other entities that could potentially close as well as associated costs with a prohibition of PCE for certain industrial and commercial conditions of use identified in this unit.

7. EPA requests comment on the proposed compliance dates for prohibitions of PCE manufacturing, processing, distribution in commerce, and use and whether additional time is needed, for example, for products to clear the channels of trade, or for implementing the use of substitutes; comments should include documentation such as the specific use of the chemical throughout the supply chain; concrete steps taken to identify, test, and qualify substitutes for those uses (including details on the substitutes tested and the specific certifications that would require updating); and estimates of the time required to identify, test, and qualify substitutes with supporting documentation. EPA also requests comment on whether these are the appropriate types of information for use in evaluating compliance requirements, and whether there are other considerations that should apply.

8. EPA requests comment on the amount of time needed, for example, for dry cleaners to transition to an alternative process or solvent. EPA also requests comment regarding the number of entities that could potentially close as well as associated costs with a 10-year phaseout of PCE for use in dry cleaning as identified in this unit.

9. EPA requests comment on allowing a de minimis level of PCE in products (*i.e.,* concentrations less than 0.1% by weight) to account for impurities.

10. EPA is soliciting comment regarding an ECEL action level that is half the ECEL and any associated provisions related to the ECEL action level when the ECEL is significantly lower than the OSHA PEL.

11. EPA is requesting comment on issues around the viability of current analytical methods and detection limits for occupational perchloroethylene sampling and/or monitoring methods.

12. EPA is soliciting comments regarding the timing of the initial exposure monitoring so that it would be representative of all tasks involving PCE where exposures may approach the ECEL. EPA is also soliciting comments regarding use of area sampling instead of personal breathing zone as a representative sample of exposures.

13. EPA requests comment on the timeframes for periodic monitoring outlined in Table 1 of this unit.

14. EPA is soliciting comment on requiring warning signs to demarcate regulated areas, such as the requirements found in OSHA's General Industry Standard for Beryllium.

15. EPA requests comment on available methods to measure the effectiveness of engineering and administrative controls in preventing or reducing the potential for direct dermal contact to PCE. EPA is also requesting comment on available monitoring methods, such as charcoal patch testing, as feasible or effective methods to measure potential direct dermal contact with PCE.

16. EPA is requesting comment on whether there should be a requirement to replace cartridges or canisters after a certain number of hours, such as the requirements found in OSHA's General Industry Standard for 1,3-Butadiene, or a requirement for a minimum service life of non-powered air-purifying respirators such as the requirements found in OSHA's General Industry Standard for Benzene.

17. EPA is soliciting comments on the requirements proposed for appropriate PPE selection, the effectiveness of PPE in preventing direct dermal contact with PCE in the workplace, and general absorption and permeation effects to PPE from direct dermal exposure. In addition, EPA understands that some workplaces rinse and reuse PPE after minimal use and is therefore soliciting comments on the impact on effectiveness of rinsing and reusing certain types of PPE, either gloves or protective clothing and gear. EPA also requests comment on the degree to which additional guidance related to use of PPE might be appropriate.

18. EPA is requesting comment on how owners and operators can engage with potentially exposed persons on the development and implementation of an exposure control plan and PPE program.

19. EPA requests comment relative to the ability of owners or operators to conduct initial monitoring within 6 months after date of publication of the final rule in the **Federal Register**, and anticipated timelines for any procedural adjustments needed to comply with the requirements outlined in this unit, including establishment of a respiratory protection program and development of an exposure control plan. EPA also requests comment relative to the ability of owners or operators to implement processes for occupational conditions of use which are subject to DDCC requirements within 12 months of publication of the final rule in the **Federal Register**, and anticipated timelines for any procedural adjustments needed to comply with the requirements outlined in this unit.

20. EPA requests comment on whether it should incorporate in the rule best practices to ensure proper and adequate performance of laboratory fume hoods, such as those identified in OSHA's 29 CFR 1910.1450, Appendix A National Research Council Recommendations Concerning Chemical Hygiene in Laboratory. Additionally, EPA requests comment relative to the ability of owners or operators to implement laboratory chemical fume hood and dermal PPE related requirements within 12 months of publication of the final rule, and anticipated timelines for any procedural adjustments needed to comply with the requirements outlined in this unit.

21. EPA requests comments on the appropriateness of identified compliance timeframes for recordkeeping and downstream notification requirements described in this unit.

22. EPA requests comment on the primary alternative regulatory action (a combination of prohibitions, requirements for a WCPP, and prescriptive controls) and whether any elements of this primary alternative regulatory action described in this unit should be considered as EPA develops the final regulatory action. In particular, EPA is requesting comment on the likelihood of successful compliance with a PCE WCPP, as described in Unit IV.A., for the conditions of use listed for the primary alternative regulatory action of PCE WCPP in Unit IV.B. Further, EPA is soliciting comment on prescribing specific engineering or administrative controls that would reduce inhalation and dermal exposures enough to address the unreasonable risk across all workplaces engaged in a condition of use. EPA also requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

23. EPA requests comment on the ways in which PCE may be used in the conditions of use for which the primary alternative regulatory action would require a WCPP, including whether activities may take place in a closed system and the degree to which users of PCE in these sectors could successfully implement an ECEL, DDCC, and ancillary requirements described in Unit IV.A. For the industrial and commercial use in laboratory chemicals, EPA is soliciting comment on non-prescriptive requirements of an ECEL and DDCC as compared to the prescriptive workplace controls of fume hood and dermal PPE EPA is proposing in Unit IV.A.3.

24. Regulated entities would be required to implement an exposure control plan within 18 months after date of publication of the final rule in the **Federal Register**. EPA requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

25. EPA is soliciting comment on prescribing specific dermal PPE, such as gloves, for each condition of use that should be considered as EPA develops the final regulatory action. Additionally, EPA is soliciting comment on prescribing specific respirators or APFs for respirators for each condition of use that should be considered as EPA develops the final regulatory action.

26. EPA is requesting comment on specific controls that mitigate the unreasonable risk from PCE and that could be included as part of a prescriptive workplace controls requirement, which could be considered as EPA develops the final regulatory action. Specifically, EPA is soliciting comment on combinations of specific engineering controls, administrative controls, and PPE that would reduce inhalation exposures to at or below the ECEL of 0.14 ppm as an 8-hour TWA or prevent direct dermal contact with PCE for all workplaces where such controls would be required. EPA also is soliciting comment on the extent to which such requirements could reduce inhalation exposures to at or below the ECEL of 0.014 ppm as an 8-hour TWA. Additionally, EPA is requesting comment on the compliance timeframe needed to implement engineering controls, administrative controls, and PPE that reduce inhalation exposures to at or below the ECEL of 0.14 ppm as an 8-hour TWA or prevent direct dermal contact with PCE for all regulated entities.

27. EPA requests comment on a combination of the 1% concentration limit for adhesives and sealants with specific engineering controls, administrative controls, or respiratory protection that would reduce inhalation exposures to PCE at or below the ECEL of 0.14 ppm as an 8-hour TWA. Additionally, EPA is requesting comment on a combination of a concentration limit with WCPP requirements. EPA also requests monitoring data, formulations used, and detailed descriptions of PCE involving activities for the industrial and commercial use in solvent-based adhesives and sealants to determine whether a concentration limit would reduce inhalation exposures such that risks are no longer unreasonable.

28. EPA requests comment on the second alternative regulatory action (a combination of prohibition and a WCPP) and whether any elements of this second alternative regulatory action described in this unit should be considered as EPA develops the final regulatory action. EPA also requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

29. EPA requests comments on all aspects of the section 6(g) exemption from the prohibition on industrial and commercial use of PCE in maskant for chemical milling as part of the second alternative regulatory option, including information on the extent to which the industry could meet the requirements of the proposed WCPP or prescriptive controls and whether compliance with specific elements of the proposed WCPP should also be required during the period of the exemption.

30. EPA requests comments on all aspects of the exemption request and proposed exemption from the prohibition on use of PCE in vapor degreasing as part of the second alternative regulatory action, including information on the extent to which this industry could meet the requirements of the proposed WCPP or prescriptive controls and whether compliance with specific elements of the proposed WCPP should also be required during the period of the exemption.

31. EPA is requesting comment on whether to consider a regulatory alternative that would subject more conditions of use to a WCPP, instead of prohibition, than those currently contemplated in the primary alternative regulatory action. EPA also requests monitoring data and detailed descriptions of PCE involving activities for these conditions of use to determine

whether these additional conditions of use could comply with the WCPP such that risks are no longer unreasonable.

32. EPA is requesting comment on whether vapor degreasing of parts and components for non-aerospace applications should also be exempt from prohibition as part of the second alternative regulatory action for the industrial and commercial use of PCE in vapor degreasing. To facilitate EPA's consideration of exemptions for other sectors, comments in support of additional exemptions should include detailed explanations of why and how long exemptions would be needed.

33. EPA is soliciting comment on whether it should specify the type of vapor degreasing operation, such as closed loop batch vapor degreasing, that would be exempt from prohibition as part of the second alternative regulatory action for the industrial and commercial use of PCE in vapor degreasing for aerospace parts and whether it should consider different exemption timeframes for different types of vapor degreasing operations.

34. Each owner or operator would be required to provide respiratory protection to all potentially exposed persons in the regulated area within 3 months after receipt of the results of any exposure monitoring or within 6 months after date of publication of the final rule in the **Federal Register**. Regulated entities would be required to implement an exposure control plan within 9 months after date of publication of the final rule in the **Federal Register**. EPA requests comment on any advantages or drawbacks for the timelines outlined in this unit compared to the timelines identified for the proposed regulatory action in Unit IV.A.

35. EPA is requesting comment on the de minimis concentration limit of PCE in products or formulations.

36. EPA is requesting comment on the extent to which facilities engaged in the industrial and commercial use of PCE as a processing aid in catalyst regeneration in petrochemical manufacturing may already meet the requirements in the proposed and alternative regulatory actions described in Unit IV. to address the unreasonable risk and is soliciting comment on the impact of such requirements on petroleum refining, with special attention to the price of gasoline.

37. EPA is requesting comment on whether preventing dermal contact with PCE through dermal PPE and training would adequately address the unreasonable risk from dermal exposures for the industrial and commercial use in laboratory chemicals.

38. EPA is requesting comment on whether to include a self-certification requirement for purchasing PCE or PCE-containing products.

39. As part of the primary alternative regulatory action, EPA is soliciting comment on prescribing specific engineering or administrative controls that would reduce inhalation and dermal exposures enough to address the unreasonable risk across all workplaces engaged in a condition of use.

40. EPA is soliciting comments on whether, for those product types relevant to industrial, commercial, and consumer conditions of use proposed to be prohibited or significantly restricted where EPA was unable to identify products currently available for sale that contain PCE, there are products in use or available for sale relevant to these conditions of use that contain PCE at this time, so that EPA can ascertain whether there are alternatives that benefit human health or the environment as compared to such use of PCE.

41. EPA is requesting comment on the Alternatives Assessment as a whole.

42. EPA requests comment on whether owners and operators should be required to attest to whether and why the exposure controls they have selected would not result in increased air releases of PCE from the workplace, and keep records of that statement as part of the WCPP exposure control plan.

43. EPA is requesting comment on the estimated economic impacts to the dry cleanining industry, including regarding expected closures.

44. EPA is requesting public comment on an issue raised in its TSCA section 9(a) Analysis (*i.e.,* the sufficiency of an action taken under a Federal law not administered by EPA).

45. EPA requests comments on whether it should incorporate in the rule voluntary consensus standards that meet specified performance criteria for environmental monitoring or measurement and seeks information in support of such comments regarding the availability and applicability of voluntary consensus standards that may achieve the sampling and analytical requirements of the rule in lieu of the proposed approach.

46. Following Panel report recommendations (Ref. 33) and in response to input provided by SERs, EPA is requesting comment on the following topics as outlined in the SBAR Panel Report:

- EPA requests public comment on the extent to which a regulation under TSCA section 6(a) could minimize requirements, such as testing and monitoring protocols, recordkeeping, and reporting requirements, which may exceed those already required under OSHA's regulations for PCE.
- EPA requests comment on the methodology and inputs for the ECEL value that are directly derived from the peer reviewed analysis in the December 2020 Risk Evaluation.
- EPA requests comment on reasonable compliance timeframes for small businesses.
- EPA requests comment on differing compliance or reporting requirements or timetables that account for the resources available to small entities.
- EPA requests public comment on specific compliance timeframes for the laundry industry.
- EPA requests comment on any additional appropriate factors for identifying reasonable compliance timeframes and how to weigh the factors for dry cleaning and other industries.
- EPA requests public comment about the feasibility of entities complying with and monitoring for a potential ECEL of 0.14 ppm. Specifically, EPA aims to obtain more information on potential costs that could be incurred using strategies to meet the requirements of such a standard, such as engineering, administrative, or prescriptive controls and how feasible it would be for entities to implement these strategies in their operations.
- EPA requests public comment about the feasibility of the use of alternatives to PCE and their availability for conditions of use that drive the unreasonable risk.
- EPA requests public comment on the consideration for a TSCA section 6(g) exemption and alternative compliance timeframes for dry cleaning, including information on whether the specific use may be critical or essential, why alternatives may not be feasible for this condition of use, and the ideal time limit for an exemption.

IX. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Risk Evaluation for Perchloroethylene. EPA Document #740–R1–8011. December 2020. *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0502-0058.*

2. EPA. Final Revised Unreasonable Risk Determination for Perchloroethylene, Section 5. December 2022.
3. EPA. Economic Analysis of the Proposed Regulation of Perchloroethylene. RIN 2070–AK84. June 2023.
4. EPA. Access CDR Data: 2016 CDR Data (updated May 2020). Last Updated on May 16, 2022. *https://www.epa.gov/chemical-data-reporting/access-cdr-data#2016.*
5. EPA. Access CDR Data: 2020 CDR Data. Last Updated on May 16, 2022. *https://www.epa.gov/chemical-data-reporting/access-cdr-data.*
6. EPA. Regulatory Actions Pertaining to Perchloroethylene. 2022.
7. OSHA. Standard Interpretations: 8-hr total weight average (TWA) permissible exposure limit (PEL). Accessed January 13, 2023. *https://www.osha.gov/laws-regs/standardinterpretations/1995-10-06-3.*
8. NIOSH. Hierarchy of Controls. Page last reviewed: August 11, 2022. *https://www.cdc.gov/niosh/topics/hierarchy/.*
9. EPA. Perchloroethylene (PCE); Revision to Toxic Substances Control Act (TSCA) Risk Determination; Notice of Availability. **Federal Register** (87 FR 76481, December 14, 2022).
10. EPA. Existing Chemical Exposure Limit (ECEL) for Occupational Use of Perchloroethylene. April 15, 2021. *https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0023.*
11. Cavalleri et al. Perchloroethylene exposure can induce colour vision loss. Neuroscience Letters 179: 162–166. August 10, 1994.
12. Echeverria et al. A Behavioral Evaluation of PCE Exposure in Patients and Dry Cleaners: A Possible Relationship Between Clinical and Preclinical Effects. JOEM Vol. 37, Number 6, 667–680. June 1995.
13. *AFL–CIO* v. *OSHA*, 965 F.2d 962 (11th Cir. 1992).
14. ACGIH. Supplement: Perchloroethylene. CAS: 127–18–4. Copyright 1996.
15. EPA. A Review of the Reference Dose and Reference Concentration Processes. December 2002. *https://hero.epa.gov/hero/index.cfm/reference/details/reference_id/88824.*
16. Cal/OSHA. Hazard Risk Assessment Project for California: Identification of Chemicals of Concern, Possible Risk Assessment Methods, and Examples of Health Protective Occupational Air Concentrations. December 2007. *https://www.cdph.ca.gov/Programs/CCDP,HP/DEODC/OHB/HESIS/CDPH%20Document%20Library/riskreport.pdf.*
17. NIOSH. Criteria for a Recommended Standard: Occupational Exposure to Tetrachloroethylene (Perchloroethylene). Page last reviewed: June 6, 2014. *https://www.cdc.gov/niosh/docs/76-185/default.html.*
18. NIOSH. NIOSH Pocket Guide to Chemical Hazards: Tetrachloroethylene. Page last reviewed: October 30, 2019. *https://www.cdc.gov/niosh/npg/npgd0599.html.*
19. NIOSH. Appendix A—NIOSH Potential Occupational Carcinogens. *https://www.cdc.gov/niosh/npg/nengapdxa.html.*
20. Executive Order 13990. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Federal Register** (86 FR 7037, January 25, 2021).
21. Executive Order 13985. Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. **Federal Register** (86 FR 7009, January 20, 2021).
22. Executive Order 14008. Tackling the Climate Crisis at Home and Abroad. **Federal Register** (86 FR 7619, February 1, 2021).
23. EPA. EPA Announces Path Forward for TSCA Chemical Risk Evaluations. June 30, 2021. *https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations.*
24. SACC. Science Advisory Committee on Chemicals Meeting Minutes and Final Report No. 2022–01. March 15–17, 2022. *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0415-0095.*
25. EPA. Notes from Federalism Consultation on Forthcoming Proposed Rulemakings for Trichloroethylene, Perchloroethylene, and n-Methylpyrrolidone under TSCA Section 6(a). July 22, 2021.
26. EPA. Notes from Tribal Consultations on Forthcoming Proposed Rulemakings for Trichloroethylene (TCE) and Perchloroethylene (PCE). June 15, 2021 and July 8, 2021.
27. Peter Sinsheimer; Green Analytics. Comments on Environmental Justice Consultation for TSCA PCE Risk Management of Dry Cleaning. August 20, 2021.
28. Hans Kim; AQUA Wet Clean. Letter re: Environmental Justice Consultation USEPA TSCA PCE Risk Management. August 20, 2021.
29. W. Heiger-Bernays and G. Nielsen. Comments on Environmental Justice Consultation #2 for TCE and PCE. July 5, 2021.
30. Martin Argüello; Physicians for Social Responsibility. USEPA EJ Consultation Meeting Comments on PCE and TCE TSCA Regulations August 20, 2021.
31. Sa Liu; School of Health Sciences Purdue University. Letter re: Environmental Justice Consultation on Forthcoming Proposed Rulemakings under TSCA Section 6(a). August 20, 2021.
32. EPA. Notes from Environmental Justice Consultations on Forthcoming Proposed Rulemakings for Trichloroethylene (TCE) and Perchloroethylene (PCE). June 16 and July 6, 2021.
33. EPA. Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule Toxic Substances Control Act (TSCA) Section 6(a) Perchloroethylene. February 1, 2023.
34. EPA. Initial Regulatory Flexibility Analysis for Perchloroethylene; Regulation of Perchloroethylene under TSCA § 6(a) Proposed Rule; RIN 2070–AK84. June 2023.
35. EPA. Public Webinar on Perchloroethylene: Risk Evaluation and Risk Management under TSCA Section 6. January 14, 2021. *https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0002.*
36. EPA. Stakeholder Meeting List for Proposed Rulemaking for Perchloroethylene under TSCA Section 6(a).
37. EPA. 2021 Policy on Children's Health. October 5, 2021.
38. EPA. Problem Formulation of the Risk Evaluation for Perchloroehtylene (Ethene, 1,1,2,2-Tetrachloro). EPA Document #EPA–740–R1–7017. May 2018. *https://www.regulations.gov/document/EPA-HQ-OPPT-2016-0732-0080.*
39. EPA. Final Risk Evaluation for Perchloroethylene: Supplemental File: Releases and Occupational Exposure Assessment. December 2020. *https://www.regulations.gov/document/EPA-HQ-OAR-2005-0155-0565.*
40. EPA. Final Scope of the Risk Evaluation for 1,2-Dichloroethane. EPA Document #EPA–740–R–20–005. August 2020. *https://www.regulations.gov/document/EPA-HQ-OPPT-2018-0427-0048.*
41. EPA. Guidelines for Carcinogen Risk Assessment. March 2005. *https://www.epa.gov/risk/guidelines-carcinogen-risk-assessment.*
42. OSHA. Final Rule. Occupational Exposure to Methylene Chloride. **Federal Register** (62 FR 1494, January 10, 1997).
43. Tetrachloroethylene Vapor Monitor (OV–80). *https://acsbadge.com/product/tetrachloroethylene-vapor-monitor-ov-80/.*
44. OSHA. Recommended Practices for Safety and Health Programs. October 2016. *https://www.osha.gov/safety-management.*
45. EPA. Perchloroethylene (PCE): Risk Management Support Documents. November 18, 2022.
46. OSHA. Personal Protective Equipment. 2004. *https://www.osha.gov/sites/default/files/publications/osha3151.pdf.*
47. National Research Council. Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards, Updated Version. 2011. *https://www.nationalacademies.org/our-work/prudent-practices-in-the-laboratory-an-update.*
48. Miria M. Finckenor; NASA. Materials for Spacecraft. 2016.
49. EPA. Meeting with The Chemours Company on Risk Management under TSCA Section 6 and Perchloroethylene. February 23, 2021. *https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0008.*
50. EPA. Meeting with Honeywell on Risk Management under TSCA Section 6 and Perchloroethylene (PCE). March 25, 2021. *https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0018.*
51. EPA. Perchloroethylene (PCE): Risk Management Support—PCE Adhesive Use. May 24, 2023.
52. EPA. Risk Management for Perchloroethylene Supplemental File: Occupational Risk Calculator. CASRN: 127–18–4. December 2021.

53. EPA. Risk Management for Perchloroethylene Supplemental File: Consumer Risk Calculator. CASRN: 127–18–4. March 2021.
54. EPA. Meeting with Spirit AeroSystems on Risk Management under TSCA Section 6 and Perchloroethylene (PCE). March 11, 2021. *https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0013.*
55. IAMAW. Letter to EPA from International Association of Machinists and Aerospace Workers. August 18, 2021.
56. EPA. An Alternatives Assessment for Use of Perchloroethylene RIN 2070–AK84. November 2022.
57. The Boeing Company. Comments Supporting Request for Additional Information on Perchloroethylene (PCE); Rulemaking Under TSCA Section 6(a) May 6, 2022.
58. The Boeing Company. Comments Supporting Request for Additional Information on Perchloroethylene (PCE); Rulemaking Under TSCA Section 6(a). September 23, 2022.
59. NASA. Known Uses of Perchloroethylene. Updated December 14, 2022.
60. Steve Shestag; The Boeing Company. Information on FAA Certification. December 9, 2022.
61. EPA. Meeting with State and Local TSCA Coordination Group on Risk Management under TSCA Section 6 for Perchloroethylene. July 11, 2022.
62. EPA. Meeting with state and local government representatives on Risk Management under TSCA Section 6 for Perchloroethylene. June 17, 2021.
63. EPA. Meeting with Honeywell UOP on Risk Management under TSCA Section 6 for Perchloroethylene (PCE) in Petrochemical Manufacturing. June 9, 2021.
64. AFPM and API. Comment of the American Fuels & Petrochemical Manufacturers and the American Petroleum Institute on Draft Revision to Toxic Substances Control Act (TSCA) Risk Determination Perchloroethylene. August 1, 2022. *https://www.regulations.gov/comment/EPA-HQ-OPPT-2016-0732-0122.*
65. AFPM. AFPM Comments on the Notice—''Problem Formulations for the Risk Evaluations To Be Conducted for the First Chemical Substances Under the Toxic Substances Control Act, and Application of Systematic Review in TSCA Risk Evaluations; Extension of Comment Period; Tetrachloroethylene (also known as perchloroethylene)''. August 16, 2018. *https://www.regulations.gov/comment/EPA-HQ-OPPT-2016-0732-0108.*
66. EPA. Meeting with the American Fuel and Petrochemical Manufacturers on Risk Management under TSCA Section 6 for Perchloroethylene. July 29, 2021.
67. NIOSH. NIOSH Pocket Guide to Chemical Hazards. DHHS (NIOSH) Publication No. 2005–149. September 2007. *https://www.cdc.gov/niosh/npg/default.html.*
68. HSIA. Comment letter from the Halogenated Solvents Industry Alliance, Inc. on the draft perchloroethylene TSCA risk evaluation. July 6, 2020. *https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0502-0053.*
69. EPA. Risk Evaluation for Perchloroethylene (Ethylene, 1,1,2,2-Tetrachloro) Systematic Review Supplemental File: Data Quality Evaluation of Environmental Releases and Occupational Exposure. CASRN: 127–18–4. April 2020.
70. EPA. Meeting with National Cleaners Association on Risk Management under TSCA Section 6 and Perchloroethylene (PCE). January 28, 2021. *https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0720-0006.*
71. EPA. Meeting with New York State Department of Environmental Conservation on Risk Management under TSCA Section 6 for Perchloroethylene. June 10, 2021.
72. EPA. Perchloroethylene: Fenceline Technical Support—Water Pathway. October 6, 2022.
73. EPA. Perchloroethylene: Fenceline Technical Support—Air Pathway. December 8, 2022.
74. OEJECR. EPA Complaint Nos. 01R–22–R6–, 02R–22–R6, and 04R–22–R6. October 12, 2022.
75. EPA. Exposure and Fate Assessment Screening Tool Version 2014 (E–FAST 2014). Washington, DC: Office of Pollution Prevention and Toxics. Last updated: February 17, 2022. *https://www.epa.gov/tsca-screening-tools/e-fast-exposure-and-fate-assessment-screening-tool-version-2014.*
76. National Water Quality Monitoring Council (NWQMC): Water Quality Portal. 2017. *https://www.waterqualitydata.us/.*
77. William P.L. Carter. Development of the SAPRC–07 Chemical Mechanism and Updated Ozone Reactivity Scales. Center for Environmental Research and Technology, College of Engineering, University of California. Revised January 27, 2010.
78. World Meteorological Organization. Scientific Assessment of Ozone Depletion: 2018. Global Ozone Research and Monitoring Project—Report No. 58. *https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf.*
79. ATSDR. Toxicological Profile for Tetrachloroethylene. June 2019. *https://wwwn.cdc.gov/TSP/ToxProfiles/ToxProfiles.aspx?id=265&tid=48.*
80. EPA. Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA); Regulation of Perchloroethylene under TSCA Section 6(a). June 2023.
81. Kevin Ashley. Harmonization of NIOSH Sampling and Analytical Methods With Related International Voluntary Consensus Standards. J Occup Environ Hyg. 12(7): D107–15. June 11, 2015. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4589148/.*

X. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a ''significant regulatory action'', as defined under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA submitted this action to OMB for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. EPA prepared an economic analysis (Ref. 3) of the potential costs and benefits associated with this action, which is also available in the docket and summarized in Unit VI.D.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted to OMB for review and comment under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR No. 2740.01 (Ref. 80). You can find a copy of the ICR in the docket for this proposed rule, and it is briefly summarized here.

There are two primary provisions of the proposed rule that may increase burden under the PRA. The first is downstream notification, which would be carried out by updates to the relevant SDS and which would be required for manufacturers, processors, and distributors in commerce of PCE, who would provide notice to companies downstream upon shipment of PCE about the prohibitions. The information submitted to downstream companies through the SDS would provide knowledge and awareness of the restrictions to these companies. The second primary provision of the proposed rule that may increase burden under the PRA is WCPP-related information generation, recordkeeping, and notification requirements (including development of exposure control plans; exposure level monitoring and related recordkeeping; development of documentation for a PPE program and related recordkeeping; development of documentation for a respiratory protection program and related recordkeeping; development and notification to potentially exposed persons (employees and others in the workplace) about how they can access the exposure control plans, exposure monitoring records, PPE program

implementation documentation, and respirator program documentation; and development of documentation demonstrating eligibility for an exemption from the proposed prohibitions, and related recordkeeping).

Respondents/affected entities: Persons that manufacture, process, use, distribute in commerce, or dispose of PCE or products containing PCE. See also Unit I.A.

Respondent's obligation to respond: Mandatory (TSCA section 6(a) and 40 CFR part 751).

Estimated number of respondents: 12,091.

Frequency of response: On occasion.

Total estimated burden: 64,622 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,625,325 (per year), includes $2,753,517 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. After display in the **Federal Register** when approved, the OMB control numbers for certain EPA regulations in title 40 of the CFR are listed in 40 CFR part 9 and displayed on the form and instructions or collection portal, as applicable.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than August 15, 2023. EPA will respond to ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

As required by section 609(b) of the RFA, EPA convened a SBAR Panel to obtain advice and recommendations from SERs that potentially would be subject to the rule's requirements. The SBAR Panel evaluated the assembled materials and small-entity comments on issues related to elements of an initial regulatory flexibility analysis (IRFA). A copy of the full SBAR Panel Report (Ref. 33) is available in the rulemaking docket.

Pursuant to section 603 of the RFA, 5 U.S.C. 601 *et seq.,* EPA prepared an IRFA (Ref. 34) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The complete IRFA is available for review in the docket and is summarized here.

1. Need for the Rule

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if EPA determines after a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a PESS identified as relevant to the risk evaluation, under the conditions of use, EPA must by rule apply one or more requirements listed in TSCA section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents such risk. PCE was the subject of a risk evaluation under TSCA section 6(b)(4)(A) that was issued in December 2020. In addition, in December 2022, EPA issued a revised unreasonable risk determination that PCE as a whole chemical substance presents an unreasonable risk of injury to health under the conditions of use. As a result, EPA is proposing to take action to the extent necessary so that PCE no longer presents such risk.

2. Objectives and Legal Basis

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if EPA determines through a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more requirements listed in section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents such risk. EPA has determined through a TSCA section 6(b) risk evaluation that PCE presents an unreasonable risk under the conditions of use.

3. Description and Number of Small Entities to Which the Rule Will Apply

The proposed rule potentially affects small manufacturers (including importers), processors, distributors, retailers, users of PCE or of products containing PCE, and entities engaging in disposal. EPA estimates that the proposal would affect approximately 12,202 small entities. Almost half (5,949) of these entities are commercial users of PCE in dry cleaning applications. Users of products containing PCE, including adhesives and sealants, aerosol cleaners/degreasers, liquid cleaners/degreasers, mold cleaners, and other products also account for about half of the affected small entities. EPA also estimates that 69 small entities use PCE in chemical milling, 88 use PCE in recycling and disposal, and 30 incorporate PCE into other formulations, mixtures, and reaction products.

4. Projected Compliance Requirements

To address the unreasonable risk EPA has identified, EPA is proposing to: prohibit most industrial and commercial uses and the manufacture (including import), processing and distribution in commerce, of PCE for those uses; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; prohibit the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 10-year phaseout; require a PCE WCPP, which would include requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact, for certain conditions of use not prohibited; require prescriptive workplace controls for laboratory use; and establish recordkeeping and downstream notification requirements. There are an estimated 12,189 small entities affected by the proposed option with a per firm cost of $715 with a total estimated cost impact of $8.7 million. This includes $6.7 million for WCPP uses, $1.9 million for uses that are prohibited, and $0.1 million for lab uses.

EPA is proposing to prohibit most conditions of use. For most other conditions of use that drive the unreasonable risk determination for PCE, EPA proposes to address the unreasonable risk with a PCE WCPP, which would include a combination of requirements to address unreasonable risk driven by inhalation and dermal exposures in the workplace. A PCE WCPP would encompass restrictions on certain occupational conditions of use and could include provisions for an ECEL, DDCC, and ancillary requirements to support implementation of these restrictions. Due to the low exposure level and stringent requirements in the PCE WCPP that would be necessary to address the unreasonable risk from PCE, EPA identified only a relatively small number of conditions of use where the Agency expected a PCE WCPP could be successfully implemented.

As described in Unit IV.A., the PCE WCPP would be non-prescriptive, in the sense that regulated entities would not be required to use specific controls prescribed by EPA to achieve the

exposure concentration limit. Rather, it would be a performance-based exposure limit that would enable owners or operators to determine how to most effectively meet the exposure limit based on conditions at their workplace.

A central component of the PCE WCPP is the exposure limit. Exposures remaining at or below the ECEL would address any unreasonable risk of injury to health driven by inhalation exposures for occupational conditions of use. EPA's proposed requirements include the specific exposure limits that would be required to meet the TSCA section 6(a) standard to apply one or more requirements to the substance so that it no longer presents unreasonable risk, and also include ancillary requirements necessary for the ECEL's successful implementation as part of a WCPP.

EPA is not proposing reporting requirements beyond downstream notification (third-party notifications). Regarding recordkeeping requirements, three primary provisions of the proposed rule relate to recordkeeping. The first is recordkeeping of general records: all persons who manufacture, process, distribute in commerce, or engage in industrial or commercial use of PCE or PCE-containing products must maintain ordinary business records, such as invoices and bills-of-lading related to compliance with the prohibitions, restrictions, and other provisions of the regulation.

The second is recordkeeping related to WCPP compliance: under the proposed regulatory action, facilities complying with the rule through WCPP would be required to develop and maintain records associated with ECEL exposure monitoring (including measurements, compliance with Good Laboratory Practice Standards, and information regarding monitoring equipment); ECEL compliance (including the exposure control plan, PPE program implementation, and workplace information and training); DDCC compliance (including the exposure control plan, PPE program implementation, basis for specific PPE selection, occurrence and duration of direct dermal contact with PCE, and workplace information and training); and workplace participation. To support and demonstrate compliance, EPA is proposing that each owner or operator of a workplace subject to the WCPP retain compliance records for five years.

EPA is also proposing to require specific prescriptive controls for the industrial and commercial use of PCE in laboratory chemicals. To reduce exposures in the workplace and address the unreasonable risk of injury to health resulting from dermal exposures to PCE identified for the industrial and commercial use as a laboratory chemical, EPA is proposing to require dermal PPE in combination with comprehensive training for tasks particularly related to the use of PCE in a laboratory setting for each potentially exposed person to direct dermal contact with PCE. Additionally, EPA is proposing to require the use of fume hoods in workplaces engaged in the laboratory chemical condition of use. To support and demonstrate compliance, EPA is proposing that each owner or operator of a laboratory workplace subject to the workplace controls for laboratory use requirements retain compliance records for five years.

a. Classes of Small Entities Subject to the Compliance Requirements

The small entities that would be potentially directly regulated by this rulemaking are small entities that manufacture (including import), process, distribute in commerce, use, or dispose of PCE, including retailers of PCE for end-consumer uses.

b. Professional Skills Needed To Comply

Entities that would be subject to this proposal that manufacture (including import), process, or distribute PCE in commerce for consumer use would be required to cease under the proposed rule. The entity would be required to modify their SDS or develop another way to inform their customers of the prohibition on manufacture, processing, and distribution of PCE for consumer use. They would also be required to maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this proposed regulation. These are all routine business tasks that do not require specialized skills or training.

Entities that use PCE in any industrial and commercial capacity that is prohibited would be required to cease under the proposed rule. Restriction or prohibition of these uses will likely require the implementation of an alternative chemical or the cessation of use of PCE in a process or equipment that may require persons with specialized skills, such as engineers or other technical experts. Instead of developing an alternative method themselves, commercial users of PCE may choose to contract with another entity to do so.

Entities that would be permitted to continue to manufacture, process, distribute, use (with the exception for use as a laboratory chemical), or dispose of PCE would be required to implement a WCPP and would have to meet the provisions of the program for continued use of PCE. Entities that would be permitted to continue use of PCE as a laboratory chemical would be required to implement prescriptive workplace controls for laboratory use and would have to meet the provisions of the workplace restrictions for continued use of PCE. A transition to a WCPP or prescriptive workplace controls for laboratory use may require persons with specialized skills such as an engineer or health and safety professional. Instead of implementing the WCPP or workplace controls for laboratory use themselves, entities that use PCE may choose to contract with another entity to do so. Records would have to be maintained for compliance with a WCPP or workplace controls for laboratory use, as applicable. While this recording activity itself may not require a special skill, the information to be measured and recorded may require persons with specialized skills such as an industrial hygienist.

5. Relevant Federal Rules

Because of its health effects, PCE is subject to numerous state, Federal, and international regulations restricting and regulating its use. The following is a summary of the regulatory actions pertaining to PCE; for a full description see appendix A of the 2020 Risk Evaluation for PCE and the summary in the docket (Ref. 6).

EPA has issued numerous rules and notices pertaining to PCE under its various authorities. PCE is a hazardous air pollutant under the CAA (42 U.S.C. 7412(b)(1)). EPA promulgated NESHAP for a number of source-specific categories that emit PCE, including dry cleaning (40 CFR part 63, subpart M) and halogenated solvent cleaning (40 CFR part 63, subpart T).

With this proposed rule under TSCA section 6, certain uses and emissions already regulated under these NESHAP would be prohibited while other uses would be subject to a WCPP.

Programs within EPA implementing other environmental statutes, including, but not limited to, the RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act, the Safe Drinking Water Act, and the CWA, classify PCE as a characteristic and listed hazardous waste (40 CFR 261.24, 40 CFR 261.31, 40 CFR 261.33), a hazardous substance (40 CFR 302.4), a contaminant subject to National Primary Drinking Water Regulations (40 CFR 141.61), and a toxic pollutant (40 CFR 401.15, 40 CFR part 423, appendix A, 40 CFR 131.36) or the

program requires reportable criteria of releases into the environment involving PCE. While TSCA shares equity in the regulation of PCE, EPA does not anticipate this rulemaking to duplicate nor conflict with the aforementioned programs' classifications and associated rules.

In addition to EPA actions, PCE is also subject to other Federal regulations. Under the OSH Act, OSHA established the PEL for PCE at 100 ppm as an 8-hour TWA with an acceptable ceiling concentration of 200 ppm and an acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift of 300 ppm, maximum duration of 5 minutes in any 3 hours. However, EPA recognizes that the existing PEL does not eliminate the unreasonable risk identified by EPA under TSCA, and EPA is therefore proposing to apply new, lower exposure thresholds, derived from the TSCA 2020 Risk Evaluation for PCE, while aligning with existing OSHA requirements where possible. For PCE, this approach would eliminate the unreasonable risk driven by certain conditions of use, reduce burden for complying with the regulations, and provide the familiarity of a pre-existing framework for the regulated community.

Under the FHSA, visual novelty devices containing PCE are regulated by the CPSC (16 CFR 1500.83(a)(31)). Under the FFDCA, the Food and Drug Administration regulates PCE in bottled water and set the maximum permissible level of PCE in bottled water to 0.005 mg/L (21 CFR 165.110). Under the Atomic Energy Act, the Department of Energy Worker Safety and Health Program requires its contractor employees to use the 2005 ACGIH TLV for PCE, which is 25 ppm (8-hour TWA) and 100 ppm Short Term Exposure Limit. Under the Federal Hazardous Material Transportation Act, the Department of Transportation has designated PCE as a hazardous material, and there are special requirements for marking, labeling, and transporting it (49 CFR part 171, 49 CFR part 172, 40 CFR 173.202, and 40 CFR 173.242).

6. Significant Alternatives to the Proposed Rule

EPA analyzed alternative regulatory approaches to identify which would be feasible, reduce burden to small businesses, and achieve the objective of the statute (*i.e.,* applying one or more requirements listed in TSCA section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents an unreasonable risk). As described in more detail in Unit V., EPA considered several factors, in addition to identified unreasonable risk, when selecting among possible TSCA section 6(a) requirements. To the extent practicable, EPA factored into its decisions: the effects of PCE on health and the environment, the magnitude of exposure to PCE of human beings and the environment, the benefits of PCE for various uses, and the reasonably ascertainable economic consequences of the proposed rule. EPA also considered input provided by the SERs in selecting among possible TSCA section 6(a) requirements as part of the proposed regulatory action and alternative regulatory actions, particularly as it related to dry cleaners' compliance timeframes. Overall, EPA expects few dry cleaning facility closures because EPA estimates that only about 60 PCE machines are expected to be in use at the end of the proposed phaseout period, based on SER input and given the age of the machines and the declining trend of use. Additionally, as s part of this analysis, EPA considered—in addition to prohibition, WCPP, and prescriptive controls described earlier—a wide variety of control measures to address the unreasonable risk from PCE such as weight fractions and a point-of-sale self-certification requirement. EPA's analysis of these risk management approaches is detailed in Unit V.A.3. In general, EPA determined that these approaches alone would either not be able to address the unreasonable risk, or, in the case of a weight fraction limit, would result in a product containing so little PCE that it would have the effect of a prohibition.

Weight Fractions: As discussed in Unit V.A.3., EPA considered limiting the weight fraction of PCE in industrial/commercial and consumer products and conducted an analysis to estimate to what extent this would reduce risks from conditions of use that drive the unreasonable risk for PCE. EPA determined that the unreasonable risk from PCE would not be driven by use of products containing PCE at less than 0.1% by weight. Therefore, EPA is proposing a de minimis level for products containing PCE at levels of less than 0.1% to account for impurities that do not drive the unreasonable risk., as described in Unit IV.A.1.d. For most industrial/commercial and consumer conditions of use, the weight fraction or concentration identified through this modeling that would address the unreasonable risk through inhalation or dermal pathways was so low that it was highly unlikely that PCE would still serve its functional purpose in the formulation. EPA thus concluded that a weight fraction limit would essentially function as a prohibition yet with a greater amount of uncertainty regarding compliance and no increased benefit to users; it was therefore not a preferred option. For the industrial and commercial use in solvent-based adhesives and sealants, EPA identified several products available on the market at concentrations of PCE between 0.1% and 1% by weight in the 2020 Risk Evaluation for PCE. As part of the primary alternative regulatory action, EPA would set a concentration limit of PCE in adhesive and sealant products for industrial and commercial use to 1%, as described in Unit IV.B.1.c.

Point-of-sale self-certification: As discussed in Unit V.A.3., EPA also examined the extent to which a point-of-sale self-certification requirement in order to purchase and subsequently use PCE would further ensure that only facilities able to implement and comply with a WCPP or prescriptive controls are able to purchase and use PCE, and self-certify to that. Under a self-certification requirement, entities would submit a self-certification to the distributor or retailer each time PCE is purchased. The self-certification would consist of a statement indicating that the facility is implementing a WCPP or required prescriptive controls to control exposures to PCE; the self-certification would be signed and presented by a person authorized to do so by the facility owner or operator. Copies of the self-certification would be maintained as records by both the owner or operator and the distributor or retailer where PCE was purchased. However, because of the number and types of entities where users can obtain PCE or PCE-containing products, EPA does not believe the added requirement and subsequent burden of a point-of-sale self-certification requirement for the use of PCE would be an effective tool for preventing facilities that may be unable to comply with the WCPP or prescriptive controls of this proposed rulemaking from accessing PCE or PCE-containing products. As such, EPA is not proposing a self-certification requirement as an additional component of the requirements for addressing the unreasonable risk of occupational exposures to PCE.

Prescriptive controls: As discussed in Unit V.A.1., EPA considered prescriptive controls (*i.e.,* engineering or administrative controls, or PPE) and has determined that prescriptive controls may not be able to eliminate unreasonable risk for some conditions of use when used in isolation. In the 2020 Risk Evaluation for PCE, analysis of occupational exposure scenarios (OES) indicated that many conditions of use

still posed risk concerns even with the application of respirators with APF 25 or 50. Because of the uncertainty regarding the feasibility of exposure reductions through engineering controls alone, EPA determined that a PCE WCPP ECEL, which would be accompanied by monitoring requirements in tandem with the implementation of engineering controls, administrative controls, and/or PPE as elements of the program, as appropriate, would more successfully reduce exposure so that the unreasonable risk is addressed. Additionally, relying primarily on respirators and gloves to reduce exposures does not consider other more protective controls in the hierarchy, including elimination, substitution, engineering controls, and administrative controls. For occupational conditions of use where compliance with the PCE WCPP ECEL and DDCC is unlikely to be successful, in most cases prohibitions (rather than prescribed controls) would be more appropriate to ensure that PCE does not present unreasonable risk under the conditions of use. EPA is proposing prescriptive workplace controls for laboratory use to codify assumptions made in the 2020 Risk Evaluation for PCE regarding the use of fume hoods in laboratory settings and because EPA has preliminarily determined that chemically resistant gloves in combination with specific activity training for tasks where dermal exposure can be expected to occur in laboratory settings would address the unreasonable risk resulting from dermal exposures. Additionally, as part of the primary alternative regulatory action, EPA includes certain prescriptive controls (PPE in combination with monitoring, regulated area, and training) for conditions of use for which EPA is proposing WCPP as the regulatory action.

As indicated by this overview, and detailed in Unit V.A, in the review of alternatives, EPA determined that some methods either did not effectively eliminate the unreasonable risk presented by PCE or, for many conditions of use, there was a high degree of uncertainty regarding whether compliance with a comprehensive WCPP or prescriptive controls would be possible to adequately protect potentially exposed persons. The primary alternative regulatory action and second regulatory action were considered and found to provide greater uncertainty in addressing the unreasonable risk from PCE under the conditions of use, resulting in EPA's proposed action. Information on the costs and benefits of the proposed and alternative regulatory actions is available in Chapters 7 and 8 of the Economic Analysis Analysis and analysis on small entity impacts is in Chapter 10 of the Economic Analysis.

EPA considered its authority under TSCA section 6(g) to grant a time-limited exemption for conditions of use where compliance with a requirement would significantly disrupt the national economy, national security, or infrastructure. As described in Units IV.B.2.b. and V.A.2., based on reasonably available information, EPA analyzed the need for an exemption and has found that a TSCA section 6(g) exemption may be warranted under the second alternative regulatory action for the industrial and commercial use in maskant for chemical milling and for the industrial and commercial use in vapor degreasing if the workplaces engaged in those conditions of use cannot meet the requirements of the proposed regulatory action (PCE WCPP) or primary alternative regulatory action (prescriptive controls) such that those conditions of use would no longer drive the unreasonable risk. A section 6(g) exemption may mean that the unreasonable risk will not be fully addressed.

As required under TSCA section 6(c)(2)(C) and detailed in Unit V.B., EPA also considered to the extent practicable whether technically and economically feasible alternatives that benefit human health or the environment, compared to the use so proposed to be prohibited or restricted, will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect. To that end, in addition to the Economic Analysis (Ref. 3), EPA conducted an Alternatives Assessment, using reasonably available information (Ref. 56). For this assessment, EPA identified and analyzed alternatives to PCE in products relevant to industrial, commercial, and consumer conditions of use. Based on reasonably available information, including information submitted by industry, EPA understands viable alternatives to PCE may not be available for several conditions of use—for example, the industrial and commercial use in vapor degreasing for certain applications (Refs. 57, 58)—and considered that information to the extent practicable in the development of the regulatory options.

Regarding timeframes for compliance, as described in Unit IV.A.1, 2, and 3, the proposed compliance dates incorporate EPA's consideration of sustained awareness of risks resulting from PCE exposure as well as precedent established by the OSHA standards (62 FR 1494, January 10, 1997). TSCA requires that EPA propose timeframes that are ''as soon as practicable'' under TSCA section 6(d)(1)(B) and 6(d)(1)(D). TSCA section 6(d)(1)(C) also requires that EPA specify mandatory compliance dates for the start of ban or phase-out requirements ''as soon as practicable'' but not later than five years after the promulgation date of a rule. In developing the proposed compliance timeframes, including for the prohibition and phaseout of PCE in dry cleaning as outlined in Unit IV.A.1.c., EPA considered reasonably available information. EPA has no information indicating that the proposed compliance dates are not practicable for the activities that would be prohibited, or that additional time is needed for products affected by the proposed restrictions to clear the channels of trade. As noted earlier, EPA is seeking public comment on whether additional time is needed for compliance with prohibitions, for products to clear the channels of trade, or for implementing a WCPP or prescriptive controls. EPA may finalize shorter or longer compliance timeframes based on public comment. Regarding potential regulatory flexibilities for compliance dates and timeframes, EPA notes that the primary alternative regulatory action would include longer compliance timeframes for prohibitions. Given the potential severity of impacts from exposure to PCE, EPA's proposed regulatory action and second alternative regulatory action would include relatively rapid compliance timeframes. However, it is possible that longer timeframes would be needed for entities to come into compliance; therefore, the primary alternative regulatory action described in the proposed rule would include longer timeframes for implementation than the proposed regulatory action. These timeframes are detailed in Unit IV. Information on the estimated costs of the shorter and longer timeframes for the dry cleaning phaseout are in Chapter 7.7.3 of the Economic Analysis.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action would affect entities that use PCE. It is not expected to affect State, local, or Tribal governments because the use of PCE by government entities is minimal. This action is not expected to result in expenditures by State, local, and Tribal governments, in the

aggregate, or by the private sector, of $100 million or more (when adjusted annually for inflation) in any 1 year. Accordingly, this action is not subject to the requirements of sections 202, 203, or 205 of UMRA.

E. Executive Order 13132: Federalism

EPA has concluded that this action has federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because regulations under TSCA section 6(a) may preempt State law. As set forth in TSCA section 18(a)(1)(B), the issuance of rules under TSCA section 6(a) to address the unreasonable risk presented by a chemical substance has the potential to trigger preemption of laws, criminal penalties, or administrative actions by a State or political subdivision of a State that are: (1) Applicable to the same chemical substance as the rule under TSCA section 6(a); and (2) Designed to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of that same chemical. TSCA section 18(c)(3) applies that preemption only to the ''hazards, exposures, risks, and uses or conditions of use'' of such chemical included in the final TSCA section 6(a) rule.

EPA provides the following preliminary federalism summary impact statement. The Agency consulted with State and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. This included background presentation on September 9, 2020, and a consultation meeting on July 22, 2021. EPA invited the following national organizations representing State and local elected officials to these meetings: American Water Works Association, Association of Clean Water Administrators, Association of Metropolitan Water Agencies, Association of State Drinking Water Administrators, Environmental Council of the States, National Association of Counties, National Conference of State Legislatures, National Governors Association, National League of Cities, National Water Resources Association, and United States Conference of Mayors. During the consultation, stakeholders in attendance asked about the differences between PCE and TCE, recommended additional reporting requirements as a risk management tool to address the unreasonable risk, suggested EPA look into safer alternatives, and described concerns related to current impacts on drinking water utilities from PCE (Ref. 25). A summary of the meeting with these organizations, including the views that they expressed, is available in the docket (Ref. 25). EPA provided an opportunity for these organizations to provide follow-up comments in writing but did not receive any such comments.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rulemaking would not have substantial direct effects on Tribal governments because PCE is not manufactured, processed, or distributed in commerce by Tribes. PCE is not regulated by Tribes, and this rulemaking would not impose substantial direct compliance costs on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with Tribal officials during the development of this action. The Agency held a Tribal consultation from May 17, 2021, to August 20, 2021, with meetings on June 15, 2021, and July 8, 2021. Tribal officials were given the opportunity to meaningfully interact with EPA risk managers concerning the current status of risk management. During the consultation, EPA discussed risk management under TSCA section 6(a), findings from the 2020 Risk Evaluation for PCE, types of information to inform risk management, principles for transparency during risk management, and types of information EPA is seeking from Tribes (Ref. 26). EPA briefed Tribal officials on the Agency's risk management considerations and encouraged Tribal officials to provide additional comments after the teleconferences. Tribal officials raised no related issues or concerns to EPA during or in follow-up to those meetings (Ref. 26).

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children as reflected by the conclusions of the PCE risk evaluation. This action's health and risk assessments are contained in Unit III.A.3, III.B.2, VI.A. and B., and the 2020 Risk Evaluation for PCE and the Economic Analysis for this proposed rulemaking (Refs. 1 and 3).

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

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

Pursuant to the NTTAA section 12(d), 15 U.S.C. 272., the Agency has determined that this rulemaking involves environmental monitoring or measurement, specifically for occupational inhalation exposures to PCE. Consistent with the Agency's Performance Based Measurement System (PBMS), the Agency proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

For this rulemaking, the key consideration for the PBMS approach is the ability to accurately detect and measure airborne concentrations of PCE at the ECEL and the ECEL action level. Some examples of methods which meet the criteria are included in appendix B of the ECEL memo (Ref. 10). EPA recognizes that there may be voluntary consensus standards that meet the proposed criteria (Ref. 81). EPA requests comments on whether it should incorporate such voluntary consensus standards in the rule and seeks information in support of such comments regarding the availability and applicability of voluntary consensus standards that may achieve the sampling and analytical requirements of the rule in lieu of the PBMS approach.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples. As described more fully in the Economic Analysis, EPA conducted an analysis to characterize the baseline conditions faced by communities and workers affected by the regulation to identify the potential for disproportionate impacts on minority and low-income populations. The baseline characterization suggests that workers in affected industries and regions, as well as residents of nearby communities, are more likely to be people of color than the general population in affected states, although this varied by use assessed. Additionally, based on reasonably available information, the Agency understands that most dry cleaning workers are members of minority populations.

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. While the regulatory options are anticipated to address the unreasonable risk from exposure to PCE to the extent necessary so that it is no longer unreasonable, EPA is not able to quantify the distribution of the change in risk across affected workers, communities, or demographic groups. EPA is also unable to quantify the changes in risks to workers, communities, and demographic groups from non-PCE-using technologies or practices that firms may adopt in response to the regulation to determine whether any such changes could pose EJ concerns. Data limitations that prevent EPA from conducting a more comprehensive analysis are summarized in the Economic Analysis (Ref. 3).

EPA additionally identified and addressed EJ concerns by conducting outreach to advocates of communities that might be subject to disproportionate exposure to PCE, such as minority populations, low-income populations and indigenous peoples. On June 16, 2021, and July 6, 2021, EPA held public meetings as part of this consultation (Ref. 32). See also Unit III.A.1. These meetings were held pursuant to and in compliance with Executive Order 12898 and Executive Order 14008, entitled ''Tackling the Climate Crisis at Home and Abroad'' (86 FR 7619, February 1, 2021).

Following the EJ meetings, EPA received five written comments, in addition to oral comments provided during the consultations. In general, commenters supported strong outreach to affected communities, encouraged EPA to follow the hierarchy of controls, favored prohibitions, and noted the uncertainty, and in some cases inadequacy, of PPE. Commenters also urged the EPA to extend the rulemaking into ongoing releases from hazardous waste and disposal sites, in particular vapor intrusion of PCE from contaminated groundwater, soil, and indoor air. Additionally, commenters expressed concern that the adverse health impacts of PCE dry cleaning fall disproportionately to owners and employees of minority owned small businesses, noted the viability of professional wet cleaning as an alternative to PCE dry cleaning, and urged EPA to consider economic impacts and a financial program to offset transition costs to local communities.

The information supporting the review under Executive Order 12898 is contained in Units I.E., II.D., III.A.1., VI.A., and in the Economic Analysis (Ref. 3). EPA's presentations and fact sheets for the EJ consultations related to this rulemaking, are available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/materials-june-and-july-2021-environmental-justice.* These materials and a summary of the consultation are also available in the public docket for this rulemaking (Ref. 32).

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Michael S. Regan,

Administrator.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR part 751 as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4)

■ 2. Amend § 751.5 by adding in alphabetical order definitions for ''Authorized person'', ''Direct dermal contact'', ''ECEL'', ''Exposure group'', ''Owner or operator'', ''Potentially exposed person'', ''Regulated area'', and ''Retailer'' to read as follows:

§ 751.5 Definitions.

* * * * *

Authorized person means any person specifically authorized by the owner or operator to enter, and whose duties require the person to enter, a regulated area.

* * * * *

Direct dermal contact means direct handling of a chemical substance or mixture or skin contact with surfaces that may be contaminated with a chemical substance or mixture.

ECEL is an Existing Chemical Exposure Limit and means an airborne concentration generally calculated as an eight (8)-hour time-weighted average (TWA).

* * * * *

Exposure group means a group consisting of every person performing the same or substantially similar operations in each work shift, in each job classification, in each work area where exposure to chemical substances or mixtures is reasonably likely to occur.

Owner or operator means any person who owns, leases, operates, controls, or supervises a workplace covered by this part.

* * * * *

Potentially exposed person means any person who may be occupationally exposed to a chemical substance or mixture in a workplace as a result of a condition of use of that chemical substance or mixture.

Regulated area means an area established by the regulated entity to demarcate areas where airborne concentrations of a specific chemical substance exceed, or there is a reasonable possibility they may exceed, the ECEL or the EPA Short-Term Exposure Limit (STEL).

Retailer means a person who distributes in commerce or makes available a chemical substance or mixture to consumer end users, including e-commerce internet sales or

distribution. Any distributor with at least one consumer end user customer is considered a retailer. A person who distributes in commerce or makes available a chemical substance or mixture solely to commercial or industrial end users or solely to commercial or industrial businesses is not considered a retailer.

■ 3. Add subpart G to read as follows:

Subpart G—Perchloroethylene

Sec.
751.601 General.
751.603 Definitions.
751.605 Prohibitions of manufacturing, processing, distribution in commerce, and use.
751.607 Workplace Chemical Protection Program.
751.609 Workplace requirements for laboratory use.
751.611 Downstream notification.
751.613 Recordkeeping requirements.
751.615 Exemptions.

Subpart G—Perchloroethylene

§ 751.601 General.

This subpart establishes prohibitions and restrictions on the manufacture (including import), processing, distribution in commerce, use, and disposal of perchloroethylene (CASRN 127–18–4), also known as tetrachloroethylene, to prevent unreasonable risk of injury to health in accordance with TSCA section 6(a).

§ 751.603 Definitions.

The definitions in subpart A of this part apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply:

Distribute in commerce has the same meaning as in section 3 of the Act, except that the term does not include retailers for purposes of §§ 751.611 and 751.613.

ECEL action level means a concentration of airborne perchloroethylene of 0.07 part per million (ppm) calculated as an eight (8)-hour time-weighted average (TWA).

3rd generation machine means a dry-to-dry machine with a refrigerated condenser, as those terms are defined in 40 CFR part 63, subpart M.

4th or 5th generation machine means a dry-to-dry machine with a carbon adsorber and refrigerated condenser, as those terms are defined in 40 CFR part 63, subpart M.

§ 751.605 Prohibitions of manufacturing, processing, distribution in commerce, and use.

(a) Applicability. The provisions of this section apply to the following uses as indicated in each paragraph of this section:

(1) All consumer use, excluding use of clothing and articles that have been commercially dry cleaned with perchloroethylene.

(2) Processing into formulation, mixture or reaction product in other chemical products and preparations.

(3) Dry cleaning use, including:

(i) Industrial and commercial use in dry cleaning and related spot cleaning in 3rd generation machines; and

(ii) Industrial and commercial use in dry cleaning and related spot cleaning in 4th and 5th generation machines.

(4) All other industrial and commercial use, except for the following:

(i) Those industrial and commercial uses presented in § 751.607(a);

(ii) Laboratory use as described in § 751.609(a); and

(iii) Any industrial and commercial use of clothing and articles that have been commercially dry cleaned with perchloroethylene.

(5) Distribution in commerce.

(b) Prohibitions. (1) After [DATE 12 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons are prohibited from manufacturing (including importing) perchloroethylene for the uses listed in paragraphs (a)(1), (2) and (4) of this section.

(2) After [DATE 15 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons are prohibited from processing perchloroethylene, including any perchloroethylene-containing products, for the uses listed in paragraphs (a)(1), (2) and (4) of this section.

(3) After [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons are prohibited from distributing in commerce (including making available) perchloroethylene, including any perchloroethylene-containing products, to retailers for any use, other than commercial dry cleaning or consumer use of clothing and articles that have been commercially dry cleaned with perchloroethylene.

(4) After [DATE 21 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all retailers are prohibited from distributing in commerce (including making available) perchloroethylene, including any perchloroethylene-containing products. Distribution in commerce by retailers of clothing and articles that have been commercially dry cleaned with perchloroethylene is not subject to the prohibitions described in this paragraph.

(5) After [DATE 21 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons are prohibited from distributing in commerce (including making available) perchloroethylene, including any perchloroethylene-containing products, for the uses described in paragraphs (a)(1) and (4) of this section.

(6) After [DATE 24 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons are prohibited from industrial or commercial use of perchloroethylene, including any perchloroethylene-containing products, for the uses listed in paragraph (a)(4) of this section.

(7) All persons are prohibited from industrial or commercial use of perchloroethylene in dry cleaning machines acquired after [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(8) After [DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons are prohibited from industrial or commercial use of perchloroethylene for the use listed in paragraph (a)(3)(i) of this section.

(9) After [DATE 10 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons are prohibited from the manufacturing (including importing), processing, distribution in commerce, or industrial or commercial use of perchloroethylene for dry cleaning and spot cleaning, including for the use listed in paragraph (a)(3)(ii) of this section.

(c) De minimis level. Products containing perchloroethylene at levels less than 0.1 percent by weight are not subject to the prohibitions described in paragraph (b) of this section.

§ 751.607 Workplace chemical protection program.

(a) Applicability. The provisions of this section apply to workplaces engaged in the following conditions of use of perchloroethylene, unless otherwise indicated in this section, except to the extent the conditions of use are prohibited by § 751.605:

(1) Manufacturing (domestic manufacture);

(2) Manufacturing (import);

(3) Processing as a reactant/intermediate;

(4) Processing into formulation, mixture or reaction product in paint and coating products;

(5) Processing into formulation, mixture or reaction product in cleaning and degreasing products;

(6) Processing into formulation, mixture or reaction product in adhesive and sealant products

(7) Repackaging;

(8) Industrial and commercial use as solvent for open-top batch vapor degreasing;

(9) Industrial and commercial use as solvent for closed-loop batch vapor degreasing;

(10) Industrial and commercial use as solvent for in-line conveyorized vapor degreasing;

(11) Industrial and commercial use as solvent for in-line web cleaner vapor degreasing;

(12) Industrial and commercial use in maskant for chemical milling;

(13) Industrial and commercial use in solvent-based adhesives and sealants;

(14) Industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing;

(15) Recycling; and

(16) Disposal.

(b) Existing chemical exposure limit (ECEL)—*(1)* Applicability. The provisions of this paragraph (b) apply to any workplace engaged in a condition of use that is listed in paragraphs (a)(1) through (14) of this section and not prohibited by § 751.605.

(2) *Eight-hour time-weighted average (TWA) ECEL.* Beginning [DATE 9 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], or beginning 4 months after introduction of perchloroethylene into the workplace if perchloroethylene use commences after [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator must ensure that no person is exposed to an airborne concentration of perchloroethylene in excess of 0.14 parts of perchloroethylene per million parts of air (0.14 ppm) as an eight (8)-hour TWA, in accordance with the requirements of paragraph (d)(1)(i) of this section and, if necessary, paragraph (f) of this section.

(3) *Exposure monitoring*—(i) *General.* (A) Owners or operators must determine each potentially exposed person's exposure by either:

(*1*) Taking a personal breathing zone air sample of each potentially exposed person's exposure; or

(*2*) Taking personal breathing zone air samples that are representative of the 8-hour TWA of each person whose exposure must be monitored.

(B) Representative 8-hour TWA exposures must be determined on the basis of one or more full-shift exposure of at least one person that represents, and does not underestimate, the potential exposure of every person in each exposure group and that represents the highest perchlorethylene exposures likely to occur under reasonably foreseeable conditions of use.

(C) Exposure samples must be analyzed using an appropriate analytical method by a laboratory that complies with the Good Laboratory Practice Standards in 40 CFR part 792.

(D) Owners or operators must ensure that methods used to perform exposure monitoring produce results that are accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of perchloroethylene.

(E) Owners and operators must re-monitor within 15 working days after receipt of any exposure monitoring when results indicate non-detect or air monitoring equipment malfunction, unless an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist reviews the monitoring results and determines re-monitoring is not necessary.

(ii) *Initial monitoring.* (A) Each owner or operator who has a workplace or work operation covered by this section, except as provided for in paragraph (b)(3)(ii)(B) of this section, must perform initial monitoring of potentially exposed persons regularly working in areas where perchloroethylene is present.

(B) The initial monitoring required in paragraph (b)(3)(ii)(A) of this section must be completed by [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] or within 30 days of introduction of perchloroethylene into the workplace, whichever is later. Where the owner or operator has monitoring within five years prior to [the effective date of the final rule] and the monitoring satisfies all other requirements of this section, the owner or operator may rely on such earlier monitoring results to satisfy the requirements of paragraph (b)(3)(ii)(A) of this section.

(iii) *Periodic monitoring.* The owner or operator must establish an exposure monitoring program for periodic monitoring of exposure to perchloroethylene in accordance with table 1 to this paragraph (b)(3)(iii).

TABLE 1 TO § 751.607(b)(3)(iii)—PERIODIC MONITORING REQUIREMENTS

Air concentration condition	Periodic monitoring requirement
If all initial exposure monitoring is below ECEL action level (<0.07 ppm 8-hour TWA)	Periodic exposure monitoring is required at least once every five years.
If the most recent exposure monitoring indicates that airborne exposure is above the ECEL (≤0.14 ppm 8-hour TWA).	Periodic exposure monitoring is required within 3 months of the most recent exposure monitoring.
If the most recent exposure monitoring indicates that airborne exposure is at or above the ECEL action level but at or below the ECEL (≥0.07 ppm 8-hour TWA, ≤0.14 ppm 8-hour TWA).	Periodic exposure monitoring is required within 6 months of the most recent exposure monitoring.
If the two most recent (non-initial) exposure monitoring measurements, taken at least seven days apart within a 6 month period, indicate exposure is below the ECEL action level (<0.07 ppm 8-hour TWA).	Periodic exposure monitoring is required within 5 years of the most recent exposure monitoring.
If the owner or operator engages in a condition of use for which WCPP ECEL is required but does not manufacture, process, use, or dispose of perchlorethylene in that condition of use over the entirety of time since the last required monitoring event.	The owner or operator may forgo the next periodic monitoring event. However, documentation of cessation of use of perchlorethylene is required; and periodic monitoring would be required when the owner or operator resumes the condition of use.

(iv) *Additional monitoring.* (A) The owner or operator must conduct additional initial exposure monitoring whenever there has been a change in the production, process, control equipment, personnel or work practices that may reasonably be expected to result in new or additional exposures above the ECEL action level or when the owner or operator has any reason to believe that new or additional exposures above the ECEL action level have occurred.

(B) Whenever start-ups, shutdown, spills, leaks, ruptures or other breakdowns occur that may lead to

exposure to potentially exposed persons, the owner or operator must conduct additional initial exposure monitoring (using personal breathing zone sampling) after the cleanup of the spill or repair of the leak, rupture or other breakdown.

(v) *Notification of monitoring results.* (A) The owner or operator must inform persons whose exposures are represented by the monitoring of the monitoring results within 15 working days.

(B) This notification must include the following:

(*1*) Exposure monitoring results;

(*2*) Identification and explanation of the ECEL and ECEL action level in plain language;

(*3*) Explanation of any corresponding required respiratory protection as described in paragraph (f) of this section;

(*4*) Descriptions of actions taken by the regulated entity to reduce exposure to or below the ECEL;

(*5*) Quantity of perchloroethylene in use;

(*6*) Location of perchloroethylene use;

(*7*) Manner of perchloroethylene use;

(*8*) Identified releases of perchloroethylene; and

(*9*) Whether the airborne concentration of perchloroethylene exceeds the ECEL limit.

(C) Notice must be provided in plain language writing, in a language that the person understands, to each potentially exposed person or posted in an appropriate and accessible location outside the regulated area with an English-language version and a non-English language version representing the language of the largest group of workers who do not read English.

(4) *Regulated areas.* (i) Beginning [DATE 9 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], or beginning 4 months after introduction of perchloroethylene into the workplace if perchloroethylene use commences after [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator must establish and maintain a regulated area wherever any person's exposure to airborne concentrations of perchloroethylene exceeds or can reasonably be expected to exceed the ECEL.

(ii) The owner or operator must limit access to regulated areas to authorized persons.

(iii) The owner or operator must demarcate regulated areas from the rest of the workplace in a manner that adequately establishes and alerts persons to the boundaries of the area and minimizes the number of authorized persons exposed to perchloroethylene within the regulated area.

(iv) The owner or operator must supply a respirator that complies with the requirements of paragraph (f) of this section and must ensure that all persons within the regulated area are using the provided respirators whenever perchloroethylene exposures may exceed the ECEL.

(v) An owner or operator who has implemented all feasible engineering, work practice and administrative controls as required in paragraph (d)(1)(i) of this section, and who has established a regulated area as required by paragraph (b)(4)(i) of this section where perchloroethylene exposure can be reliably predicted to exceed the ECEL only on certain days (for example, because of work or process schedule) must have persons use respirators in that regulated area on those days.

(vi) The owner or operator must ensure that, within a regulated area, persons do not engage in non-work activities which may increase perchloroethylene exposure.

(vii) The owner or operator must ensure that while persons are wearing respirators in the regulated area, they do not engage in activities which interfere with respirator seal or performance.

(c) Direct dermal contact controls. (1) The provisions of this paragraph (c) apply to any workplace engaged in the conditions of use that are listed in paragraphs (a)(1) through (16) of this section and are not prohibited by § 751.605.

(2) Owners or operators must ensure that all persons are separated, distanced, physically removed, or isolated from direct dermal contact with perchloroethylene in accordance with the requirements of paragraph (d)(1)(ii) of this section and, if necessary, paragraph (f) of this section.

(d) Exposure control procedures and plan—(1) Methods of compliance—(i) ECEL. (A) The owner or operator must institute one or a combination of elimination, substitution, engineering controls or administrative controls to reduce exposure to or below the ECEL except to the extent that the owner or operator can demonstrate that such controls are not feasible.

(B) Wherever the feasible exposure controls, including one or a combination of elimination, substitution, engineering controls or administrative controls, which can be instituted are not sufficient to reduce exposure to or below the ECEL, the owner or operator must use them to reduce exposure to the lowest levels achievable by these controls and must supplement them by the use of respiratory protection that complies with the requirements of paragraph (f) of this section. Where an owner or operator cannot demonstrate exposure below the ECEL, including through the use of engineering controls or work practices, and has not demonstrated that it has supplemented feasible exposure controls with respiratory protection that complies with the requirements of paragraph (f) of this section, this will constitute a failure to comply with the ECEL.

(C) The owner or operator must maintain the effectiveness of engineering controls and administrative controls instituted under paragraph (d)(1)(i)(A) of this section.

(D) The owner or operator must not implement a schedule of personnel rotation as a means of compliance with the ECEL.

(E) The owner or operator must document their exposure control strategy and implementation in an exposure control plan in accordance with paragraph (d)(2) of this section.

(ii) *Direct dermal contact control requirements.* (A) The owner or operator must institute one or a combination of elimination, substitution, engineering controls, or administrative controls to prevent all persons from direct dermal contact with perchloroethylene except to the extent that the owner or operator can demonstrate that such controls are not feasible.

(B) Wherever the feasible exposure controls, including one or a combination of elimination, substitution, engineering controls or administrative controls, which can be instituted are not sufficient to prevent direct dermal contact, the owner or operator must use them to reduce direct dermal contact to the extent achievable by these controls and must supplement them by the use of dermal personal protective equipment that complies with the requirements of paragraph (f) of this section. Where an owner or operator cannot demonstrate direct dermal contact is prevented, including through the use of engineering controls or work practices, and has not demonstrated that it has supplemented feasible exposure controls with dermal personal protective equipment that complies with the requirements of paragraph (f) of this section, this will constitute a failure to comply with the direct dermal contact control requirements.

(C) The owner or operator must maintain the effectiveness of engineering controls and administrative

controls instituted under paragraph (d)(1)(ii)(A) of this section.

(D) The owner or operator must document their exposure control strategy and implementation in an exposure control plan in accordance with paragraph (d)(2) of this section.

(2) *Exposure control plan requirements.* Beginning [DATE 12 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], owners and operators must include and document in an exposure control plan the following:

(i) Identification and rationale of exposure controls used or not used in the following sequence: elimination of perchloroethylene, substitution of perchloroethylene, engineering controls and administrative controls to reduce exposures in the workplace to either at or below the ECEL or to the lowest level achievable and to prevent or reduce direct dermal contact with perchloroethylene in the workplace;

(ii) The exposure controls selected based on feasibility, effectiveness, and other relevant considerations;

(iii) If exposure controls were not selected, document the efforts identifying why these are not feasible, not effective, or otherwise not implemented;

(iv) Actions taken to implement exposure controls selected, including proper installation, maintenance, training or other steps taken;

(v) Description of any regulated area and how it is demarcated, and identification of authorized persons; and description of when the owner or operator expects exposures may be likely to exceed the ECEL;

(vi) Regular inspections, evaluations, and updating of the exposure controls to ensure effectiveness and confirmation that all persons are implementing them as required;

(vii) Occurrence and duration of any start-up, shutdown, or malfunction of the facility that causes air concentrations to be above the ECEL or any direct dermal contact with perchloroethylene and subsequent corrective actions taken during start-up, shutdown, or malfunctions to mitigate exposures to perchloroethylene; and

(viii) Availability of the exposure control plan and associated records for potentially exposed persons.

(e) *Workplace information and training.* (1) The owner or operator must provide information and training for each person prior to or at the time of initial assignment to a job involving potential exposure to perchloroethylene.

(2) The owner or operator must ensure that information and training is presented in a manner that is understandable to each person required to be trained.

(3) The following information and training must be provided to all persons assigned to a job involving potential exposure to perchloroethylene:

(i) The requirements of this section, as well as how to access or obtain a copy of these requirements in the workplace;

(ii) The quantity, location, manner of use, release, and storage of perchloroethylene and the specific operations in the workplace that could result in exposure to perchloroethylene, particularly noting where exposures may be above the ECEL or where there is potential for direct dermal contact with perchloroethylene;

(iii) Methods and observations that may be used to detect the presence or release of perchloroethylene in the workplace (such as monitoring conducted by the owner or operator, continuous monitoring devices, visual appearance or odor of perchloroethylene when being released, etc.);

(iv) The health hazards of perchloroethylene in the workplace; and

(v) The principles of safe use and handling of perchloroethylene and measures potentially exposed persons can take to protect themselves from perchloroethylene, including specific procedures the owner or operator has implemented to protect potentially exposed persons from exposure to perchloroethylene, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

(4) The owner or operator must re-train each potentially exposed person annually to ensure that each such person maintains the requisite understanding of the principles of safe use and handling of perchloroethylene in the workplace.

(5) Whenever there are workplace changes, such as modifications of tasks or procedures or the institution of new tasks or procedures, which increase exposure, and where those exposures exceed or can reasonably be expected to exceed the ECEL action level or increase potential for direct dermal contact, the owner or operator must update the training as necessary to ensure that each potentially exposed person has the requisite proficiency.

(f) *Personal protective equipment (PPE).* (1) The provisions of this paragraph (f) apply to any owner or operator that is required to provide respiratory protection or dermal protection pursuant to paragraph (d)(1)(i)(B) or (d)(1)(ii)(B) of this section or § 751.609(b)(2).

(2) PPE, including respiratory and dermal protection, that is of safe design and construction for the work to be performed must be provided, used, and maintained in a sanitary, reliable, and undamaged condition. Owners and operators must select PPE that properly fits each affected person and communicate PPE selections to each affected person.

(3) Owners and operators must provide PPE training in accordance with 29 CFR 1910.132(f) to all persons required to use PPE prior to or at the time of initial assignment to a job involving potential exposure to perchloroethylene. For the purposes of this paragraph (f)(3), provisions in 29 CFR 1910.132(f) applying to an ''employee'' also apply equally to potentially exposed persons, and provisions applying to an ''employer'' also apply equally to owners or operators.

(4) Owners and operators must retrain each potentially exposed person required to use PPE annually or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use PPE, or when changes in the workplace or in PPE to be used render the previous training obsolete.

(5) *Respiratory protection.* (i) Beginning [DATE 9 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], or within 3 months after receipt of any exposure monitoring that indicates exposures exceeding the ECEL, the owner or operator must supply a respirator, selected in accordance with this paragraph, to each person who enters a regulated area and must ensure that all persons within the regulated area are using the provided respirators whenever perchloroethylene exposures may exceed the ECEL.

(ii) Owners or operators must provide respiratory protection in accordance with the provisions outlined in 29 CFR 1910.134(a) through (l) (except paragraph (d)(1)(iii)) and as specified in this paragraph for persons exposed or who may be exposed to perchloroethylene in concentrations above the ECEL. For the purpose of this paragraph (f), the maximum use concentration (MUC) as used in 29 CFR 1910.134 must be calculated by multiplying the assigned protection factor (APF) specified for a respirator by the ECEL. For the purposes of this paragraph (f)(5)(ii), provisions in 29 CFR 1910.134(a) through (l) (except paragraph (d)(1)(iii)) applying to an ''employee'' also apply equally to potentially exposed persons, and

provisions applying to an ''employer'' also apply equally to owners or operators.

(iii) Owners or operators must select and provide to persons appropriate respirators as indicated by the most recent monitoring results as follows:

(A) If the measured exposure concentration is at or below 0.14 ppm: no respiratory protection is required.

(B) If the measured exposure concentration is above 0.14 ppm and less than or equal to 0.7 ppm (5 times ECEL): Any National Institute for Occupational Safety and Health (NIOSH)-certified air-purifying quarter mask respirator (APF 5).

(C) If the measured exposure concentration is above 0.7 ppm and less than or equal to 1.4 ppm (10 times ECEL): Any NIOSH-certified air-purifying half mask or full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters (APF 10).

(D) If the measured exposure concentration is above 1.4 ppm and less than or equal to 3.5 ppm (25 times ECEL): Any NIOSH-certified air-purifying full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters; any NIOSH-certified powered air-purifying respirator equipped with NIOSH-approved organic vapor cartridges; or any NIOSH-certified continuous flow supplied air respirator equipped with a hood or helmet (APF 25).

(E) If the measured exposure concentration is above 3.5 ppm and less than or equal to 7.0 ppm (50 times ECEL): Any NIOSH-certified air-purifying full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters; or any NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece and a NIOSH-approved organic vapor cartridge (APF 50).

(F) If the measured exposure concentration is above 7.0 ppm and less than or equal to 140 ppm (1,000 times ECEL): Any NIOSH-certified supplied air respirator equipped with a half mask or full facepiece and operated in a pressure demand or other positive pressure mode (APF 1,000).

(G) If the measured exposure concentration is greater than 140 ppm (1,000 times ECEL) or the concentration is unknown: Any NIOSH-certified self-contained breathing apparatus equipped with a full facepiece and operated in a pressure demand or other positive pressure mode; or any NIOSH-certified supplied air respirator equipped with a full facepiece and operated in a pressure demand or other positive pressure mode in combination with an auxiliary self-contained breathing apparatus operated in a pressure demand or other positive pressure mode (APF 10,000).

(iv) The respiratory protection requirements in this paragraph represent the minimum respiratory protection requirements, such that any respirator affording a higher degree of protection than the required respirator may be used.

(v) When a person whose job requires the use of a respirator cannot use a negative-pressure respirator, the owner or operator must provide that person with a respirator that has less breathing resistance than the negative-pressure respirator, such as a powered air-purifying respirator or supplied-air respirator, when the person is able to use it and if it provides the person with adequate protection.

(6) *Dermal protection.* (i) The owner or operator must supply and require the donning of dermal PPE that separates and provides a barrier to prevent direct dermal contact with perchloroethylene in the specific work area where it is selected for use, selected in accordance with this paragraph (f)(6)(i) and provided in accordance with 29 CFR 1910.132(h), to each person who is reasonably likely to be dermally exposed in the work area through direct dermal contact with perchloroethylene. For the purposes of this paragraph (f)(6)(i), provisions in 29 CFR 1910.132(h) applying to an ''employer'' also applies equally to owners or operators.

(ii) Owners or operators must select and provide dermal PPE in accordance with 29 CFR 1910.133(b) and additionally as specified in this paragraph to each person who is reasonably likely to be dermally exposed in the work area through direct dermal contact with perchloroethylene. For the purposes of this paragraph (f)(6)(ii), provisions in 29 CFR 1910.133(b) applying to an ''employer'' also apply equally to owners or operators.

(iii) Owners or operators must select and provide to persons appropriate dermal PPE based on an evaluation of the performance characteristics of the PPE relative to the task(s) to be performed, conditions present, and the duration of use. Dermal PPE must include, but is not limited to, the following items:

(A) Impervious gloves selected based on specifications from the manufacturer or supplier.

(B) Impervious clothing covering the exposed areas of the body (*e.g.,* long pants, long sleeved shirt).

(iv) *Demonstration of imperviousness.* Owners or operators must demonstrate that each item of gloves and other clothing selected provides an impervious barrier to prevent direct dermal contact with perchloroethylene during normal and expected duration and conditions of exposure within the work area by evaluating the specifications from the manufacturer or supplier of the clothing, or of the material used in construction of the clothing, to establish that the clothing will be impervious to perchloroethylene alone and in likely combination with other chemical substances in the work area.

§ 751.609 Workplace requirements for laboratory use.

(a) *Applicability.* The provisions of this section apply to workplaces engaged in the industrial and commercial use of perchloroethylene as a laboratory chemical.

(b) *Laboratory use requirements.* (1) After [DATE 12 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], owners or operators must ensure fume hoods are in use and functioning properly and that specific measures are taken to ensure proper and adequate performance of such equipment to minimize exposures to persons in the area when perchloroethylene is used in a laboratory setting.

(2) After [DATE 12 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], owners or operators must ensure that all persons reasonably likely to be exposed from direct dermal contact to perchloroethylene in a laboratory setting are provided with dermal personal protective equipment as outlined in § 751.607(f)(2) and (6) and training on proper use of PPE as outlined in § 751.607(f)(3) and (4).

§ 751.611 Downstream notification.

(a) Beginning on [DATE 2 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], each person who manufactures (including imports) perchloroethylene for any use must, prior to or concurrent with the shipment, notify companies to whom perchloroethylene is shipped, in writing, of the restrictions described in this subpart in accordance with paragraph (c) of this section.

(b) Beginning on [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], each person who processes or distributes in commerce perchloroethylene or any perchloroethylene-containing products for any use must, prior to or concurrent

with the shipment, notify companies to whom perchloroethylene is shipped, in writing, of the restrictions described in this subpart in accordance with paragraph (c) of this section.

(c) The notification required under paragraphs (a) and (b) of this section must occur by inserting the following text in section 1(c) and 15 of the Safety Data Sheet (SDS) provided with the perchloroethylene or with any perchloroethylene-containing product:

After [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] this chemical/product cannot be distributed in commerce to retailers for any use. After [DATE 21 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], this chemical/product is and can only be distributed in commerce or processed for the following purposes: Processing as a reactant/intermediate; Processing into formulation, mixture or reaction product in cleaning and vapor degreasing products; Processing into formulation, mixture or reaction product in paint and coating products; Processing into formulation, mixture or reaction product in adhesive and sealant products; Processing by repackaging; Recycling; Industrial and commercial use as solvent in vapor degreasing; Industrial and commercial use in maskant for chemical milling; Industrial and commercial use as a processing aid in catalyst regeneration in petrochemical manufacturing; Industrial and commercial use in laboratory chemicals; Industrial and commercial use in solvent-based adhesives and sealants; Industrial and commercial use in dry cleaning in 3rd generation machines until [DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]; Industrial and commercial use in all dry cleaning and related spot cleaning until [DATE 10 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]; and Disposal.

§ 751.613 Recordkeeping requirements.

(a) *General records.* After [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], all persons who manufacture, process, distribute in commerce, or engage in industrial or commercial use of perchloroethylene or perchloroethylene-containing products must maintain ordinary business records, such as downstream notifications, invoices and bills-of-lading related to compliance with the prohibitions, restrictions, and other provisions of this subpart.

(b) *Workplace Chemical Protection Program compliance.* (1) ECEL exposure monitoring. For each monitoring event, owners or operators subject to the ECEL described in § 751.607(b) must document the following:

(i) Dates, duration, and results of each sample taken;

(ii) All measurements that may be necessary to determine the conditions that may affect the monitoring results;

(iii) Name, workplace address, work shift, job classification, and work area of the person monitored; documentation of all potentially exposed persons whose exposures the monitoring is intended to represent if using a representative sample; and type of respiratory protective device worn by the monitored person, if any

(iv) Use of appropriate sampling and analytical methods, such as analytical methods already approved by EPA, Occupational Safety and Health Administration (OSHA) or NIOSH, or compliance with an analytical method verification procedure;

(v) Compliance with the Good Laboratory Practice Standards in accordance with 40 CFR part 792; and

(vi) Information regarding air monitoring equipment, including: type, maintenance, calibrations, performance tests, limits of detection, and any malfunctions.

(2) *ECEL compliance.* Owners or operators subject to the ECEL described in § 751.607(b) must retain records of:

(i) Exposure control plan as described in § 751.607(d)(2);

(ii) Facility exposure monitoring records;

(iii) Notifications of exposure monitoring results;

(iv) The name, workplace address, work shift, job classification, work area and respiratory protection used by each potentially exposed person and PPE program implementation as described in § 751.607(f), including fit-testing and training; and

(v) Information and training provided by the regulated entity to each person prior to or at the time of initial assignment to a job involving potential exposure to perchloroethylene and any re-training as required in § 751.607(e).

(3) *DDCC compliance.* Owners or operators subject to DDCC requirements described in § 751.607(c) must retain records of:

(i) Exposure control plan as described in § 751.607(d);

(ii) Dermal protection used by each potentially exposed person and PPE program implementation as described in § 751.607(f), including:

(A) The name, workplace address, work shift, job classification, and work area of each person reasonably likely to directly handle perchloroethylene or handle equipment or materials on which perchloroethylene may present and the type of PPE selected to be worn by each of these persons;

(B) The basis for specific PPE selection (*e.g.,* demonstration based on permeation testing or manufacturer specifications that each item of PPE selected provides an impervious barrier to prevent exposure during expected duration and conditions of exposure, including the likely combinations of chemical substances to which the PPE may be exposed in the work area);

(C) Appropriately sized PPE and training on proper application, wear, and removal of PPE, and proper care/disposal of PPE;

(D) Occurrence and duration of any direct dermal contact with perchloroethylene that occurs during any activity or malfunction at the workplace that causes direct dermal exposures to occur and/or glove breakthrough, and corrective actions to be taken during and immediately following that activity or malfunction to prevent direct dermal contact to perchloroethylene; and

(E) Training in accordance with § 751.607(f)(3).

(iii) Information and training provided by the regulated entity to each person prior to or at the time of initial assignment to a job involving potential direct dermal contact with perchloroethylene and any re-training as required in § 751.607(e).

(4) *Workplace participation.* Owners or operators must document the notice to and ability of any potentially exposed person that may reasonably be affected by perchloroethylene inhalation exposure or direct dermal contact to readily access the exposure control plans, facility exposure monitoring records, PPE program implementation, or any other information relevant to perchloroethylene exposure in the workplace.

(c) *Workplace requirements for laboratory use compliance.* Owners and operators subject to the laboratory chemical requirements described in § 751.609 must retain records of:

(1) Dermal protection used by each potentially exposed person and PPE program implementation, as described in § 751.613(b)(3)(ii); and

(2) Documentation identifying: implementation of a properly functioning fume hood using manufacturer's instructions for installation, use, and maintenance of the fume hood, including inspections, tests, development of maintenance procedures, the establishment of criteria for acceptable test results, and documentation of test and inspection results.

(d) *Records related to § 751.615 exemptions. To maintain eligibility for an exemption described in § 751.615,*

the records maintained by the owners or operators must demonstrate compliance with the specific conditions of the exemption.

(e) *Retention.* Owners or operators must retain the records required under this section for a period of 5 years from the date that such records were generated.

§ 751.615 Exemptions.

(a) *In general.* (1) As provided in paragraph (b) of this section, a time-limited exemption from the requirements of § 751.605 is established in this section in accordance with 15 U.S.C. 2605(g)(1)(A).

(2) In order to be eligible for the exemptions established in this section, regulated parties must comply with all conditions established for such exemptions in accordance with 15 U.S.C. 2605(g)(4).

(b) *Time-limited exemption.* Use of perchloroethylene or perchloroethylene containing products identified in paragraph (b)(1) of this section in an emergency by the National Aeronautics and Space Administration and its contractors operating within the scope of their contracted work until [DATE 10 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(1) *Applicability.* The emergency use exemption described in this paragraph (b) shall apply to the following specific conditions of use as described in paragraph (b)(1)(i) of this section.

(i) *Conditions of use subject to this exemption.* (A) Industrial and commercial use as solvent for cold cleaning.

(B) Industrial and commercial use in wipe cleaning.

(ii) *Emergency use*—(A) *In general.* An emergency is a serious and sudden situation requiring immediate action, within 15 days or less, necessary to protect:

(*1*) Safety of National Aeronautics and Space Administration's or their contractors' personnel;

(*2*) National Aeronautics and Space Administration's missions;

(*3*) Human health, safety, or property, including that of adjacent communities; or

(*4*) The environment.

(B) *Duration.* Each emergency is a separate situation; if use of perchloroethylene exceeds 15 days, then justification must be documented.

(C) *Eligibility.* To be eligible for the exemption, the National Aeronautics and Space Administration and its contractors must:

(*1*) Select perchloroethylene because there are no technically and economically feasible safer alternatives available during the emergency.

(*2*) Perform the emergency use of perchloroethylene at locations controlled by National Aeronautics and Space Administration or its contractors.

(2) *Requirements.* To be eligible for the emergency use exemption described in this paragraph (b), the National Aeronautics and Space Administration and its contractors must comply with the following conditions:

(i) *Notification.* Within 15 working days of the emergency use by National Aeronautics and Space Administration and its contractors, National Aeronautics and Space Administration must provide notice to EPA that includes the following:

(A) Identification of the conditions of use detailed in paragraph (b)(1)(i) of this section that the emergency use fell under;

(B) An explanation for why the emergency use met the definition of emergency in paragraph (b)(1)(ii)(A) of this section; and

(C) An explanation of why perchloroethylene was selected, including why there were no technically and economically feasible safer alternatives available in the particular emergency.

(ii) *Exposure control.* The owner or operator must comply with the Workplace Chemical Protection Program provisions in § 751.607, to the extent technically feasible in light of the particular emergency.

(iii) *Recordkeeping.* The owner or operator of the location where the use takes place must comply with the recordkeeping requirements in § 751.613.

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Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 2800
Rights-of-Way, Leasing, and Operations for Renewable Energy; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[BLM_HQ_FRN_MO#4500171739]

RIN 1004–AE78

Rights-of-Way, Leasing, and Operations for Renewable Energy

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend its existing right-of-way (ROW) regulations, issued under authority of the Federal Land Policy and Management Act (FLPMA). The principal purpose of these amendments would be to facilitate responsible solar and wind energy development on public lands managed by the BLM. The rule would adjust acreage rents and capacity fees for solar and wind energy, provide the BLM with more flexibility in how it processes applications for solar and wind energy development inside designated leasing areas, and update agency criteria on prioritizing solar and wind applications. The rule would also make technical changes, corrections, and clarifications to the existing ROW regulations. This rule would implement the authority granted to the Secretary of the Interior (Secretary) in the Energy Act of 2020 to ''reduce acreage rental rates and capacity fees'' to ''promote the greatest use of wind and solar energy resources'' and achieve other enumerated policy goals.

DATES: Please submit comments on this proposed rule on or before August 15, 2023. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

This rule includes a proposed new information collection requirement that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the new information collection requirement in this rule, please note that such comments should be sent directly to the OMB, and that the OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, comments to the OMB on the proposed new information collection are best assured of being given full consideration if the OMB receives them by July 17, 2023.

ADDRESSES: *Mail, personal, or messenger delivery:* U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240, Attention: 1004–AE78.

Federal eRulemaking Portal: https://www.regulations.gov. In the Searchbox, enter ''RIN 1004–AE78'' and click the ''Search'' button. Follow the instructions at this website.

For Comments on Information-Collection Activities: Written comments and suggestions on the information-collection requirements should be submitted by the date specified above in **DATES** to *www.reginfo.gov/public/do/PRAMain.* Find this specific information-collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

If you submit comments on the information-collection burdens, you should provide the BLM with a copy at the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rulemaking. Please indicate ''Attention: OMB Control Number 1004–0206 (RIN 1004–AE78)'' regardless of the method used to submit comments on the information-collection burdens. Comments not pertaining to the proposed rule's information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

FOR FURTHER INFORMATION CONTACT: Jayme Lopez, Interagency Coordination Liaison, by phone at (520) 235–4581 and by email at *energy@blm.gov,* or Jeremy Bluma, Renewable Energy Advisor, by phone at (208) 789–6014 and by email at *energy@blm.gov* for information relating to the BLM Renewable Energy program and information relating to the substance of the rule with a subject line of ''RIN 1004–AE78''.

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:

I. Public Comment Procedures

If you wish to comment on this rule, you may submit your comments to the BLM by mail, personal or messenger delivery during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, or through *https://www.regulations.gov* (see the **ADDRESSES** section).

Please make your comments on the rule as specific as possible, confine them to issues pertinent to the rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the rule comments that we receive after the close of the comment period (see **DATES** section) or comments delivered to an address other than those listed above (see **ADDRESSES** section). Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** section. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. As explained later, this proposed rule would include revisions to information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the revised information collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the **DATES** and **ADDRESSES** sections above. Please note that due to COVID–19, electronic submission of comments is recommended.

II. Background

A. Introduction

This proposed rule sets forth changes to the BLM's Renewable Energy and ROW programs related to two main topics. The first topic is solar and wind energy rents and fees, implementing new authority from the Energy Act of 2020 (43 U.S.C. 3003) to ''reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations'' if the Secretary makes certain findings. The second

topic is making public lands available to solar and wind energy application inside of a designated leasing area without first holding a competitive offer.

Solar and Wind Energy Rents and Fees

FLPMA generally requires ROW holders to ''pay in advance the fair market value'' for use of the public lands, subject to certain exceptions. The Energy Act of 2020, 43 U.S.C. 3003, introduced a new exception to FLPMA's fair market value requirement, allowing the BLM, on behalf of the Secretary, to ''reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations'' if the agency makes certain findings, which can include that the existing rates ''impose economic hardships'' or ''limit commercial interest in a competitive lease sale or right-of-way grant,'' or ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.''

Through this proposed rule, the BLM proposes changes to acreage rents and capacity fees for solar and wind energy ROW authorizations in order to ''promote the greatest use of wind and solar energy resources,'' maximize ''commercial interest'' in lease sales and ROW grants, and avoid ''economic hardship'' to ROW holders. By implementing these proposed changes, the BLM would promote solar and wind energy use on public lands and underpin an increase to the share of clean energy that is part of the United States' domestic power infrastructure.

For example, the BLM expects that the proposed reductions in solar and wind energy acreage rent and capacity fees will facilitate solar and wind energy development by increasing commercial interest and encouraging additional investment in the use of public lands. These proposed reductions should particularly benefit smaller scale projects or projects that are on the margins of being economically profitable, increasing interest among renewable energy developers.

Through the rent and fee adjustments contemplated in this rule, the BLM also expects that lower acreage rental rates and capacity fees for solar and wind energy generating facilities would translate into lower costs for energy deployment, increasing renewable energy market penetration in domestic energy production. By reducing costs to producers, these reduced rates may also reduce electricity costs to rate payers. Additionally, the BLM proposes reductions to capacity fees tied to a holder's use of American made parts and materials consistent with direction in the Energy Act of 2020. The BLM anticipates that the proposed Buy American capacity fee reductions would increase economic certainty for renewable energy projects on BLM-managed public lands. By incentivizing the use of American made parts and materials in exchange for a reduced capacity fee, the BLM expects to reduce costs for developers, which in turn will stimulate increased demand for domestic production of renewable energy parts and materials. These intended outcomes would serve to promote the greatest use of wind and solar energy resources on public lands. Currently, wind and solar energy developers face a choice between relying on foreign-sourced parts and materials or paying higher prices for domestically sourced parts and materials, if available. (See for example the Department of Energy's Solar Photovoltaics—Supply Chain Deep Dive Assessment.[1]) Uncertainty in global supply chain dynamics, as seen in recent years, has the potential to delay deployment of solar and wind energy development projects on public lands. Using incentives to create demand for American-made renewable energy parts and materials will help develop domestic supply chains and reduce impacts on renewable energy deployment on public lands from potential supply-chain delays. Similar to the proposed rental fee and capacity fee reductions described in the previous paragraphs, the BLM believes that incentivizing the use of parts and materials that qualify for the Buy American reduction will increase the responsible deployment of renewable energy and will increase commercial interest in the use of public lands, promoting the development of solar and wind energy resources on public lands.

Consistent with the BLM's authority under FLPMA, the BLM would require ROW holders to pay in advance either an acreage rent or a capacity fee for solar and wind energy generation installations. The proposed rule's methodology for calculating a capacity fee is based on actual energy production, which is a change from the BLM's 2016 rule, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections* (81 FR 92122). The 2016 rule discusses the capacity fee in detail at 81 FR 92122, page 92134. The 2016 rule bases the MW capacity fee on a technology's (*i.e.,* photovoltaic or concentrating solar-thermal) nameplate capacity as an estimate of the energy that could be generated at each facility. This rule proposes, instead, to base the capacity fee for solar and wind energy generation facilities on actual energy generation at each facility. The BLM believes this change would more accurately reflect the actual capacity for energy production of an individual project based on a developer's selection of technology, project design and the solar or wind resource available at particular sites. This change to the capacity fee indexes the required payment to the developments' energy generation, being greater when the capacity generates more energy and less when generating less. In the context of this rule, the term ''capacity fee'' is defined as ''the fee charged to right-of-way holders once energy production commences that is based on the production of energy on public lands from solar and wind energy generating facilities.''

The BLM would also calculate an acreage rent for wind and solar ROWs based on per acre values for pastureland from the National Agricultural Statistics Service (NASS) Cash Rents Survey. The acreage rent would be the minimum rent paid to the BLM for solar and wind energy generating facilities once a grant or lease is issued, whether or not energy is generated on the ROW in a given year. The capacity fee would be collected in place of the acreage rent if the capacity fee exceeds the acreage rent. The capacity fee would reflect the value of solar or wind energy resources used to generate electricity on the public lands. One component of the capacity fee, the MWh rate, which is based on wholesale prices for the major trading hubs serving 11 western States or on prices received by the ROW holder under a power purchase agreement, would be reduced by 80 percent until 2036 under this rule based on authority provided by the Energy Act of 2020 (codified at 43 U.S.C 3003) and would only be adjusted by a fixed annual adjustment factor once set at the beginning of the grant or lease period. If the BLM collects the capacity fee, no acreage rent would be required that year. This fee calculation relies on BLM's direction under sections 504(g) and 102(a)(9) of FLPMA to collect ''the fair market value'' for the use of the public lands and its resources, which Congress further clarified in the Energy Act of 2020 to confirm that the BLM could ''consider acreage rental rates, capacity fees, and other recurring annual fees in total.'' Starting in 2036, under § 2806.52(b)(1)(ii), the MWh rate reduction would decrease from 80

[1] *https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Report%20-%20Final.pdf.*

percent to 20 percent of the wholesale price per Megawatt hour (MWh). This change in the MWh rate reduction in 2036 would not affect existing ROWs and would only apply to new or renewed ROWs for which the MWh rate is set at the beginning of their authorization using the current rate of the MWh rate schedule applicable in 2036.

This rule aims to improve payment predictability for grant and lease holders by fixing the key data used for determining the acreage rent and the capacity fee—the state-wide pastureland rent values and the wholesale price of electricity—at the time the ROW is issued. In doing so, these rates would be set for the term of the ROW and only adjusted by the annual adjustment factor and, in the case of the capacity fee, by the holder's actual annual production.

See preamble § 2806.50 for a more detailed discussion of the BLM's proposed methodology for determining the acreage rent and capacity fee.

Lands Available for Solar and Wind Energy Applications

Under this rule, the BLM would have the option to make public lands inside designated leasing areas available for non-competitive leasing by application, while retaining discretion to conduct competitive offers, either within or outside of designated leasing areas. This is a change from the BLM's 2016 rule, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections,* which required authorizations within designated leasing areas to be offered competitively before the agency could proceed with a non-competitive application process.

The BLM designated solar energy zones through the 2012 Western Solar Plan (*https://blmsolar.anl.gov/documents/solar-peis/*), which identified approximately 285,000 acres of agency preferred development locations for solar with high potential for solar energy production and low conflicts with other resources and uses. Subsequently, the BLM designated approximately 388,000 acres of preferred development locations for solar in California through the 2016 Desert Renewable Energy Conservation Plan (*https://blmsolar.anl.gov/documents/drecp/*) and over 192,000 acres of preferred development locations for solar energy in Arizona through the 2017 Restoration Design Energy Project. After the 2016 rule went into effect, the BLM initially observed that solar and wind energy developers generally did not submit nominations or expressions of interest on their own accord for lands within agency preferred locations and instead continued to actively submit non-competitive applications outside of such locations. In the past two years, however, the BLM has offered designated leasing areas competitively and identified greater levels of competitive interest inside and outside of designated leasing areas. Nonetheless, the BLM believes that by revising the regulations to allow the agency greater flexibility to use competitive processes in circumstances where competitive interest exists and to issue leases without a competitive process where no competitive interest exists across all BLM-managed public lands, the BLM can maximize interest in renewable energy leasing and accelerate the deployment of solar and wind energy on the public lands. Therefore, the BLM proposes to revise its rules to allow applications to be filed within designated areas without first holding a competitive offer, while preserving for the BLM the discretion to hold a competitive offer in response to competing applications, nominations, or expressions of interest, or on its own initiative. See § 2804.23 for cost recovery considerations related to competing applications and subpart 2809 for the competitive process for solar and wind energy applications or leases.

Need for the Rule

FLPMA provides the BLM with comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed ''on the basis of multiple use and sustained yield'' unless otherwise provided by law (43 U.S.C. 1732(a)). Further, FLPMA authorizes the BLM to issue rights-of-way on the public lands for electric generation systems, including solar and wind energy generation systems, and mandates that the United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute (43 U.S.C. 1764(g)). On December 27, 2020, the Energy Act of 2020 was enacted, establishing a minimum goal of ''authoriz(ing) production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025.'' To date, the BLM has authorized projects on public land that are estimated to support more than 13 gigawatts of electricity from renewable energy sources. Current information regarding the BLM's approved energy developments and number of gigawatts is available on its website.[2] The Energy Act of 2020 also provided the BLM with new authority to reduce rates below fair market value based on specific findings, including ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources'' 43 U.S.C. 3003(b)(2). The BLM proposes to implement the direction in the Energy Act of 2020 through this rulemaking process.

On January 27, 2021, President Biden issued Executive Order (E.O.) 14008, ''Tackling the Climate Crisis at Home and Abroad.'' Section 207 of E.O. 14008, titled ''Renewable Energy on Public Lands and in Offshore Waters,'' instructs the Department of the Interior ''to increase renewable energy production on (public) lands.''

The changes in this rulemaking would provide clearer direction for the BLM in processing proposed renewable energy right-of-way applications on public lands while also supporting the goals of the Energy Act of 2020 and E.O. 14008.

Statutory Authority

Section 310 of FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate regulations to carry out the purposes of FLPMA and other laws applicable to public lands. Section 302 of FLPMA (43 U.S.C. 1732) also provides comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed ''under principles of multiple use and sustained yield,'' unless otherwise provided by law (43 U.S.C. 1732(a)). Sections 501, 504, and 505 of FLPMA authorize the Secretary to grant ROWs on public lands; to issue regulations governing such ROWs and charge rent for such ROWs; and to impose terms and conditions on ROW grants, respectively (43 U.S.C. 1761, 1764, and 1765). Sections 304 and 504 of FLPMA (43 U.S.C. 1734(b) and 1764(g)) also authorize the BLM to collect funds from ROW applicants or holders to reimburse the agency for its costs incurred while working on a proposed or authorized ROW. As defined by FLPMA, the term ''right-of-way'' includes an easement, lease, permit, or license to occupy, use, or traverse public lands (43 U.S.C. 1702(f)). See Title V of FLPMA (43 U.S.C. 1761–1772).

The Energy Act of 2020 authorizes the Secretary to reduce acreage rental rates and capacity fees if the Secretary makes certain findings, which can include that

[2] *https://www.blm.gov/programs/energy-and-minerals/renewable-energy/active-renewable-projects.*

the existing rates ''impose economic hardships'' or ''limit commercial interest in a competitive lease sale or right-of-way grant,'' or ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources'' (43 U.S.C. 3003).

III. Discussion of the Rule

43 CFR Part 2800 Rights-of-Way Authorized Under FLPMA

Part 2800 of the CFR describes requirements for ROWs issued under FLPMA. This rule would revise the rent and fee schedules for solar and wind energy development ROWs. This rule would also modify the application process for public lands inside of solar and wind designated leasing areas available to allow for either competitive or non-competitive leasing processes. Other changes, including updated solar and wind prioritization provisions and establishing criteria for a ''complete application,'' would correct or clarify existing regulations.

Section 2801.5 What acronyms and terms are used in the regulations in this part?

This section contains the acronyms and defines the terms used in this rule.

Paragraph (a) provides for the acronyms used in this part. The acronym ''FLPMA,'' meaning the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), would replace the term ''Act'' from these rules. This change provides clarity to which act the BLM is referencing.

Paragraph (b) provides for the terms used in this part. The proposed rule would:

Remove the term ''Act'' which means the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 et. seq.). This revision is consistent with the addition of the acronym ''FLPMA'' under paragraph (a) of this section;

Remove definitions of ''Megawatt (MW) capacity fee,'' ''Net capacity factor,'' ''Megawatt hour (MWh) price,'' ''Rate of return,'' and ''Hours per year'' from this rule. Because under this proposed rule the BLM would no longer charge a megawatt capacity fee based on solar and wind energy generation facility nameplate capacity, definitions related to the nameplate capacity fee are no longer necessary and would be removed from this rule;

Revise the definition of the term ''Megawatt hour (MWh) rate'' to mean the 5 calendar-year average of the annual weighted average wholesale prices per MWh for major trading hubs serving 11 western States of the continental United States. This revision is consistent with the BLM's proposed change to implement a capacity fee;

Add the term ''Buy American'' to mean an item or product that qualifies for the Buy American preference under Section 52.225–1(b) of the Federal Acquisition Regulations (FAR) (48 CFR 52.225–1(b)) or a successor regulation. Section 52.225–1(b) of the FAR identifies certain categories of items or products that qualify for the Buy American preference in federal acquisition. Generally, under section 52.225–1(b), the preference applies to ''domestic end products'' and ''commercially available off-the-shelf'' (or ''COTS'') items, with an additional provision specifying qualification rules for an ''end product that consists wholly or predominantly of iron or steel or a combination of both.'' Each of the terms quoted above, in turn, is defined in section 52.225–1(a). The BLM proposes to use the term ''Buy American'' as a catch-all term to refer to items for which the Buy American preference is available under section 52.225–1(b) of the FAR;

Revise the term ''Grant'' to reflect that solar or wind energy leases are not covered under the definition. The change is consistent throughout the proposed rule and provides reader clarity where the BLM will issue a solar or wind energy grant and where a solar or wind energy lease will be issued;

Add the term ''Capacity fee'' to mean the fee based on the amount of electricity produced from solar or wind energy resources on the public lands. This proposed change is consistent with the BLM's proposed change to implement a capacity fee that is based on production;

Revise the term ''Reasonable costs'' to be consistent with the rule change replacing the words ''the Act'' with the acronym ''FLPMA.'' This change is intended to improve readability and consistency with the rules in this part. See changes to acronyms under paragraph (a) of this section for further discussion on the use of acronyms;

Add the term ''Renewable Energy Coordination Office (RECO)'' to mean one of the National, State, district, or field offices established by the Secretary under 43 U.S.C. 3002(a) that is responsible for implementing a program to improve Federal permitting coordination with respect to eligible projects on covered land and such other activities as the Secretary determines necessary;

Add the term ''Solar and wind energy lease'' to mean any right-of-way issued under Title V of FLPMA within an area identified in a BLM land use plan as a designated leasing area. Any right-of-way not issued within an area identified as a designated leasing area would be a grant. This term is introduced for readability; and

Add the term ''solar or wind energy development'' to mean the use of public lands to generate electricity from solar or wind energy resources on public lands. This definition is intended to clarify that the term ''energy development'' refers specifically to uses of public lands that directly involve the generation of electricity on public lands, and not to other uses of public lands that might indirectly support energy production. The addition of this definition clarifies which ROW grants and leases are subject to the conditions in Section 50265(b)(1) of the Inflation Reduction Act, which apply to ''a right-of-way for wind or solar energy development on Federal land.''

Section 2801.6 Scope

The scope in 43 CFR part 2800 would clarify that the regulations in this part apply to leases as well as grants. Paragraph (a)(1) includes the additional language ''or leases'' when describing the authorization types, clarifying that the scope includes both instrument types.

Section 2801.9 When do I need a grant or lease?

Section 2801.9 explains when a grant or lease is required for systems or facilities located on public lands. Section 2801.9(d) would be revised to extend the thirty-year maximum term to 50 years for ROWs for solar or wind energy development and for other uses that support solar or wind energy development, and to make other technical changes. Paragraphs (d)(3) and (4) are consolidated into new paragraph (d)(3), removing differences between grants and leases inside and outside designated leasing areas.

New paragraph (d)(4) would add storage facilities that are separate from energy generation facilities to the list of systems, facilities, and related activities for energy generation, storage, or transmission projects for which a grant or lease is required. Similarly, paragraph (d)(6) would add electric transmission lines with a capacity of 100kV or more. The BLM proposes to add these paragraphs to specifically describe the additional types of authorizations required for various components of solar and wind energy developments, or their related infrastructure that may be operated, and thus processed, separately.

FLPMA requires the BLM to limit each ROW granted under FLPMA ''to a reasonable term in light of all circumstances concerning the project,'' including among other factors, ''the cost of the facility, its useful life, and any public purpose it serves'' (43 U.S.C. 1764(b)). The BLM considered different alternatives for the maximum term of a grant or lease for solar or wind energy development and for other uses that support solar or wind energy development, such as freestanding energy storage and electric transmission. Among other alternatives, the BLM considered providing for 5- or 10-year extensions to the initial term length with continued operations. However, the BLM believes, based on its experience administering such ROWs, that the reasonable term of a grant or lease is best limited to a 50-year term for large infrastructure ROWs, considering the cost of the facility, its useful life, and the public purpose it serves.

Considering the cost of the facility may include the financing terms and the payback period a prospective grant or lease holder may enter into under a loan or grant program. When evaluating the useful life of a project, the BLM may consider the time it takes before a facility is no longer economically feasible to operate or the projected time until repowering (*i.e.,* updating components of a facility to increase useful life or energy production). The economic life of technology has been increasing and is expected to continue doing so with the advent of new materials in solar or wind energy facilities. The method for financing or repowering may also change over time with further advances with the maturation and advancement of the renewable energy market. Additionally, a facility may also be part of a Federal, Tribal, state or local government energy plan or infrastructure project which may also indicate the need for a longer ROW term. In providing for ROW terms that may be up to 50 years, the BLM would be able to take into consideration the cost of the facility, its useful life and public purposes it serves up to a 50-year term as these considerations may change over time or with specific projects.

The BLM is interested to hear from commenters whether other alternatives for maximum terms of grants and leases would be more appropriate, including, potentially, the existing 30-year maximum term; a maximum term longer than 50 years; no regulatory limitation to a ROW term; extending the initial term by 10-year intervals with updated power purchase agreements; or reducing the initial term based on the factors listed in 43 U.S.C. 1764(b).

Subpart 2802—Lands Available for FLPMA Grants or Leases

Subpart 2802 would be revised to add ''or leases'' to the title to clarify for readers that public lands are available for both grants and leases, consistent with other revisions in this rule regarding leases.

Section 2802.11 How does the BLM designate right-of-way corridors and designated leasing areas?

Section 2802.11 explains how the BLM designates ROW corridors and designated leasing areas. Section 2802.11 would be revised to explain how the BLM designates areas through its land use planning process, including the non-exhaustive list of factors it considers. The rule would add a new factor for access to electric transmission. § 2802.11(b) would be revised to improve readability and consistency between the BLM's regulatory authority under part 2800 and its statutory authority under the FLPMA.

Paragraph (b)(1) is revised to be consistent with section 202(c)(9) of FLPMA (43 U.S.C. 1712(c)(9)), to include Tribal land use plans.

Paragraphs (b)(10) and (b)(11) would be added to provide more detail for what the BLM considers when designating new leasing areas for solar and wind energy. In the BLM's experience with its energy programs, it has considered multiple criteria that are either specific to a particular region or State, as well as many common considerations all such types of development must consider. The proposed rule would identify two such factors that the BLM typically considers.

The BLM proposes to add ''access to electric transmission'' in (b)(10) as a factor to be considered. This factor is intended to ensure that planning efforts for prioritizing solar and wind energy development take into consideration access to electric transmission. In the BLM's experience, accessibility to transmission is a key component for successful developments on public lands. The BLM also proposes to add a factor in (b)(11) derived from its 2012 Western Solar Plan.[3] Section A.2.6 of Appendix A of the Plan explained that areas designated for solar development (termed solar energy zones in the Plan) would be relatively large areas where energy development is feasible and there is a low potential for conflict due to environmental, cultural, and other relevant criteria. The Western Solar Plan sets forth a four-step process for identifying new or expanded solar energy zones. The four steps are as follows:

(1) Assess the demand for new or expanded areas;

(2) Establish technical and economic suitability criteria;

(3) Apply environmental, cultural, and other screening criteria; and

(4) Analyze proposed areas through the land use planning process described in part 1600 of this chapter.

In the rule, the BLM proposes to carry forward three of these four steps, excluding the establishment of technical and economic suitability criteria because technical and economic criteria have and will change rapidly for utility-scale solar energy development and in the BLM's experience it has not been feasible or appropriate to utilize those criteria for the establishment of designated leasing areas. The BLM proposes to include steps (1), (3), and (4) above to the factors listed in § 2802.11(b)(11).

Section 2803.10 Who may hold a grant or lease?

Section 2803.10 provides the criteria for who may hold a grant or lease. Some BLM ROWs may cross more than one State. Therefore, the BLM proposes to revise existing provisions to clarify that a holder who is of legal age and authorized to do business in one State must also meet this requirement in each other State in which the ROW grant they seek is located.

Section 2803.12 What happens to my application or grant if I die?

Section 2803.12 explains how the BLM administers a ROW or an application for a ROW in the event of the holder's or applicant's death. Paragraph (a) would be added to this section to address a situation in which an applicant dies before the ROW is granted and clarifies that an application does not hold any transferable rights. If an applicant dies before the grant or lease is issued as described in 43 CFR 2805.10, the application cannot be transferred to another person and is deemed denied. Existing paragraphs (a) and (b) would be renumbered as (b) and (c) and revised.

Paragraph (b) would be revised to include leases, clarifying that any inheritable interest in the grant or lease would be distributed under state law. Paragraph (c) would be revised to include the additional provision that if the BLM distributes a grant to an unqualified holder, the receiver must comply with all the terms, conditions,

[3] *https://eplanning.blm.gov/eplanning-ui/project/2017069/510.*

and stipulations of the grant. The BLM also replaces the word ''distributee'' to ''receiver'' to improve clarity to readers that when the BLM distributes a grant or lease, the instrument would be received by the holder.

Section 2804.12 What must I do when submitting my application?

Section 2804.12 explains what an applicant must do when submitting a ROW application. Section 2804.12 would be revised to remove a provision that limits solar and wind energy development applications to public lands outside of designated leasing areas, revise the application fee requirements for solar and wind rights-of-way, and specify when an application becomes ''complete.''

The BLM proposes to remove existing paragraph (c)(1), which limits solar and wind energy development applications to public lands outside of designated leasing areas, to allow applications to be submitted on public lands inside or outside of designated leasing areas without the BLM first holding a competitive offer under subpart 2809. As discussed previously in the summary and background sections of this notice, this change will make designated leasing areas available to noncompetitive applications.

Paragraph (c) would be revised to update the requirements for payment of an application filing fee for solar or wind energy development ROWs and for short-term ROWs, which include project-area testing applications. The paragraph would also address the relationship between application filing fees and reasonable costs. Application filing fees are an existing per-acre fee collected by the BLM as a cost recovery payment and are intended to discourage applicants from applying for more land than is necessary for a proposed project and also to provide an early cost recovery payment. This rule would clarify that application filing fees are applied towards payment of reasonable costs to the government for processing applications as required under FLPMA. New provisions would be added to clarify that a cost recovery agreement may be required under §§ 2804.14 through 2804.22 of this part for processing an application if the application filing fees are insufficient to cover the government's costs in processing such an application. Any cost recovery overpayment under an agreement, including application filing fees, may either be refunded to the applicant or applied to the monitoring costs of the ROW grant or lease consistent with this part if the project is approved.

This rule would remove periodic (at least once every 10-year) updates to the application filing fee amounts using the IPD–GDP. The BLM is proposing to remove these periodic updates because they are not necessary in light of the BLM's ability to establish a cost recovery agreement with an applicant. Alternatively, the BLM considered but did not propose in this rule that it may continue updating the rate every 5 years through policy. Cost recovery agreements may include consideration for changes from inflation or government indirect costs that are not captured by the application filing fee.

The BLM is interested in comments regarding its proposed removal of the periodic update to the application filing fee.

Section 2804.12(f) would be revised to clarify that the BLM will use a deficiency notice pursuant to existing § 2804.25(c) to inform applicants of additional information that the BLM requires in order to process their application. This could include, for example, an updated plan of development (POD). Paragraph (f) would also be revised to remove a reference to part 2880, which applies to oil and gas pipeline ROWs under the Mineral Leasing Act (MLA) rather than to FLPMA ROWs, to avoid confusion to readers.

The BLM proposes to add paragraph (j), describing what constitutes a complete application. Under this rule, a complete application would be one that meets or addresses the requirements of § 2804.12, as appropriate for the application submitted. Identifying when an application is complete will support consistency in agency actions that require completed applications, such as when the BLM would prioritize solar and wind energy development applications under § 2804.35. The proposed revision would clarify that the BLM will notify an applicant in writing when their application is complete. Additional information may be necessary for the BLM to continue processing a complete application if necessary, resource data is not submitted earlier. If the BLM determines that additional information is necessary after an application becomes complete, it may issue a deficiency notice under § 2804.25(c). Additional sections in this rule that refer to complete applications are § 2804.25, *How will the BLM process my application?,* and § 2804.35, *Application prioritization principles for solar and wind energy facilities.* In addition, complete applications are discussed in this preamble in the context of § 2084.30, which this rulemaking proposes to remove and reserve.

Section 2804.14 What is the processing fee for a grant application?

This section provides for collection of a fee to reimburse the Federal Government for its costs in processing an application for use of public lands.

Paragraph (c) would be revised to update the BLM's address to read as U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5645, Attention: Lands, Realty, and Cadastral Survey, Washington, DC 20240. This revision would be made so that the public is aware of where to obtain a copy of the current cost recovery schedule. The BLM also posts the cost recovery schedule online at *http://www.blm.gov.*

Section 2804.22 How will the availability of funds affect the timing of the BLM's processing?

Section 2804.22 provides that if the BLM has insufficient funds to process your application, the bureau will not process your application until funds become available or you elect to pay full actual costs under § 2804.14(f). Current text of § 2804.22 would become paragraph (a). The BLM proposes to add ''continue to'' to this provision to clarify that if the BLM is processing an application, the BLM will not continue to process the application until funds become available or the applicant elects to pay full actual costs under § 2804.14(f).

Section 2804.22 would be revised to improve readability and add new provisions under paragraphs (b) and (c). New paragraph (b) would allow the BLM to deny an application after 90 days if requested reasonable costs for processing an application have not been received. Cost recovery agreements can provide for a portion of the funds to be used for the BLM to hire additional staff or contractors.

New paragraph (c) would provide that the BLM may enter into a cost recovery agreement with an applicant in which a portion of the funds may be used to hire additional staff or contractors to aid in application processing. If such cost recovery payments are provided to the BLM, the funds paid must be non-severable (non-refundable) once committed to the hiring of an employee. Payment of such funds would allow the BLM to increase its application-processing capacity.

Section 2804.23 What costs am I responsible for when the BLM decides to use a competitive process for my application?

Existing § 2804.23 describes when the BLM will use a competitive process and how such a process is initiated. Portions of the existing section that address when the BLM would use a competitive process have been relocated to subpart 2809, along with portions of the existing § 2804.30, or have been removed for reasons explained below. Therefore, revised § 2804.23 is limited to addressing issues related to cost recovery in competitive processes.

The section title would be revised, changing ''if'' to ''when.'' In this paragraph, the applicant would be required to pay the application costs when the BLM decides to use a competitive process.

Existing paragraph (a) would become introductory text, and existing paragraphs (a)(1) and (2) would be renumbered as paragraphs (a) and (b). The introductory text has been revised to remove the term ''competing applications for the same facility or system,'' which is a term that is not used elsewhere in the regulations and is not clearly defined, and instead refer to situations in which ''the BLM decides to use a competitive process,'' which matches the title of this section as well as the language used in subpart 2809. Apart from this change, the substance of the retained text has not changed.

Provisions found under existing paragraph (b) would be removed, but the substance of these provisions—that the discretion to decide whether to conduct a competitive process resides with the BLM—is addressed in proposed §§ 2809.10(a) and 2809.12. The provisions of existing paragraph (c) can be found in existing § 2809.13(b) (which addresses the notice requirements for notices of competitive offerings), and in proposed §§ 2809.10(a) and (e) (which address the BLM's discretion and the circumstances under which the BLM will not conduct a competitive offer). Changes to the substance of these provisions are addressed below in the context of those sections. Existing paragraphs (d) and (e) would be removed from the regulations to be consistent with this rule which would allow for applications to be submitted inside designated leasing areas without first holding a competitive offer.

Section 2804.25 How will the BLM process my application?

Section 2804.25 explains how the BLM would process your application. Revisions in this section would eliminate the provision for a mandatory pre-processing public meeting under existing paragraph (e)(2)(i); clarify that Tribal governments are accorded equal treatment with state and local governments during application reviews; and make technical changes.

Existing provisions in paragraph (e) describe how the BLM processes solar and wind ROW applications. This paragraph is not intended to enumerate all the steps that the BLM may be required to take under other authorities, including its obligations under NEPA (which are incorporated in paragraph (e)(4)) or its obligations to engage in Tribal consultation (which are similarly referenced in paragraph (e)(7)), and any changes to this paragraph would not affect those obligations or the steps that the BLM takes to comply with them. Rather, the purpose of this paragraph is to describe how the BLM carries out certain steps that are distinctive to the ROW application review process, such as prioritizing applications (existing paragraph (e)(2)(ii)) and reviewing a proposed POD (paragraph (e)(3)).

The proposed rule would remove a provision in this paragraph requiring a pre-processing public meeting in the affected area of a potential ROW (existing paragraph (e)(2)(i)), while leaving in place a provision that allows for such a meeting to occur at the BLM's discretion (paragraph (e)(1)). Such pre-processing public meetings are in addition to the opportunities for public participation that exist during the environmental review process, and from coordination and consultation sessions that the BLM holds with state, Tribal, and local governments, and are a unique feature of the solar and wind ROW application process. The BLM's experience, since its last rulemaking for solar and wind energy in 2016, demonstrates that this unique procedural step is redundant and not necessary to ensure adequate public participation and coordination with Tribal, and local governments. Participation and interest in these pre-processing meetings are not as strong as it was when solar and wind energy development was a relatively unfamiliar use of public lands, and these meetings are often confused with public meetings that are held later during the environmental review process. Removing this provision would reduce costs, shorten processing times, and remove redundant or unnecessary process requirements for these proposals. However, should the BLM decide that a public meeting is advisable (for example, in response to a request for such a meeting), it will give notice, under existing provisions in paragraph (e)(1) of this section, in the **Federal Register**, or may use other notification methods such as a local newspaper or the internet to announce a public meeting.

Other changes within this section would clarify that Tribal governments are accorded equal treatment with state and local governments under paragraph (e)(2)(ii) (formerly paragraph (e)(2)(iii)); remove references to the prohibition on filing non-competitive applications within designated leasing areas, which would no longer exist under the proposed regulations; and simplify language related to application prioritization under § 2804.35 in paragraph (e)(2)(i) (formerly paragraph (e)(2)(ii)).

Additionally, the BLM would revise paragraph (e)(5), which currently reads, ''The BLM will determine whether your proposed use complies with Federal and State laws,'' by removing ''and State.'' This revision provides clarity on the BLM's role regarding State laws. The BLM is not responsible for enforcing State law or ensuring that an applicant complies with State law, and removing this provision from the regulations would remove potential reader confusion as to the Federal Government's responsibility under State law. To the extent that State law is applicable to development on Federal lands, consistency with State law may be relevant to an application's prioritization under § 2804.35(a)(4).

Paragraph (f) addresses the segregation of lands within a ROW application. Segregation removes the lands covered by a ROW application from appropriation under the public land and mining laws. The BLM would revise this paragraph to clarify that a segregation would not be extended unless the application is complete (as defined in § 2804.12(j)) and a cost recovery payment has been received that includes the application filing fee. For further information on these segregations, please see the BLM's *Segregation of Lands-Renewable Energy* final rule published on April 30, 2013 (78 FR 25204).

Section 2804.26 Under what circumstances may the BLM deny my application?

Section 2804.26 explains the circumstances under which the BLM may deny an application.

Paragraph (a)(4) would be revised to be consistent with the proposed revisions for acronyms and terms found in § 2801.5, where the BLM replaces the term ''the Act'' with ''FLPMA.'' For further discussion on this proposed

revision, see this preamble for a discussion of revisions under § 2801.5.

New paragraphs (a)(9) and (10) would incorporate into this section requirements that are discussed elsewhere in the rule. Paragraph (a)(9) provides for denying an application if the applicant fails to comply with a deficiency notice within the time specified by the BLM under § 2804.25(c). Paragraph (a)(10) provides that an application may be denied for failing to pay costs, as noted in proposed § 2804.22(b).

Paragraph (c) would be removed, since the placement of this provision (which references requests for alternative requirements under § 2804.40) in section 2804.26 may be read incorrectly to suggest that an applicant may request alternative means of complying after the BLM denies the application. Section 2804.40 provides that applicants must request alternative requirements in a timely manner (see § 2804.40(c)). A request that is received after an application has been denied is not timely. Removing this provision in this section improves clarity regarding when such requests may be made.

Section 2804.30 What is the competitive process for solar or wind energy development for lands outside of designated leasing areas?

Section 2804.30 would be removed and reserved. Some portions of the existing section are duplicative of provisions in existing §§ 2809.13, 2809.14, and 2809.17, which address competitive leasing inside of designated leasing areas; because the BLM proposes to use the same process for competitive leasing inside and outside of designated leasing areas, there is no need to describe this process twice. Other portions of the existing section are proposed for inclusion in revised sections of subpart 2809, while others would be removed for the reasons explained below.

Existing paragraph (a) would be removed, because the BLM would no longer distinguish between lands inside or outside of designated leasing areas for purposes of competitive leasing. Criteria and procedures for selecting parcels for competitive leasing are discussed in revised § 2809.12.

Existing paragraph (b) is duplicative of existing § 2809.13(a), which the BLM does not propose to revise.

Existing paragraph (c) is substantially similar to proposed § 2809.10(a).

Existing paragraph (d) is duplicative of existing § 2809.13(b), which the BLM does not propose to revise, except that the sentence in existing section (d) that reads, ''The notice would explain that the successful bidder would become the preferred applicant (see paragraph (g) of this section) and may then apply for a grant,'' corresponds to proposed new section 2809.13(b)(7), as discussed below.

Existing paragraph (e) is duplicative of existing § 2809.14, which the BLM does not propose to revise.

Existing paragraphs s (f) and (g) correspond to § 2809.15, which the BLM proposes to revise as discussed below.

Existing paragraphs (h)(1) through (3) correspond to § 2809.17(a) through (c), which the BLM proposes to revise as discussed below.

Existing paragraph (h)(4) is duplicative of existing § 2809.17(d) and would be removed for the reasons discussed below in connection with that section.

Section 2804.31 Reserved

Section 2804.31, title, ''How will the BLM call for site testing for solar and wind energy?'' would be removed and reserved. The BLM has not had competitive interest in a site testing right-of-way since the regulations were finalized in 2016, and thus has not held a competitive process to authorize a site testing ROW during that period. The BLM has received input that the use of a competitive process for a site testing ROW prohibitively increases the time and cost for processing an application. This change does not eliminate rights-of-way for site testing, which may still be issued upon BLM approval of an application for site testing under § 2801.9(d)(1) and (d)(2); nor does it eliminate the use of competitive processes for solar and wind energy development rights-of-way, which can be found in §§ 2809.11 and 2809.13.

The BLM is interested in comments on the BLM proposing to remove the rules for a call for a competitive process for site testing ROWs for solar and wind energy and whether there is any value in keeping this rule for the future.

Section 2804.35 Application Prioritization Principles for Solar and Wind Energy Development Rights-of-Way

Section 2804.35 would be retitled from ''How will the BLM prioritize my solar or wind energy application?'' to ''Application prioritization principles for solar and wind energy development rights-of-way'' to more clearly identify the content of this section. Revisions to this section are based on the BLM's experience with the existing prioritization criteria and their potential for causing confusion and misunderstanding of the criteria's use. The existing § 2804.35 prescribes screening criteria under which an application is evaluated and then assigned high, medium, or low priority. However, in practice, a single application may meet criteria that are associated with more than one priority level. Furthermore, the relative importance of different criteria may vary from location to location due to resource considerations. Likewise, not all prioritization criteria are equally relevant for every application. These practical concerns create confusion within the existing regulations. Additionally, evaluation using the existing criteria removes some discretion from the BLM to best determine an application's priority because use of the criteria to prescribe the priority level fails to recognize and give weight to local resource issues and circumstances.

Revisions in this section therefore would not assign specific criteria to specific priority levels. Instead, the revised section would clarify that relevant factors including those set forth in the regulation are to be used holistically to prioritize applications in a manner that would facilitate environmentally responsible developments and ensure that agency workloads are directed appropriately. The revised section would also explicitly recognize that the BLM may identify additional criteria in step-down guidance, which may be national in scope or specific to an area.

Paragraph (a) clarifies that the purpose of prioritizing applications is to allocate agency resources to processing applications that have the greatest potential for approval and implementation.

Paragraph (b) identifies factors that the BLM may consider when prioritizing applications. The proposed factors are similar to the existing criteria inasmuch as they focus on the extent to which an application avoids known resource, use, or policy conflicts and complies with relevant plans and policies, but they are less prescriptive than the existing criteria. This rule proposes factors that are inclusive of the existing rule's criteria found in this section. The rule would provide discretion to the BLM as to how best to apply the factors to prioritizing processing of solar or wind energy generation applications, taking into account the multiple considerations that are relevant to each area and office managing public lands.

The first factor would consider whether the proposed project is located within an area preferred for such development, such as a designated leasing area. These areas have

previously been identified as posing less severe resource conflicts through the land use planning process, and the BLM may reasonably presume that developments proposed within these areas are more likely to proceed to approval.

The second factor would consider whether the proposed development avoids adverse impacts to or conflicts with known resources or uses on or adjacent to public lands, and includes specific measures designed to further mitigate impacts or conflicts. When submitting an application to the BLM, the applicant must address known potential adverse resource conflicts, including those for sensitive resources and values that are the basis for special designations and protections, as well as potential conflicts with existing uses on or adjacent to the proposed energy generation facility.

The applicant must also include specific measures to mitigate impacts or conflicts with resources and uses. While subsequent consultation, public comment, and environmental review processes may reveal unknown resource or use conflicts, the BLM may reasonably presume that projects with fewer known conflicts are more likely to proceed to approval and successful implementation.

The third factor would consider whether the proposed project is in conformance with the governing BLM land use plans. Applications should identify whether the proposed project is in conformance with the governing land use plan or would require an amendment or revision to the plan. The BLM may, in its discretion, consider applications for solar or wind energy generation facilities that would require an amendment or a revision to the governing land use plan under part 1600 of these regulations. However, such application could require greater resources to process and could present resource conflicts, which would result in a lower priority.

The fourth factor would consider whether the proposed project is consistent with relevant State, local, and Tribal government laws, plans, or priorities. The purpose of this determination is not to enforce these State, local, or Tribal but rather to ensure comity and identify projects that are more likely to be successfully approved. In addition, applying this principle helps to ensure that the BLM takes into account the existing resource knowledge and expertise that may be available through State, local, and Tribal plans and priorities. To carry out this prioritization, the BLM may enter into agreements with State, local, or Tribal governments or rely on existing agreements.

The fifth factor would consider whether the proposed project incorporates the best management practices set forth in the applicable BLM land use plans and other BLM plans and policies. Like the first four principles, this principle ensures that the BLM takes into account the knowledge and expertise that has gone into formulating these existing policies and also recognizes that an application that would require an amendment to existing plans or policies is likely to require more time and effort to process.

Under the sixth factor, the BLM would consider any other circumstances or prioritization criteria identified by the BLM in subsequent policy guidance or land use planning. Such guidance or planning could describe new criteria in addition to the proposed principles or may describe regional or local criteria that may be used when prioritizing solar and wind energy applications. Under paragraph (c), once applications are complete (as defined in § 2804.12(j) of this part), the BLM would go through a process to prioritize those complete applications (as defined in § 2804.12(j) of this part), based on all available information. Available information may include information provided in the application or its plan of development, applicant responses to deficiency notices, and information provided to the BLM in public meetings or consultations, including consultations with other Federal agencies and with State, local, or Tribal governments.

Paragraph (d) would allow the BLM to re-prioritize an application based on new information that the BLM has received or on changes the applicant has made to the application. Changes to an application may include changes that clarify an applicant's proposal or the related plans, studies, and inventories. Once the BLM begins processing an application, the BLM will generally continue processing that application to completion and decision, to the extent possible. Nonetheless, the BLM reserves the right to re-prioritize an application, and adjust its workload accordingly, if circumstances warrant such re-prioritization.

The BLM is interested in comments regarding its proposed prioritization principles for solar or wind energy developments. Are the factors appropriate? Should the BLM consider additional factors, such as co-location with energy storage, or other proposed or existing energy facilities, or proximity to transmission infrastructure facilities as a consideration?

Section 2804.40 Alternative Requirements

Section 2804.40 provides for situations when a requestor is not able to meet the requirements of this subpart and wants to request alternative requirements from the BLM. The introductory paragraph would be revised to clarify that requests for alternative requirements apply only to the application requirements set forth in this subpart, and not to other requirements related to ROWs, such as the requirement to pay rent as set forth in subpart 2806. This revision would improve clarity and avoid potential misunderstandings.

Section 2805.10 How will I know whether the BLM has approved or denied my application or if my bid for a solar or wind energy development grant or lease is successful or unsuccessful?

Section 2805.10 provides for how the BLM communicates to an applicant that their application or bid is successful. This section would be revised to improve consistency and clarity within the BLM's regulations and to avoid confusion over the timing of appeals. Existing paragraphs (a) and (d), which the BLM does not propose to revise, specify that the agency decision occurs when the BLM transmits an unsigned grant or lease to the successful applicant or when the BLM notifies an unsuccessful bidder or applicant that their bid or application has not been successful (see also the discussion below of § 2809.15, which clarifies the process through which a successful bidder may proceed to become a presumptive lease holder, and eventually a lease holder). Existing paragraph (b), which the BLM similarly does not propose to revise, clarifies that the unsigned grant or lease document will specify the terms and conditions of the grant or lease. These paragraphs identify the point at which the BLM has made its decision to approve, approve with modifications, or deny the application, which typically marks the endpoint of the BLM's decision-making process. This decision marks the appropriate time for appeal of the BLM's decision.

Existing paragraph (c) injects potential confusion into this scheme by stating that after the applicant signs and returns the grant, ''BLM will sign the grant and return it to you with a final decision issuing the grant,'' and that the applicant ''may appeal this decision under § 2801.10 of this part.'' This language suggests that an appealable decision occurs any time the BLM

issues a grant or lease by returning a signed ROW instrument to the applicant, even though the step of issuing the ROW often does not require the BLM to exercise discretion.

Under the proposed rulemaking, paragraph (c) would be revised to replace the text ''BLM will sign the grant and return it to you with a final decision'' with the text ''The BLM will issue the right-of-way by signing the grant or lease and transmitting it to you,'' and by removing the sentence ''You may appeal this decision under § 2801.10 of this part.'' The purpose of this revision is to remove the confusing reference to a ''decision'' in paragraph (c), to recognize that the act of issuing the grant is not an appealable decision. The BLM also proposes the technical change of replacing ''grant'' with ''grant or lease.''

While the proposed revision would clarify that the act of issuing a grant or lease by returning a signed ROW instrument to the applicant is not typically an appealable decision, the revised text retains the critical language clarifying that it is the BLM's act of returning the signed instrument to the holder that constitutes the ''issuance'' of the ROW. Identifying the point in time at which the ROW is ''issued'' is important for calculating when the term of a ROW begins to run (see § 2805.11) and when the holder's obligation to pay rent begins (see § 2806.12). Identifying the point at which the ROW is ''issued'' is also important for clarifying which actions are subject to the conditions in Section 50265(b)(1) of the Inflation Reduction Act, which imposes conditions on when the Secretary may ''issue a right-of-way for wind or solar energy development on Federal land.'' Under both the current and the proposed text of § 2805.10(c), the ROW is issued when the BLM transmits the signed instrument to the holder.

Section 2805.11 What does a grant or lease contain?

Section 2805.11(b) addresses the duration of ROWs. Section 2805.11(b)(2) provides specific terms for solar and wind energy grants and leases. Paragraphs (b)(2)(iv), (b)(2)(v), and (b)(4) would be revised to update the maximum terms for solar and wind energy generation facilities, energy storage facilities that are separate from energy generation facilities, and electric transmission lines with a capacity of 100 kV or more. The term for a grant or lease for these types of authorizations may be up to 50 years. Revisions under this section are consistent with those made under § 2801.9(d).

Paragraph (b)(2)(iv) would be revised to include updating the maximum term for both grants and leases, consistent with changes under this rule that allow for applications to be filed within designated leasing areas without first holding a competitive offer.

Paragraph (b)(2)(v) would be revised to set the maximum term for ROWs for energy storage facilities that are separate from energy generation facilities. Although these ROWs are generally treated as linear ROWs, rather than solar or wind energy development ROWs, for purposes such as rent calculation, the BLM believes that allowing a longer maximum term, commensurate with the maximum term for solar or wind energy development ROWs, will facilitate the transition to cleaner sources of energy in the United States.

Paragraph (b)(4) would be added to update the term for electric transmission lines with a capacity of 100 kV or more.

Section 2805.12 What terms and conditions must I comply with?

Section 2805.12 provides terms and conditions that apply to ROWs. The BLM proposes to revise paragraph (e)(2) to clarify that the option of requesting alternative stipulations, terms, or conditions does not apply to terms or conditions related to rents or fees. As with requests for alternative application requirements under § 2804.40, requests for alternative stipulations, terms, or conditions under § 2805.12 are limited to technical obligations of the applicant or holder and not to the holder's obligation to compensate the United States for the use of the public lands and their resources. Requests for exemptions or deviations from the general rent provisions of subpart 2806 should be made under provisions of that subpart that specifically address such exemptions or deviations, such as existing § 2806.15(c) (which the BLM does not propose to revise), which sets forth a procedure for asking the BLM State Director to waive or reduce a holder's rent payment, or proposed § 2806.52(b)(1)(i), which describes certain circumstances under which the BLM may calculate rent based on an alternative MWh rate. The applicability of those provisions would not be affected by this proposed revision to § 2805.12.

Section 2805.13 When is a grant or lease effective?

Section 2805.13 title and section is revised to add ''or lease'' to clarify that this section applies to both grants and leases.

Section 2805.14 What rights does a right-of-way grant or lease convey?

The title would be revised from ''What rights does a grant convey?'' to ''What rights does a right-of-way grant or lease convey?'' The title would be revised to clarify that this section applies to both grants and leases.

Paragraph (g) would be revised to remove the text ''solar or wind energy development'' and add ''right-of-way'' to read as ''right-of-way grant or lease'' to capture every instrument or type of ROW authorization that the BLM may issue. This revision would clarify for readers that an applicant may apply to renew any ROW grant or lease, including those for solar or wind. This revision would clarify that holders of all ROW grants and leases may apply for a renewal under § 2807.22. ROW grants or leases would include those issued for solar or wind energy developments, communication sites, or other types of uses authorized by a ROW grant or lease.

Section 2805.16 If I hold a grant or lease, what monitoring fees must I pay?

This section provides for a monitoring fee to reimburse the Federal Government for its costs in inspecting and monitoring the public lands subject to a ROW and for its ongoing costs administering the ROW.

Proposed paragraph (b) would update the BLM's headquarters address to read as U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5645, Attention: Lands, Realty, and Cadastral Survey, Washington, DC 20240. This revision is made so that the public is aware of where to obtain a copy of the current cost recovery schedule. The BLM also posts the cost recovery schedule online at *http://www.blm.gov.*

Subpart 2806—Annual Rents and Payments

In subpart 2806, the BLM sets forth the rent calculation methodologies for solar and wind energy development ROWs. Section 504(g) of FLPMA, 43 U.S.C. 1764(g), requires ROW holders, subject to several narrow exceptions, ''to pay in advance the fair market value'' for the use of the public lands. Section 102(a) of FLPMA, 43 U.S.C. 1701(a), clarifies that ''it is the policy of the United States that . . . the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute.'' The BLM has consistently taken the position that this statutory mandate includes the authority to charge acreage rent and capacity fees

that reflect the fair market value of the public lands and their resources. For example, the preamble to the 2016 rule explained that ''(t)he BLM has determined that the most appropriate way to obtain fair market value is through the collection of multicomponent fee (sic) that comprises an acreage rent, a MW capacity fee, and, where applicable, a minimum and a bonus bid for lands offered competitively . . . (T)he collection of this multicomponent fee will ensure that the BLM obtains fair market value for the BLM authorized uses of the public lands, including for solar and wind energy generation'' (81 FR 92122, page 92134). As the BLM explained in 2016, the use of a multicomponent rent and fee structure that comprises an acreage rent, a MW capacity fee, and in some cases also a minimum and a bonus bid, assists the BLM in achieving important objectives, including identifying the fair market value for the use of public land. The multicomponent fee proposed in this proposed rule would continue to achieve important BLM objectives, including allowing the BLM to capture fair market value for use of the land (subject to reductions pursuant to Energy Act of 2020 authority).

For solar and wind energy development ROWs, the fair market value requirement of Section 504(g) of FLPMA has been supplemented since the 2016 rulemaking by the Energy Act of 2020, 43 U.S.C. 3003, which reaffirms that the ''Secretary may consider acreage rental rates, capacity fees, and other recurring annual fees in total when evaluating existing rates paid for the use of Federal land by eligible projects,'' and confers on the Secretary new authority to reduce acreage rental rates and capacity fees if the Secretary makes certain findings.

Consistent with FLPMA and the Energy Act of 2020, the BLM proposes to continue to determine rent for solar and wind energy ROWs based on acreage rent rates and capacity fees, although under a revised methodology that provides the BLM with more flexibility to ensure rental fees and rates are adjusted to appropriately respond to changes in the renewable energy market. The revised methodology would also reflect the direction in the Energy Act of 2020, including to propose rules for certain rate reductions and to meet the Congressional goal of permitting 25 GW by 2025. The BLM also proposes to introduce through this rulemaking certain rate reductions, implementing the authority of the Energy Act of 2020.

Acreage rent rates for solar and wind energy ROWs would be determined under the proposed rule using the NASS Cash Rents Survey, which reflects the value of the land at the time the ROW is issued. This per-acre land rental value would be multiplied by an encumbrance factor (which differentiates between solar and wind energy facilities) and an annual adjustment factor that accounts for changes in the value of the land over the lifetime of the ROW due to inflation and similar factors. Because the NASS Cash Rents Survey used for solar and wind acreage rents reflects a valuation of annual rent, no rate of return is applied when determining solar and wind energy acreage rents.

Once a solar or wind energy generation facility is producing electricity, the BLM would charge the higher of the acreage rent, described in the previous paragraph, or the capacity fee for the ROW. The capacity fee is determined using the annual production multiplied by either wholesale power pricing information or pricing figures specific to a project's power purchase agreement, to determine the market value of the energy generated from the project. The wholesale power pricing information or other pricing figures, like the pastureland rental value used for calculating acreage rents, would be fixed at the time the ROW is issued and would be updated using a fixed annual adjustment factor. This market value of the energy generated would then be multiplied by a rate of return based on a percentage of wholesale pricing, and by certain policy-based fee reduction factors tied to the Energy Act of 2020, to arrive at a capacity fee.

Section 2806.10 What rent must I pay for my grant or lease?

Section 2806.10 provides rent requirements that apply to all grants and leases, requiring payment in advance, consistent with Section 504(g) of FLPMA, as amended.

New § 2806.10(c) would clarify to a reader that the per acre rent schedule for linear ROW grants must be used unless a separate rent schedule is established for your use, such as with communication sites under § 2806.30 or solar and wind energy development facilities per § 2806.50, or the BLM determines that none of these schedules applies pursuant to § 2806.70.

Section 2806.12 When and where do I pay rent?

Paragraphs 2806.12(a) and (b) describe the proration of rent for the first year of a grant and the schedule for payment of rents. Paragraphs 2806.12(a) and (b) would be revised by deleting the term ''non-linear,'' which is not defined in the regulations, to clarify that these provisions apply to all ROW grants or leases.

Section 2806.20 What is the rent for a linear right-of-way grant?

Section 2806.20(c) addresses how to obtain a current rent schedule for linear ROWs. This paragraph would be revised to update the BLM's mailing address of record by reference to § 2804.14(c) that would also be updated.

Solar and Wind Energy Development Rights-of-Way

The existing regulations contain two undesignated center headings to organize and differentiate sections pertaining to solar (see existing 2806.50 through 58) and wind (see existing §§ 2806.60–68) energy rights-of-way. This proposed rule would revise those sections and undesignated headings to provide a single set of provisions for all solar and wind energy development ROWs. Existing regulations have solar and wind rights-of-way separated into different sections, even though rents, fees, and the required payments for solar and wind rights-of-way are similar. The rent, fee, and payment requirements under the proposed rule are discussed in the following sections and would be the same for both solar and wind except for the difference in the encumbrance factor used in calculating the acreage rent that is discussed under § 2806.52(a). Sections 2806.60 through 2806.68, which address wind energy rents and fees, would be removed and consolidated with solar energy rents and fees under 2806.50 through 2806.58.

The BLM has considered several alternative methods for valuing solar and wind energy facilities on public lands. In May 2022, the BLM issued its interim solar and wind energy rent policy in an update to the BLM Right-of-Way Manual (Manual), Section 2806.60—*Rent: Solar and Wind Rights-of-Way Rents, Fees, and Reductions,* which incorporated the Secretary's authority under the Energy Act of 2020 to implement changes to the solar and wind energy rents and fees, including reductions. The Manual provides for updates to the rent adjustment methodology under regulation or law. The BLM issued this interim policy after first releasing a draft update to Section 2800.60 of the Manual for public review and comment, see *https://www.blm.gov/press-release/blm-seeks-public-input-proposed-guidance-renewable-energy-blm-public-lands* (December 3, 2021). In the BLM's release of the draft update to the manual, it solicited comments on alternatives for reduced rent payments and offered two rent adjustment options that would rely on the Secretary's

authority under the Energy Act of 2020, 43 U.S.C. 3003, to reduce acreage rental rates and capacity fees if, among other things, the Secretary determines ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.'' The two primary options would have generally sought to either adjust the baseline acreage and capacity fees or provide for a nominal acreage rent and a capacity fee. After reviewing the comments received on the draft update, the BLM amended Section 2806.60 [4] of the Manual with its update to renewable energy rent that provides for adjustments to baseline acreage rents and capacity fees that result in a reduction in total payments for solar and wind energy facilities. Manual 2806.60 does not provide for a nominal acreage rent and a capacity fee.

The BLM determined that the most expeditious way to implement rent changes was by an interim adjustment to the 2016 methodology as reflected in the Manual and subsequently to use this rulemaking to further address its proposed rate setting methodology based on an acreage rent and a capacity fee. In this rulemaking, the BLM considered as an alternative the rates released in Manual Section 2806.60—*Rent: Solar and Wind Rights-of-Way Rents, Fees, and Reductions,* which implements a state-wide per acre value based on non-irrigated land values and a reduced capacity fee that is the same for both solar and wind energy. Please see the BLM's release of its updated Right-of-Way Manual Section 2806.60 for further information. Under this proposed rule, the rates would generally be lower for solar and wind energy ROWs and allow existing holders to choose to keep the updated rate methodology set by the Manual.

The BLM understands, based on comments received for the draft Manual and other engagement with industry representatives and grant and lease holders, that predictability of project costs is critical to the success of an energy generation facility. This includes the costs of energy development through its life, including those for construction, operations, and maintenance.

Although land use expenses, such as annual payments for rents and fees, are a small portion of an energy generating facility's operating expenses (generally 1–3 percent of costs), these amounts are important to a developer as they contribute to determining if a certain facility may be successful or not. Under existing regulations the BLM adjusts the rates based on changes in land values and power pricing, among other considerations. More recently, the rates for solar and wind energy development acreage rents have increased by more than 300 percent in some locations while capacity fees have decreased by about 50 percent. These unanticipated rate changes affect existing holder payments, raising concerns over project viability in future years for projects that are typically associated with 30-year ROWs.

Under the current regulatory method, established in 2016, the rates for acreage rent and wholesale power pricing would likely increase again when the next adjustments are made starting in 2026. These increases to the BLM's rates would be based primarily on recent NASS per-acre land survey data and western power trading pricing in wholesale markets which are both trending upwards in recent years. Changes or variability in rates present an uncertainty to potential ROW holders. The BLM aims through this rulemaking to improve the predictability of public land rental rates for solar and wind energy development, while continuing to adhere to FLPMA's fair market value requirement, except where rates would be reduced to promote the greatest use of the public lands consistent with the Energy Act of 2020.

The 2016 rule did not require the BLM to use a particular source for electricity market wholesale trading data when determining the value for wholesale market pricing, in order to provide the agency with flexibility to use the best available data. Such flexibility is maintained in this proposed rule. Currently, the BLM uses the SNL Energy dataset from S&P Global. Under the proposed rule, however, the BLM would elect to use the wholesale market pricing data from the Energy Information Administration at this time because it is free and open to the public, which would provide additional transparency into the BLM's rate schedule. The BLM would still retain flexibility to utilize different data sources in the future. Wholesale market pricing data from the Energy Information Administration may be found on the Administration's website: *https://www.eia.gov/electricity/wholesale/.*

The BLM is interested in receiving comments and information discussing the BLM's proposed changes to the solar and wind energy acreage rent and capacity fees and whether the rule reasonably implements changes to BLM regulations under Title V of FLPMA and the Energy Act of 2020. Is the BLM proposing a reasonable methodology for valuing solar and wind energy development ROWs, including any preference for alternatives to the BLM's proposal in this rule. Is the BLM's proposal to use free and publicly available wholesale market pricing information appropriate when setting its rates? Are there other options that are more appropriate for use in the BLM's rate setting methodology?

Under this rule, the BLM proposes changes to the acreage rent and capacity fees that would greatly improve payment certainty. Payment certainty would be improved through the BLM establishing an acreage rate and capacity fee rate at the beginning of a grant or lease term and then adjusting it annually by a fixed percentage of the rate established in the first year of the grant or lease term, and by the annual energy production. This is different than current methodology which updates rates periodically based on changes in land values derived from the NASS Census of Agriculture, conducted every five years, and estimated energy generation capacity of solar and wind facilities.

The BLM's proposed acreage rent would use an average of the state-wide pastureland rent from the NASS Cash Rent Survey instead of adjusted non-irrigated land values to determine the acreage rent. The acreage rent would be the minimum payment made to the BLM each year, regardless of energy generation on public lands, and would compensate the United States for the privilege obtained by the developer in securing the right to use and build improvements on the public lands. See § 2806.52(a) for further information on the acreage rent.

The BLM also proposes a capacity fee based on wholesale power prices to compensate the United States for the value of the solar and wind energy resources used by the developer on public lands. The capacity fee would be collected annually, but only when the fee exceeds the acreage rent for the year. See § 2806.52(b) for further information on the capacity fee.

This rule also proposes certain reductions to the capacity fee under the authority granted to the Secretary in the Energy Act of 2020, which provides that annual acreage rent and capacity fees may be reduced if the Secretary determines that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources, among other reasons. Reductions to the capacity fee are discussed in greater detail under § 2806.52(b)(1)(ii) and (iii) for the MWh

[4] *https://www.blm.gov/sites/default/files/docs/2022-05/MS-2806%20rel%202-307%20Chapter%206.pdf.*

rate reduction and Buy American reduction. The BLM considered but did not pursue several reductions for siting developments in designated areas, use of energy storage, efficiency of technology used, payment of compensatory mitigation fees, and project sizing. These reductions would be applied to solar or wind energy developments depending on the specifics of the project and whether it would qualify for one or multiple reductions. The BLM did not propose multiple reductions because it made for a more complex rate structure that may help individual projects that qualify for the reduction(s) but did not seem to promote the deployment of solar or wind energy on public lands collectively.

This rule proposes a single reduction, to apply to all developments, to the annual weighted average wholesale power price, referred to as the MWh rate reduction, as well as a Buy American reduction that is project-specific. For the reasons explained below and in the introduction to this notice, the BLM believes that these proposed rate reductions would reduce economic hardships on developers, maximize commercial interest in lease sales, and promote the greatest use of wind and solar energy resources.

The BLM is interested to hear comments from readers on its proposed capacity fee rate reductions and use of the Energy Act to promote the greatest use of solar and wind energy resources on public lands. How might the BLM utilize its authority under the Energy Act of 2020 differently to provide a reduction to the capacity fee? How might the BLM utilize this authority differently to promote the greatest use? Additionally, the BLM would like to receive comments on whether the BLM should use multiple project specific reductions or whether other reductions may be more appropriate toward meeting the goals of the Energy Act of 2020.

Section 2806.50 Rents and Fees for Solar and Wind Energy Development

Existing § 2806.50 requires a holder of a solar ROW to pay both an annual rent and a phased-in capacity fee in advance each year. Under the proposed rule, this section would be modified to require the holder of a solar or wind energy development ROW to pay the greater of either an annual rent or a capacity fee in advance each year, consistent with Section 504(g) of FLPMA (43 U.S.C. 1764(g)). Because this proposed rule uses a fee based on production, it would remove the phased-in MW capacity fee. The phased-in MW capacity fee in the current regulations is based on the nameplate capacity, an estimation of energy generation potential of a technology, and apart from the phase-in factor, is paid regardless of the amount of energy that is actually produced.

The acreage rent or capacity fee, as applicable, calculated consistently with the requirements found in §§ 2806.11 and 2806.12. The acreage rent would be calculated according to the formula set forth in § 2806.52(a), while the capacity fee would be calculated according to the formula set forth in § 2806.52(b).

Section 2806.50 would be retitled adding ''and wind'' consistent with changes under this rule to consolidate both solar and wind energy rent, fee, and payment provisions. Revisions also include the addition of ''wind'' and ''grant or lease,'' clarifying that this section applies both to grants and leases issued under this part.

The BLM is also interested in public comments regarding its proposal to move from a fee based on the nameplate capacity of a project to a fee based on the energy produced at a solar or wind energy generation facility sited on public lands. Additionally, the BLM would like input on whether it should implement minimum efficiency criteria for developments to support the greatest use of solar and wind energy resources on public land. If so, what criteria should the BLM follow and what penalties, if any should the BLM include for facilities that would not meet these criteria?

As proposed, and as noted in the draft economic and threshold analysis, the BLM believes that this rule would not have a significant economic impact on a substantial number of small entities, and further, that any potential impacts on small entities are unlikely, and would only occur in a limited set of circumstances. The BLM is not aware of developers and operators of solar or wind energy facilities on public lands [5] that would typically qualify as a small business under the Small Business Administration regulations at 13 CFR part 121, which define what constitutes a small business for the relevant industries. Additionally, entities that develop solar or wind projects on public land are often an affiliate of a larger company or a financial investment company that does not qualify as a small business, and therefore the affiliate company would also not qualify as a small business. The BLM provides further information on small business and the number of potentially affected establishments in its draft economic and threshold analysis (Table 8).

The BLM is interested on comments whether small business may be impacted and whether that impact would be negative or positive. How is this rule negatively or positively affecting small business, and how might the BLM more fairly include small business if it is negatively impacted?

Section 2806.51 New and Existing Grant and Lease Rate Adjustments

Section 2806.51 would be retitled from ''Schedule Rate Adjustment'' to ''New and Existing Grant and Lease Rate Adjustments,'' clarifying to readers that this section applies to both new and existing grants and leases.

Paragraph (a) directs readers to the appropriate section setting forth the different rental schedules for different types of ROWs.

Paragraph (b) explains the process for selecting a rate adjustment method for a new grant or lease.

Paragraph (c) informs holders of existing solar or wind energy development ROWs that they may request that the new rate methodology set forth in this proposed rule be applied to their existing grant or lease. Existing holders would have 2 years from the date this rule becomes effective to request a change to the new rate adjustment method. The BLM would continue to apply the grant or lease holder's current rate methodology if a timely request is not received. A request to change the rate adjustment method would require the holder's agreement to the BLM re-issuing the grant or lease with updated Terms and Conditions found under this part, pursuant to § 2806.70.

Section 2806.52 Annual Rents and Fees for Solar and Wind Energy Development

Section 2806.52 currently provides the methodology that the BLM uses to determine the acreage rent and the MW capacity fee for solar and wind energy development ROWs. The current regulation provides for payment of both the acreage rent and the MW capacity fee (based on the MW capacity of the solar or wind energy generation facility).

The BLM proposes to require payment of the greater of either an acreage rent, which is calculated in advance of authorization, or a capacity fee, which is calculated once energy generation begins (§ 2806.50). Section 2806.52 would be revised to provide the methodology for the BLM to determine the acreage rent (§ 2806.52(a)) and capacity fee (§ 2806.52(b)).

[5] Wind: *https://www.blm.gov/sites/default/files/docs/2021-11/PROJECT%20LIST%20WIND_October%202021.pdf.* Solar: *https://www.blm.gov/sites/default/files/docs/2023-03/PROJECT_LIST_SOLAR_FY2022.pdf.*

Paragraph (a) would provide that acreage rent would be determined by multiplying the authorized number of acres (rounded up to the nearest tenth) by the state-specific per-acre rate from the solar and wind energy acreage rent schedule in effect at the time a grant or lease is issued. The acreage rent would be the minimum yearly payment for a grant or lease and would not be required if the capacity fee under paragraph (b) of this section exceeds the acreage rent. Paragraph (a)(1) explains that the per acre rate is calculated by multiplying the state-specific per-acre value by the encumbrance factor and a factor that reflects the compound annual adjustment since the start of the grant or lease term, according to the formula A $\times$ B $\times$ ((1 + C) ^D)).

Paragraph (a)(1)(i) would clarify that ''A'' would be the per-acre rate, using the state-specific per-acre value from the solar or wind energy acreage rent schedule for the states where a project is located for the year when the grant or lease is issued. The per-acre rate for a grant or lease would not change once issued, even with updates to the acreage rent schedule; instead, the acreage rent would be adjusted by the annual adjustment factor, ''C'' in the formula above, under 2806.52(a)(1)(iii). To calculate the current acreage rent schedule for a state, the BLM would use the most recent 5-year period average of NASS pastureland rent values. The average per acre value would be determined by using only the years with reported NASS pastureland rents within the 5-year period. Updates to the per acre rate would occur every 5 years in the acreage rent schedule consistent with the timing of rent adjustments under § 2806.22 for the linear rents schedule. The current 5-year average ranges from $2.10 per acre in Arizona to $12.60 per acre in California with a median value of $6.62 per acre in the Western States, based upon the pastureland rent value in the NASS Cash Rents Survey through 2021.

Using Nevada as an example for how the BLM would average NASS pastureland rents, assume that values of $10.00, $13.00, and $10.00 per acre were reported respectively for 2019, 2020, and 2021. NASS reported values during the 5-year period only for those 3 years and did not report values for 2017 and 2018. Therefore, the BLM would average the reported values using three years for that 5-year period. Thus, the 5-year average would be $11.00 per acre.

Paragraph (a)(1)(ii) would clarify that ''B'' in the formula above, would be the encumbrance factor. For solar energy development facilities, a 100 percent encumbrance factor would be set in this rule, and for wind energy a 5 percent encumbrance factor would be set. A 100 percent encumbrance factor reflects a virtual exclusion of all other uses on the ROW. A lesser encumbrance factor recognizes that an authorized use or development only partially encumbers the land, allowing other uses to co-exist. This proposed rule would maintain the existing 100 percent encumbrance factor for solar energy developments. This rule proposes to reduce the encumbrance factor for wind energy from 10 percent to 5 percent to account for changes in technology over the years and the comparative reduction in land occupied by wind energy generation facilities which use fewer wind turbines and generally meet or exceed older wind energy facility nameplate capacities. For wind, this rule proposes a 5 percent encumbrance factor, reflecting that relatively little exclusion of other uses would occur. This is also consistent with changes in lands where the National Renewable Energy Laboratory (NREL) has noted that wind projects now typically occupy one to four percent of the land within the project area. You may read further in NREL's news release and analysis, NREL Explores the Dynamic Nature of Wind Deployment and Land Use.[6]

Paragraph (a)(1)(iii) clarifies that ''C,'' in the formula above, would be the annual adjustment factor, which is 3 percent, and Paragraph (a)(1)(iv) clarifies that ''D'' would be the year of the grant or lease term, where the first year (whether partial or a full year) would be 1 and the final year for a grant or lease authorized for a 50-year term would be 51 (assuming a partial first year). Currently, the BLM sets and adjusts the annual adjustment factor based on the average annual change to the Implicit Price Deflator—Gross Domestic Product (IPD–GDP) for the ten-year period immediately preceding the year that the NASS Census data become available, to reflect the loss in value due to inflation. Under the proposed rule, the annual adjustment factor would be fixed at 3 percent. In reviewing the IPD–GDP, average annual change for the last five-year period (2017–2022) was 3.27 percent, while for the ten-year period before that the average annual change was 2.39 percent. This difference highlights the fact that inflation in 2017–22 has been significantly greater than for years in the preceding 10-year period. Under the proposed rule, the annual adjustment factor would be fixed at 3 percent, derived by rounding the average annual change from the past 15 years to the nearest full percent. Setting this factor would improve future rate predictability.

Paragraph (a)(2) would describe where you may obtain a copy of the current per acre rates for solar and wind energy rent schedule.

Paragraph (b) would provide that the capacity fee is calculated by multiplying the MWh rate or the alternative MWh rate (which is described below), the MWh rate reduction, the Buy American reduction, the rate of return, and the annual power generated on public lands for the grant or lease in question (measured in MWh) by a factor that reflects the compound annual adjustment. The capacity fee is paid annually beginning in the first year that generation begins for the energy generation facility. There would be no capacity fee levied for the first year or any other year if the acreage rent exceeds the capacity fee. The proposed formula for calculating the annual capacity fee is A $\times$ F $\times$ G $\times$ B $\times$ C $\times$ (1 + D) ^E.

Paragraph (b)(1)(i) would clarify that ''A'' is either the MWh rate, an amount determined based on the average of the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States, or the alternative MWh rate. The MWh rate is calculated based on the wholesale prices from the full five calendar-year period preceding the most recent MWh rate adjustment before the ROW was issued, rounded to the nearest dollar increment. There is no MWh rate phase-in for energy generation facilities except for existing holders that elect to continue paying under their current rate adjustment method per § 2806.51(c).

The BLM may use an alternative MWh rate when a grant or lease holder enters into a power purchase agreement with a utility for a price per MWh that is lower than the average of the annual weighted average wholesale price. In those instances, the BLM would determine if the rate in the power purchase agreement is appropriate to use instead of the MWh rate. For example, an alternative MWh rate may not be appropriate if the utility issues itself a power purchase agreement for its solar or wind energy development. If the rate in the agreement is appropriate, then the BLM would set an alternative MWh rate for the grant or lease at the rate shown in the agreement.

[6] *https://www.nrel.gov/news/program/2022/nrel-explores-the-dynamic-nature-of-wind-deployment-and-land-use.html#:~:text=Through%20comprehensive%20spatial%20analysis%20of%20U.S.%20wind%20power,and%20plant%20design%20are%20changing%20land%20use%20requirements.*

In paragraph (b)(1)(ii), ''B'' is the *MWh rate reduction.* The BLM proposes to set the capacity fee based on 20 percent of the wholesale price per MWh or alternative MWh rate until 2036. This reduction is consistent with the authority provided in the Energy Act of 2020 allowing the Secretary to reduce acreage rental rates and capacity fees if, among other things, the Secretary determines ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.'' Further, this reduction would help BLM meet the minimum goal under the Energy Act of 2020 for ''authoriz(ing) production of not less than 25 gigawatts of electricity from wind, solar, and geothermal projects by not later than 2025.'' Implementing this reduction is necessary to promote the greatest use of wind and solar energy resources and maximize commercial interest in lease sales by lowering the entry cost of prospective energy generating facilities and further supporting existing facilities that may have capacity fee rates that exceed market value, impose economic hardship, or limit future commercial interests.

Starting in 2036, the MWh rate reduction factor would increase to 80 percent of the wholesale price per MWh—that is, the capacity fee would now be based on 80 percent of the wholesale price per MWh or alternative MWh rate. This continuing 20 percent reduction would be consistent with the Energy Act of 2020 authority to reduce acreage rental rates and megawatt capacity fees when the Secretary determines that reducing the rate would ensure that the BLM's rates are ''competitively priced compared to other available land.''

The BLM is interested to hear from commenters whether the reduction to the wholesale price per MWh should be limited to a specific period of time or conditioned on national or regional (*i.e.,* renewable portfolio standard) priorities. The BLM has also considered whether a shorter period of time to set its rates would be appropriate instead of using a 5-year average of wholesale market pricing. Should a different period of time be provided in the final rule, or should the BLM allow for the reduction to continue until further rulemaking or a change in the statutory framework? Additionally, the BLM considered conditioning this reduction on renewable portfolio standards, in which a State may set a specific objective for additional energy from renewable energy resources. If such a provision were added to the final rule, the BLM would lower its MWh rate for projects that help a State to meet its renewable portfolio standard.

Finally, the BLM has considered, but not proposed in this rule, tiering the wholesale power pricing to the potential energy of the solar or wind energy resource in a given location based on solar energy insolation values or wind energy by meter per second, in which case, the BLM would lower the power pricing for locations that are of lower energy resource potential to promote renewable energy development that may have a lower overall production capacity. In addition to the proposed expiration of an 80 percent reduction to the price per MWh rate used in determining a capacity fee, the BLM is interested to hear from commenters whether a different reduction may be more appropriate, if at all.

In paragraph (b)(1)(iii), ''C'' is the *Buy American reduction.* As explained above, the BLM proposes to promote the development of wind and solar energy resources on public lands by helping to offset some of the costs of using American-made items in solar and wind energy development facilities. The Federal Acquisition Regulations (FAR), 48 CFR 52.225–1(b), describe certain categories of items or products that are eligible for the Buy American preference in Federal acquisition. As noted above, in the discussion of proposed Section 2801.5, the BLM proposes to adopt the term ''Buy American'' to refer to any item that is eligible for the Buy American preference in Federal acquisition under section 52.225–1(b) of the FAR. Paragraph (b)(1)(iii) of Section 2806.52 of the BLM's proposed regulation would reduce the capacity fee for solar or wind energy generation facilities according to the percentage of the total cost of the facilities on the ROW attributable to Treasury items. The reduction to the capacity fee would be as follows:

(A) 25 percent or more of the total facility cost attributable to items qualifying for Buy American preference = 5 percent reduction
(B) 35 percent or more qualifying for Buy American preference = 10 percent reduction
(C) 45 percent or more qualifying for Buy American preference = 15 percent reduction
(D) 55 percent or more qualifying for Buy American preference = 20 percent reduction

To qualify for this capacity fee reduction, the percent of the energy generation facility's total cost that consists of items qualifying for the Buy American preference would have to meet or exceed the percentages set forth in this section. The holder would have to identify the items qualifying for the Buy American preference in the energy generation facility and provide sufficient documentation (*e.g.,* purchase orders for end products, materials and supplies of the facility; as-built or construction plans) to demonstrate that these items, in the aggregate, represent the specified percentage of the facility's total cost.

Once an energy generation facility qualifies for a Buy American reduction, the facility would have that same reduction for the term of the grant or lease. The BLM would only revisit the reduction at the time of an assignment, amendment or renewal of an energy generation facility grant or lease to determine what reduction, if any, it may qualify for. The BLM would apply the version of the FAR in effect at the time the ROW is issued If the FAR is amended in the future in such a way that section 52–225–1(b) of the FAR no longer provides a clear meaning for the term ''Buy American,'' as defined in these proposed regulations, the BLM would continue to apply the most recent version of the FAR that provides such a workable definition until such time as the BLM is able to amend these regulations.

Also, the proposed Buy American reduction increases incrementally based on the percentage of the total facility cost attributable to items qualifying for Buy American preference. The BLM recognizes that, in other contexts, such as direct federal procurement, qualification for a domestic content preference is based on reaching a set percentage and is not altered by reaching a higher percentage. The BLM seeks comment on whether it should establish a fixed reduction based upon a set percentage rather than the escalating approach proposed in this rule.

The Buy American reduction to the capacity fee is proposed in this rule under the authority of the Energy Act of 2020, 43 U.S.C. 3003, to ''promote the greatest use of wind and solar energy resources,'' avoid ''economic hardships'' to ROW holders, and maximize ''commercial interest'' in lease sales and ROW grants. Providing this reduction would defray some costs in sourcing from domestic supply chains, which would support continued deployment of solar and wind projects on public lands if foreign supply chains are disrupted.

Deployment of renewable energy technology on public lands has been impeded, particularly in recent years, by unreliable foreign supply chains as a result of international developments, a worldwide pandemic, and

manufacturing limitations. There have been several instances of international developments, such as the Russia-Ukraine war, that resulted in disruptions to supplies and limited investment in solar and wind energy resources on public lands, created economic hardships for ROW holders, or limited commercial interest in lease sales and ROW grants. Such recent developments include the enactment of the Uyghur Forced Labor Prevention Act, Public Law 117–78 (''UFLPA''), which aims to prevent the importation of goods produced using forced labor in China. The UFLPA imposes a rebuttable presumption that ''any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China'' are made with forced labor, and are therefore prohibited from importation into the United States. A significant portion of the global supply chain for photovoltaic panels and their components involves the Xinjiang region, and although panels imported into the United States no longer incorporate components from Xinjiang, the United States' efforts to combat the use of forced labor has impacted the import of solar energy components and precursor materials.

At the same time, the United States has reduced importation of Russian mineral resources and imposed sanctions against the Russian Federation as the Russia-Ukraine war has progressed, resulting in increased demand for domestic minerals (*e.g.,* steel, aluminum, iron, copper, and silicon). As of November 2022, the United States had reduced US goods trade with Russia to about $500 million worth of goods from its peak of about $2.65 billion in March 2022 (the month after the Russian-Ukraine war started) per the U.S. Census Bureau.[7] Trade in goods between the United States and the Russian Federation continues to decline with the implementation of US tariffs against Russian imports. These imports of necessary minerals have nearly stopped in the past year, having a significant effect on the available resources used in manufacture and development of solar and battery storage facilities.

In addition, the worldwide COVID–19 pandemic that started in 2020 revealed vulnerabilities in the United States' supply chains for materials, supplies, and other goods used in its carbon-free clean energy markets, such as in solar and wind energy developments, among other things. Vulnerabilities in supply chains include international shipping, where shipping vessels and containers waited for months during labor shortages and quarantine periods before becoming available to the American public. Uncertainty in global supply chain dynamics have significant potential to cause delays and higher prices for solar and wind energy development projects on public lands. Potential tariffs to foreign-sourced items and components result in dramatic decline in project deployment. According to the Solar Energy Industries Association's U.S. Solar Market Insight Q2 2021 report, supply chain constraints for critical solar components, such as polysilicon, steel, aluminum, and semiconductor chips, lead to higher prices. In response to the U.S. Department of Commerce's anti-circumvention tariffs on solar products from Southeast Asia countries, the President made an emergency declaration on a temporary duty-free importation of solar cells and modules to curb disruption to solar projects.

These developments highlight the importance of secure, reliable domestic supply chains to the development of solar and wind energy resources on public lands and demonstrate how the proposed Buy American reduction, by supporting those domestic supply chains, would promote the greatest use of those resources, while also reducing economic hardships for developers. By offsetting some of the costs of domestically sourced parts and materials, the Buy American reduction would reduce the economic dependence of developers on unreliable global supply chains and support the efforts of domestic suppliers. In this way, the proposed Buy American reduction supports the transition to more-reliable domestic supply chains which would, in turn, increase commercial interest in the use of public lands and promote the development of solar and wind energy resources on public lands.

Recent Presidential determinations and legislation are similarly intended to strengthen domestic supply chains for renewable energy components, highlighting the importance of such domestic supply chains to the development of domestic energy generation. On March 31, 2022, and most recently on June 6, 2022, the President signed determinations permitting use of the Defense Production Act Title III authorities for domestic clean energy technologies (including solar photovoltaic components; transformers and electric grid components; heat pumps; insulation; and electrolyzers, fuel cells, and platinum group metals), reiterating the Administration's commitment to a carbon pollution-free electricity sector. In addition, the *Creating Helpful Incentives to Produce Semiconductors for America Act,* aka, the ''CHIPS Act,'' was signed on August 9, 2022, providing for improvements to manufacturing of important components for clean energy, among other things, furthering the objective to improve domestic supply chains. The Infrastructure Investment and Jobs Act, Public Law 117–58, signed on Nov. 15, 2021, also provides funding for electric vehicles and clean energy technologies, including manufacturing of energy storage and its components, increasing domestic supply chains. We anticipate that there will be significant increases in domestic manufacturing over the next five years that will benefit the solar and wind energy generation industries. The BLM would encourage a more rapid deployment of domestically made items by providing a reduction to solar and wind energy development facilities using qualifying items for the Buy American preference, thereby increasing further commercial interest in public lands and expediting deployment of solar and wind energy developments and maximizing the greatest use of solar and wind energy resources on public lands.

The BLM is aware that other Federal agencies (*e.g.,* Office of Management and Budget) may currently be developing policy relevant to domestic content requirements, including those authorized by the Inflation Reduction Act. The BLM may consider using a definition from one of those policies as an alternative to the domestic content definition under Buy American and would welcome comments to that effect.

The BLM is interested in receiving comments regarding the addition of the domestic content reduction to the capacity fee and to other parts of this rule where domestic content provisions are proposed. Is there a more appropriate way than determining percentage of total cost of qualifying items for the domestic content preference? Are there other methods to promote the greatest use of solar and wind energy generation on the public lands while strengthening the resiliency of domestic energy supply chains that may be more appropriate or preferred? Do the proposed reductions up to 20 percent fairly encourage developers to qualify for using American-made products in their solar or wind energy generation facilities, and support increasing demand for clean energy technologies on public lands? What forms of documentation would be

[7] *https://www.census.gov/foreign-trade/balance/c4621.html.*

appropriate to provide to the BLM in order to qualify for this reduction when applying for a grant or lease, and when demonstrating at time of renewal or reauthorization?

The BLM also is interested in receiving comments on the possibility of adding a reduction to the capacity fee of up to 20 percent based on the use of union labor in project construction. Like the Buy American preference, such a provision would offset some developer costs, thus promoting the use of solar and wind energy resources on public lands, while reducing economic hardships for developers who may also qualify for certain tax incentives. Should the BLM incorporate a capacity fee reduction in this rule for the use of union labor? Should the reduction be contingent on a developer's commitment to enter into a project labor agreement? What documentation should be required to qualify for this reduction? What percentage reduction would be appropriate?

Paragraph (b)(1)(iv) explains how the BLM would apply the alternative MWh rate and the Buy American reduction from paragraphs (b)(1)(ii) and (iii) of this section. By default, the BLM would apply the ordinary MWh rate under paragraph (b)(1)(i) and the MWh rate reduction under paragraph (b)(1)(ii). A developer who wished to benefit from the alternative MWh rate and the Buy American reduction would need to submit a request for conditional approval prior to the issuance of a grant or lease, along with sufficient documentation to demonstrate that the development qualifies or may later qualify for these rate reductions. In some cases, the BLM would not be able to determine definitively in advance whether the proponent qualifies for these reductions. The BLM could then conditionally approve the requested reductions, but the reductions would not go into effect until the proponent qualifies for the reduction. If energy generation begins before the holder has demonstrated that the facility qualifies, the BLM would charge the holder the full capacity fee. The capacity fee could be updated for subsequent calendar years after the holder demonstrates that the facility qualifies, but the BLM would not refund past payments made before the rate reductions went into effect.

For example, an applicant or presumptive lease holder (see §§ 2809.13 and 2809.15, below) might request conditional approval of an alternative MWh rate. In that situation, a request for conditional approval for an energy generation facility may be granted if the presumptive lease holder has entered into or intends to enter into a power purchase agreement (see (b)(1)(i) of this section) that has a lower rate than the MWh rate. Documentation submitted to the BLM when requesting conditional approval may include draft or interim power purchase agreements or confirmation in writing from the purchasing party that negotiations have been entered into. While the BLM may then conditionally approve the request for an alternative MWh rate, the alternative rate would not go into effect and be used to calculate the rental obligations until the power purchase agreement is finalized and the BLM determines, in writing, that the facility actually qualifies for the alternative rate. The holder's MWh rate would then be updated for the next year's billing, but payments for past years would not be reduced retroactively.

In another example of a request for conditional approval, an applicant or presumptive lease holder might request conditional approval of a Buy American reduction. In that example, a request for conditional approval may be granted if the proponent demonstrates that it has firm plans to use items qualifying for the preference. Documentation submitted to the BLM when requesting conditional approval may include procurement contracts or design documents showing that the facility would meet sufficient levels to qualify for this reduction. While the BLM may then conditionally approve the request for a Buy American reduction, the reduction would not go into effect and be used to calculate the proponent's rental obligations until the proponent submits documentation of actual value incorporated into the facility, such as fulfilled purchase orders and as-built design documents demonstrating installation of the qualifying Buy American items in that facility and the BLM determines, in writing, that the facility actually qualifies for the reduction. The holder's MWh rate then would be updated for the next year's billing, but payments for past years would not be reduced retroactively.

Paragraph (b)(2) would clarify that ''D'' is the annual adjustment factor, which is the same adjustment factor used for the annual acreage rent under § 2806.52(a)(1)(iii). See §§ 2806.52(a) and 2806.22(a) of this preamble for further discussion on the annual adjustment factor. The BLM understands that generally when a solar or wind energy operator begins generating power, they are in an agreement with a utility or other party to sell their power. It is customary that such agreements include an escalation clause that increases the purchase price of power each year of the agreement. These annual escalations vary by agreement. Annual escalation rates generally range between one and three percent each year of the agreement. There may be some higher annual escalation rates; however, higher rates are not common. The BLM believes, based on its experience with power purchase agreements, that three percent annual adjustment factor is a fair and reasonable escalation for the MWh rate.

Paragraph (b)(3) would clarify that ''E'' is the year of the grant or lease term, which is the same number used for the annual acreage rent under § 2806.52(a)(1)(iv). See § 2806.52(a) of this preamble for further discussion on the year of the grant or lease term.

Paragraph (b)(4) would clarify that ''F'' is the rate of return, which is proposed at 7 percent, an increase from the 2 percent currently used in the BLM's recent Manual 2806.60 update for solar and wind energy rents. In this rule, the rate of return is the relationship of income to the total value for a granted use of the public land resource. The rate of return accounts for the value of the authorization each year for use of the resource on public lands which is provided to the BLM through an annual payment. The BLM has previously used a 10-year average of the yields on 20- and 30-year U.S. Treasury bonds to ''build up'' a return for use in calculating the rate of return, as described in its October 31, 2008, rulemaking, *Update of Linear Right-of-Way Rent Schedule.* The rate of return minimum under the existing regulations is 4 percent, but the BLM used the Energy Act authority to lower the rate of return to 2 percent in its Manual update. It is the BLM's experience that periodically ''building up,'' or calculating, the rate of return creates uncertainty for grant holders as the Treasury bond rates are affected by changes to interest rates, inflation, and economic growth. The BLM's proposal to set its rate of return in this rule introduces a level of rate predictability, including for future rate changes.

The BLM considered several options for determining a rate of return. These options included retaining the current ten-year average of the 20- and 30-year Treasury bond yields and the prime rates used by banks for lending. Market capitalization rates and Gross Domestic Product (GDP) by industry were also considered for determining a reasonable rate of return for ROWs but were ultimately not proposed in this rule. Treasury bond yields reflect the Federal Government's cost of borrowing or equivalently the returns earned by investors in Federal debt. A similar logic applies to prime rates, which

reflect the interest earned by private banks on their loans or assets and which were also considered but not proposed in this rule.

The BLM notes that the 50-year simple (*i.e.,* arithmetic) average of the real annual return on 10-year Treasury Bonds is approximately 7 percent. This 50 years includes times when the United States went through periods of stagflation, high inflation, economic boom, and relatively calm market conditions. The average of the 10-year Treasury Bond rates is a reasonable reflection of the return to government. As proposed in this rule, solar and wind energy development terms would be up to 50 years and use a 7 percent rate of return supported by the 50-year average of the 10-year Treasury Bond rates. The proposed 7 percent rate of return is also supported by the Council of Economic Advisors, which estimates a real return to U.S. capital of around 7 percent from 1960 to 2014 using data from the National Income Product Accounts and other sources.[8] By setting the rate of return in this rule, it would not be adjusted in the future, except by further rulemaking.

The BLM is interested in comments on the proposed codification of the encumbrance factor and rate of return, and the acreage rent calculations more generally. What alternative factors might the BLM consider in setting rate of return? Does the BLM's proposed rate of return improve predictability for holders? Does the proposed rate of return accurately capture the fair market value of solar and wind energy developments on public lands? Should the BLM consider allowing for adjustment in the future or setting the rate based on inflation parameters at the time of grant issuance, and if so, explain what reasoning you believe supports future changes and what that might look like? Please provide your comments and supporting references or materials for that recommendation.

Paragraph (b)(5) would clarify that ''G'' is the estimated annual power generated on public lands for the grant or lease in question. The estimated annual power generated on public lands would be provided to the BLM ahead of the first year of energy generation in a certified statement from the grant or lease holder, and every year thereafter. The BLM would bill annually to coincide with the calendar year, consistent with the timing for acreage rent payments. Beginning in the year following the first full year of production, the certified annual statement provided to the BLM would also include the most recent year's actual energy generation. The actual energy generation would be used to calculate a corrected capacity fee, and any under- or over-payments for the difference between estimated and actual energy generation would be administered under §§ 2806.13 and 2806.16, respectively. A holder that underestimates energy generation by more than 10 percent of the actual energy generation would be subject to a late payment fee and other administrative fees, consistent with § 2806.13.

For example, the BLM would require an annual certified statement from the grant or lease holder by October of the second year of energy generation that includes an estimate of energy generation for the third year of energy generation, as well as actual production information for the first year of energy generation. The following year, the BLM would require an annual certified statement that includes the estimate for the fourth year of energy generation and the actual energy generation from the second year.

The BLM is interested in comments regarding the under estimation of energy generation. Is a different percent of underestimation appropriate or should the BLM implement such a provision after repeated occurrences of under estimating power?

In instances where an energy generation facility crosses multiple land ownerships, the reported estimate and actual energy generation would be apportioned based on the energy generated on the public lands. The reported energy generated on public lands would be determined by prorating the project area's footprint on public lands with the total project area footprint. This would include infrastructure that is necessary for the energy generating facility, including any roadways, fence lines, safety setbacks, and other infrastructure. However, this would not include electric power lines or offsite substations unless they are within the footprint of the project area or necessary to generating energy. Under this provision, the BLM would not carve out land from the footprint of the facility when apportioning energy generation on public lands.

Paragraph (b)(6) would describe where you may obtain a copy of the current MWh rate schedule for solar and wind energy generation.

Paragraph (b)(7) would provide for periodic adjustments to the MWh rate. This paragraph applies unless you are an existing holder and elect to continue paying under your current rate adjustment method per § 2806.51(c).

Paragraph (b)(7)(i) would clarify that the rate from the MWh rate schedule for the first year of energy generation would not change once your grant or lease is authorized. The annual adjustment factor under § 2806.52(b)(1)(i) would be applied to the MWh rate during the term of the grant or lease. Any subsequent MWh rate schedule updates would apply to new grants and leases.

Paragraphs (b)(7)(ii) and (iii) would provide that the MWh rate schedule would be updated once every five years consistent with the timing of acreage rent adjustments. The MWh rate schedule would include the annual adjustment factor when setting the rate for the five-year period.

Paragraph (b)(8) would provide that the general payment provisions for rents under § 2806.14(a)(4) also apply to the capacity fee.

Paragraph (c) would apply unless you are an existing grant or lease holder and elect to continue with your current MW capacity fee adjustment method. The fee would be set at the time of authorization or re-issuance and not adjusted further except by the annual adjustment factor from § 2806.52(b)(2).

Section 2806.54 Energy Storage Facilities That are not Part of a Solar or Wind Energy Development

Provisions of existing § 2806.54 would be incorporated into § 2806.52 (see discussion relating to § 2806.52). Existing § 2806.54 would be retitled from ''Rents and fees for solar energy development leases'' to ''Rent for energy storage facilities that are not part of a solar or wind energy development facility.'' Under this rule, the BLM is removing differences in payment requirements for grants and leases; therefore, the existing § 2806.54 title and its provisions are no longer necessary and would be misleading to a reader.

Revised § 2806.54 would clarify that the rent the BLM determines for an energy storage facility that is not part of a solar or wind energy development facility would be based on the linear rent schedule. Energy storage facilities may be authorized separately from a solar or wind energy development facility. In these instances, the BLM would apply the linear rent schedule unless the BLM determines that the linear rent schedule does not apply per § 2806.70, such as when the BLM determines that a small site rent schedule applies to the energy storage facility.

[8] Council of Economic Advisers Issue Brief, ''Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate'' (January 2017).

The BLM would not charge the rent or fee of a solar or wind energy development ROW for an energy storage facility that is separate from the energy generation facility, the purpose of which is simply to store generated energy, and then deploy the stored energy as needed. Charging a capacity fee would be inappropriate as there is no energy generation from the facility. Using the pastureland rents for energy storage would also be inappropriate, as use of those acreage rates are intended to be coupled with the capacity fee to determine solar and wind energy generation payments for use of public lands. Thus, the BLM proposes that for energy storage facilities separate from an energy generation facility, it would apply the linear rent schedule unless it determines that the linear rent schedule does not apply per § 2806.

Sections 2806.60 through 2806.68 would be removed for the reasons discussed above. Information formerly contained in these sections are now found under §§ 2806.50 through 2806.58. Sections 2806.56 and 2806.58 are inclusive of all testing authorization types and do not require revision to include wind energy testing. The BLM is interested in reader comments regarding its valuation of energy storage that is not part of a solar or wind energy generation facility. Is a different method for collecting a rent warranted or appropriate for such facilities on public lands? Should the BLM consider valuing battery storage differently, such as based on how many hours of storage capacity per MWh of energy may be deployed?

Subpart 2807—Grant Administration and Operation

Section 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?

Section 2807.20 describes when you must seek to amend your application, grant, or lease.

Paragraph (b) would be revised to clarify that the requirements for amending an application or grant are the same as processing a new application, including payment of processing and monitoring cost recovery fees. This paragraph would be revised to include ''except for qualifying energy development grants and leases per § 2806.51(c).'' That section describes rights-of-way in effect before the effective date of this rule. See § 2806.51(c) of this preamble for further discussion on qualifying projects.

Paragraph (f) is a new paragraph that would describe how the BLM would administer an existing grant or lease if the holder requests to change the rent adjustment methodology. Any request would have to be received within 2 years of the date this rule becomes effective and would be processed as an amendment by which the BLM would re-issue the grant or lease, without further environmental review, and update the terms and conditions under § 2805.12 and rent provisions under §§ 2806.50 through 2806.52. The BLM would be able to collect or use processing and monitoring costs under §§ 2804.14 and 2805.16 for handling the request. See section 2806.51(c) for further discussion regarding requests to use the rent adjustment methodology of this rule.

Section 2807.21 May I assign or make other changes to my grant or lease?

Section 2807.21 provides the requirements for when a holder may seek to assign or make other changes to a grant or lease.

Paragraph (e) would be revised to clarify that the BLM may issue solar or wind energy development leases non-competitively inside a designated leasing area, consistent with other changes proposed in this rule. Additionally, the BLM could modify a grant or lease, such as adding additional terms and conditions, except for solar and wind energy leases unless required pursuant to § 2805.15(e), which provides for changes to terms and conditions as a result of changes in legislation, regulation, or as otherwise necessary to protect the public health or safety or the environment.

Subpart 2809—Competitive Process for Solar and Wind Energy Development Applications or Leases

Subpart 2809 would be retitled from ''Competitive Process for Leasing Lands for Solar and Wind Energy Development Inside Designated Leasing Areas.'' Existing subpart 2809 is dedicated to competitive solar and wind energy leasing specifically in designated leasing areas. Revisions to subpart 2809 generally apply the same competitive process both within and outside designated leasing areas. This change is consistent with other revisions in this rule that would provide the BLM with discretion to accept applications within designated leasing areas and authorizing leases using a competitive offer or non-competitive process based on whether competitive interest exists for the area. Revisions generally include incorporating provisions describing competitive processes outside of designated leasing areas, currently found under §§ 2804.30 and 2804.31, into subpart 2809 as appropriate.

Section 2809.10 Competitive process for energy development grants and leases

Section 2809.10 would be retitled from ''General'' and revised to provide the same standard for the use of competitive processes on public lands located both inside and outside of designated leasing areas. As revised, paragraphs (a) through (d) explain that the BLM may conduct a competitive process to consider solar or wind energy development applications or leases: (1) on its own initiative; (2) based on responses to a call for nominations; (3) based on a request submitted by a member of the public in writing; or (4) when it receives two or more competing applications. These provisions incorporate the BLM's broad discretion under FLPMA to determine under what circumstances it may utilize a competitive process to offer leases for lands outside of designated leasing areas, as noted in the existing text of §§ 2804.23(b) and (c) and 2804.30(c). These provisions standardize the BLM's discretion to utilize a competitive process for lands within and outside designated leasing areas.

Existing paragraph (d) is proposed to be removed consistent with changes made under § 2804.35(b) and subpart 2809. Under existing paragraph (d) the BLM generally prioritizes the processing of competitive leases over non-competitive grants. Under subparts 2804 and 2809, the BLM proposes to provide greater flexibility and discretion to process applications inside designated leasing areas by removing the requirement in the current rule that the BLM can only accept applications processed first through a competitive process. Additionally, § 2804.35(b) of this preamble provides additional information on the BLM's proposed factors to prioritize applications.

The BLM has found that the requirement of the current rule to only accept applications processed competitively extends the timeline and increases costs, creating a barrier for authorizing projects in certain DLAs where there was no competitive interest. The proposed changes incorporate the BLM's broad discretion under FLPMA to determine under what circumstances it may utilize a competitive process for lands both inside and outside of designated leasing areas and standardize the BLM's discretion to utilize a competitive process where competitive interest exists for lands. The BLM anticipates that these changes would lead to more deployment in these areas

because accepting applications within DLAs without the prerequisite of holding a competitive process will likely generate more applications in the most desirable locations. This in turn would provide BLM with the flexibility to utilize a competitive process where there are multiple competing applications. At the same time, applicants can also proactively submit applications in DLAs that may not have competitive interest, and the BLM can process the leases non-competitively. The purpose of these changes is to ensure that the BLM is able to use the most appropriate process given the circumstances of a particular location, which the BLM believes will spur more competition for the most desirable areas, while continuing to increase solar and wind energy deployment consistent with the statutory direction in the Energy Act of 2020.

Paragraph (e) would largely incorporate language currently found in § 2804.23(c), to establish the timing within which the BLM would not initiate a competitive process for those lands where the BLM has accepted an application, received a plan of development, and entered into a cost recovery agreement. These provisions are intended to improve certainty with applicants that the BLM would not hold a competitive offer after an application has progressed substantively. Consistent with the BLM's statutory authority, and to preserve its discretion to utilize a competitive process where appropriate, § 2809.10(e) proposes that the BLM would decline to use a competitive process after it receives a complete application and plan of development, enters into a cost recovery agreement, and publishes an Environmental Assessment or a Draft Environmental Impact Statement. The BLM considered other possible criteria for identifying the point in time at which it will decline to hold a competitive offer, including some criteria that would cut off potential competition earlier in time (such as 30-days after receiving a complete application, as defined in § 2804.12(j)), and other criteria, such as the initiation of scoping, including through the publication of a notice of intent to prepare an Environmental Impact Statement The BLM also considered establishing a notice process, whereby the BLM solicits expressions of interest in an area after receiving a first application, to determine if there is any competitive interest. The BLM is interested in receiving comments about (a) the benefits of a process by which the agency would provide notice and how a public notice process can create an efficient use of leases on BLM land, (b) how notice could be communicated and what information could be included, (c) the cutoff point for expressions of interest incorporated into this proposed rule, (d) what information could be required for expressions of interest, (e) whether expressions of interest should also be noticed, and (f) other potential features of a notice process. The BLM is also interested in receiving comments about other potential cutoff points or associated public notice processes.

Section 2809.11 How will the BLM call for nominations?

Section 2809.11 would be retitled from ''How will the BLM solicit nominations?'' to improve consistency with the revised section.

Proposed paragraph (a) provides that the BLM would publish a notice in the **Federal Register** calling for nominations of lands to be offered through a competitive process for solar and wind energy development, and may use other notification methods, such as a newspaper of general circulation in the affected area, or the internet. The first sentence of this paragraph would be revised from ''The BLM will publish a notice . . .'' to ''The BLM may publish a notice . . .'' to reflect the proposed discretionary use of a competitive process discussed in § 2809.10.

Paragraph (a) would also be revised to remove language specifying that a call for nominations may only be issued for public lands inside of designated leasing areas. The paragraph would also specify information that will be included in a call for nominations as follows:

(1) The date, time, and location by which nominations must be submitted;

(2) The date by which nominators will be notified of the BLM's decision on timely submissions;

(3) The area or areas nominations are being requested; and

(4) The qualification for a nominator, which must include at a minimum the requirements for an applicant, see § 2803.10.

Paragraph (b) would provide the requirements for nominating a parcel of land for a competitive offer. Paragraph (b)(1) would require a payment of $5 per acre for nominated parcels. The nomination fee is collected by the BLM under its cost recovery authority under Sections 304(b) and 504(g) of FLPMA, and the portion not spent in processing the nomination and preparing for a competitive offer may be refunded to the nominator if not successful in the competitive offer. These fees would reimburse the BLM for the expense of preparing and holding a competitive offer. The proposed revision would remove language that adjusts the nomination fee for inflation. In the BLM's experience, this inflation adjustment adds unnecessary complexity.

Paragraph (b)(2) would require the nomination to include the nominator's name and address of record. This information is necessary for the BLM to communicate with the nominator about a future competitive offer for the parcel. The proposed revision changes ''leasing'' to ''submissions'', consistent with changes in this rule allowing for applications for development to be submitted without first requiring a competitive process to be held.

Paragraph (b)(3) would require that a nomination be accompanied by a legal land description and a map of the parcel of land. This information would help the BLM in identifying parcels in the competitive offer. The BLM proposes adding language stating that nominated lands may be the entire area or part of the area made available in the call for nominations.

Paragraph (c) would provide that the BLM would not accept nomination submissions that do not comply with this section, or from submitters who are not qualified per § 2803.10 to hold a grant or lease. The requirement that a nominator must be qualified to hold a grant is carried over and relocated from existing paragraph (d). Existing paragraph (c) allowed interested parties to submit ''informal expressions of interest.'' In the BLM's experience, the information required by proposed paragraph (b) is the minimum information that the BLM needs in order to efficiently process and consider a nomination; an ''informal expression of interest'' that does not comply with these requirements imposes an undue burden on the agency and would not be considered under the proposed regulation. At the same time, under the proposed regulation, the BLM would consider nominations that do comply with the requirements of paragraph (b) even if they are not submitted in response to a published call for nominations, as set forth in proposed § 2809.10(c).

Paragraph (d) would state that a nomination cannot be withdrawn, except by the BLM for cause, in which case the nomination fee would be refunded. This provision is carried over and relocated from existing paragraph (e). Existing paragraph (d) is removed consistent with the addition of paragraph (a)(4) of this section which provides how to qualify as a nominator.

Paragraph (e) would provide that the decision whether to hold a competitive offer in response to a nomination lies in the BLM's discretion.

Section 2809.12 How will the BLM select and prepare parcels?

Section 2809.12 describes how the BLM identifies parcels suitable for competitive offer. Paragraph (a) would be revised to note that the BLM may rely on any information it deems relevant in identifying parcels for competitive offers, but also describe more accurately the most common sources of information, which include nominations and existing land use designations. In particular, the BLM may continue to consider existing designated leasing areas, which are an example of land use designations, although it will not be constrained to conduct competitive offers in such areas.

Paragraph (b) would be revised to clarify that the BLM may conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, either before or after offering lands competitively. The existing regulations state that the BLM ''will'' conduct such studies and site evaluation work before holding a competitive offer. In practice, however, the BLM has sometimes found that the necessary studies and site evaluation work cannot be completed until the competitive offer is held and the successful bidder has submitted an application or plan of development. Accordingly, the BLM proposes to revise this regulation to clarify that the timing of these studies and site evaluation work relative to the competitive offer may vary depending on the circumstances. As noted below, the proposed regulations also introduce the term ''presumptive lease holder'' to clarify that the necessary environmental reviews must be completed before the BLM irretrievably commits to allowing a facility to be developed (see §§ 2809.13 and 2809.15).

Paragraph (c) would be added to clarify that the BLM's decision to conduct a competitive offer, or not conduct a competitive offer, is not a decision to approve or deny a grant or lease and is not subject to appeal.

Section 2809.13 How will the BLM conduct competitive offers?

Section 2809.13 describes how the BLM conducts competitive offers. Paragraph (b) provides that the BLM publishes a notice of competitive offer in the **Federal Register** and through other notification methods, such as a newspaper of general circulation in the area affected or the internet. Paragraph (b)(7) would be revised consistent with other revisions in this rule that would allow the BLM to accept applications within designated leasing areas without prior competitive offer. This paragraph clarifies that the notice of competitive offer would state whether a successful bidder would become a preferred applicant or a presumptive lease holder. Preferred applicants would be required to meet application submission requirements under § 2804.12, and presumptive lease holders would be required to submit a Plan of Development per § 2809.18. The difference between preferred applicants and presumptive lease holders is discussed further in connection with § 2809.15.

Under paragraph (c), the BLM would notify nominators of its decision to conduct a competitive offer at least 30 days in advance of the bidding for the lands that were nominated if the nominator has paid the nomination fees and demonstrated qualifications to hold a grant or lease.

Section 2809.15 How will the BLM select the successful bidder?

Section 2809.15 explains how the successful bidder is selected. This proposed rule introduces a new distinction between the term ''preferred applicant'' (used in the existing regulations and carried forward into this rule) and the term ''presumptive lease holder'' (a new term in this rule). The distinction between preferred applicants and presumptive lease holders reflects the fact that the proposed regulations allow the BLM to conduct competitive offers in a wider range of circumstances than the existing regulations. The distinction is intended to ensure that the BLM can properly balance the need to expedite approval of proposed projects in areas where the environmental impacts of solar and wind energy development are already well understood with the need to ensure that the BLM does not commit public land resources before completing the necessary analyses.

The term ''presumptive lease holder'' would describe those situations in which at least one round of environmental review for solar or wind energy development has been conducted before the competitive offer is held, so that the environmental impacts of potential development are relatively well understood before the competitive offer is held, and the successful bidder has a high likelihood of being able to obtain an authorization to develop its proposed project. As set forth in paragraph (b)(1)(i), a successful bidder would only be designated as a presumptive lease holder if the lands for which the competitive offer is held are located within a designated leasing area and the BLM has indicated in advance that the successful bidder would become a presumptive lease holder (see also § 2809.13(b)(7)). These requirements would limit the use of the term ''presumptive lease holder'' to situations in which the BLM has previously completed an environmental analysis for solar or wind energy development in the area through the land use planning process and has specified in advance (through the notice of competitive offer) many of the terms, conditions, and mitigation measures that would need to be incorporated into an approved authorization. A presumptive lease holder would therefore avoid the initial application review stage, which is designed to ensure that the site is generally appropriate for solar or wind energy development. A presumptive lease holder would have site control for a solar or wind energy development, precluding other competing solar or wind energy developments from siting on that land.

At the same time, the proposed regulations also recognize that even in these cases, an additional site-specific environmental analysis may be required before the BLM irretrievably commits to allowing a facility to be developed. The BLM retains its full discretion in considering whether to approve a presumptive lease holder's proposal based on site-specific environmental analysis, which would typically be tiered to the area-wide environmental analysis accompanying the identification of the area as a designated leasing area. This proposed change would resolve an ambiguity in the current rule regarding the appropriate timing of an environmental analysis tiered to an area-wide environmental analysis for a site-specific proposal. Paragraph (b)(1)(ii) therefore notes that the presumptive lease holder's right to develop a project on the site would remain contingent upon the BLM's approval of the presumptive lease holder's proposed plan of development. Once the BLM approves the proposed plan of development, following site-specific environmental analysis, a lease could be awarded, conferring a right to develop a project on the site, and the presumptive lease holder would become a lease holder.

In contrast, in other cases under the proposed rule, the BLM could conduct a competitive offer outside of a designated leasing area in response to

receiving two or more competing applications or under any of the other circumstances set forth in § 2809.10, without having completed an initial environmental analysis for solar or wind energy development in the area. In such cases, as set forth in paragraph (b)(2), the successful bidder would be designated a ''preferred applicant,'' and would merely obtain the exclusive right to submit an application for solar or wind energy development on the site, without competition from other applicants for solar or wind energy development. Such an application would be processed under Part 2804 in the same manner as an application for a non-competitive authorization, and a full environmental analysis would be conducted before the preferred applicant can obtain the right to develop a project on the site. A preferred applicant that fails to meet the requirements of Part 2804 may lose status as the preferred applicant and their application may be denied consistent with § 2804.26.

Accordingly, paragraph (a) would add ''preferred applicant or the presumptive lease holder'' consistent with other revisions in this part that clarify what the BLM may offer in a notice of competitive offer. Reference to paragraph (b) of this section is updated consistent with the addition of new paragraph 2809.15(b).

New paragraph (b) would provide that a successful bidder becomes a presumptive lease holder or preferred applicant only after making payments required in paragraph (d) of this section and satisfying requirements for holding a grant or lease under § 2803.10. The BLM could move on to the next highest bidder or re-offer the lands under § 2809.17 if the successful bidder does not satisfy these requirements.

Paragraph (b)(1) would describe the requirements to become a presumptive lease holder, which are that the public lands successfully bid upon are located within a designated lease area and that the notice of competitive offer indicated successful bidders would become presumptive lease holders. This paragraph also provides that a presumptive lease holder would only be awarded a lease if the BLM approves the plan of development that is submitted in accordance with § 2804.25(c).

Paragraph (b)(2) would describe the requirements for a preferred applicant. A successful bidder who does not become a presumptive leaseholder in accordance with paragraph (b)(1) would become a preferred applicant. Applications for a grant or lease would be processed for the parcel identified in the submission under § 2809.12(b). As with presumptive lease holders, approval of a preferred applicant's application is not guaranteed. However, the BLM would not process other applications for solar and wind energy development on lands where a preferred applicant has been identified, unless that application is allowed by the preferred applicant. The BLM may consider issuing authorizations for other uses, such as roadways, testing facilities, recreation permits, or even ROWs under MLA authority on the lands for which there is a preferred applicant. Processing authorizations for other uses under Title V of FLPMA would be performed under the subpart 2804 of this part. Recreation permits and ROWs under MLA authority would be processed under part 2920 and 2880, respectively. In some instances, such as when other applicants have submitted applications for incompatible uses, the BLM may determine that processing other applications must wait until it issues a decision on a first-in-line solar or wind energy development facility.

Existing paragraphs (b) and (c) would be redesignated as (c) and (d) respectively. Redesignated paragraph (c) is not revised, while redesignated paragraph (d) is revised to make several technical changes. Paragraph (d)(1) (currently paragraph (c)(1)) is added back into this section without revision. Paragraphs (d)(2), (3), and (4) (currently paragraphs (c)(2), (3), and (4)) are revised to replace the words ''the day of the offer'' with the words ''the day on which the BLM conducts the competitive offer.'' This proposal is made to prevent confusion that sometimes arises under the existing regulations. The intent of paragraph (d) is to specify that the successful bidder must make certain payments on, or within fifteen days of, the day that the BLM conducts the competitive offer and the bidder is identified as the successful bidder. However, some readers have misunderstood ''the offer'' in this paragraph to refer to the day on which the BLM offers the lease to the successful bidder, as described in paragraphs (a), (d), and (e) of the existing regulation. This reading creates an internal contradiction: the successful bidder must make the specified payments within a specified time after the BLM offers the lease to the bidder, but the BLM cannot make the offer until it has received the payments (see existing paragraph (d)). The proposed revisions would avoid this internal contradiction by clarifying that the payments must be made on or after the day on which the competitive offer is held, but before the lease can be offered to the successful bidder.

Paragraphs (d)(3) and (4) would also be revised to update reference to redesignated paragraph (c) for payment of the balance of bonus bids after variable offsets, and to reflect the different payment requirements for successful bidders who would become preferred applicants and those who would become presumptive lease holders.

Paragraph (d)(5) would be added to clarify that successful bidders may be required to pay reasonable costs in addition to payment of the application filing fee when processing an application. Additional reasonable costs may include a Category 6 cost recovery for the BLM to complete processing the application. If a Category 6 cost recovery fee is required, it would be reduced by the amount of the application filing fee already paid. See § 2804.19 of the existing regulations for further information on Category 6 cost recovery.

Existing paragraph (d) would be removed from this rule as its provisions are duplicative and no longer necessary for grants or leases. The requirements of existing paragraphs (d)(1) and (d)(2) are addressed in proposed paragraph (b) and in revised paragraph (e), while existing paragraph (d)(3) merely cross-references § 2808.12, which would remain in effect without changes under the proposed rule, and repeats a requirement of existing § 2804.25(b)(1), which would similarly remain in effect.

Paragraph (e) would be revised to explain that the successful bidder would not become a preferred applicant or a presumptive lease holder, and the BLM would keep all money that has been submitted with the competitive offer, if the successful bidder does not satisfy the payment terms under paragraph (d) of this section. In such a case, the BLM could proceed to the next highest bidder or re-offer the lands competitively under § 2809.17.

Section 2809.16 When do variable offsets apply?

Section 2809.16 provides that a successful bidder may be eligible for a variable offset of bonus bids.

Paragraph (c) would be revised by adding ''including progressive steps towards.'' The BLM proposes this additional text to clarify to readers that the offsets are not limited explicitly to what is listed and that the BLM may use other factors, including progressive steps towards the listed factors. Consistent with existing paragraph (b) of this section, the BLM would identify further information on the variable

offset in its notice, including what progressive steps may include.

Paragraph (c)(11) would be added to allow the BLM to provide an incentive for use of items that qualify for the Buy American preference in solar and wind energy generation facilities on public lands, to complement the fee reduction described in § 2806.52(b)(1)(iii). In order to qualify for the Buy American variable offset, if offered, prospective bidders must demonstrate how they meet the thresholds identified within the Notice of Competitive Offer. A prospective bidder would be required to provide sufficient documentation to the BLM prior to the competitive offer to show that the bidder qualifies for this variable offset. This may be documentation in an initial Plan of Development provided to the BLM or other methods discussed in § 2806.52(b)(1)(iii) of this preamble. As discussed below, the BLM may hold in suspense the amounts corresponding to the variable offset until the facility construction is substantially complete or the successful bidder can otherwise demonstrate to the BLM that the required Buy American items have been used in the facility.

The BLM is interested in receiving comments regarding the addition of the Buy American variable offset. Responses to this section may also be applied to other parts of this rule where Buy American incentives are proposed. Are there other methods to implement a proposed variable offset that may better provide the greatest economic benefit to the American public or support increasing demand for clean energy technologies on public lands? Is there an alternative method to provide acceptable documentation to the BLM for qualifying items for the Buy American preference in an energy generation facility? What are reasonable levels to qualify for Buy American items within an energy generation facility that could be met by a developer today and in the future, such as when domestic production levels have increased further?

This paragraph would be further revised by renumbering existing paragraph (c)(11) to (c)(12) and by revising it to read as ''other factors'' by removing the word ''similar.'' This revision is also made to emphasize that the BLM may use other factors, including progressive steps towards those factors, when determining a variable offset for a competitive offer.

The BLM is also interested in receiving comments on the possibility of adding ''use of union labor'' to the list of variable offset factors in § 2809.16(c). That addition would parallel the proposed Buy American variable offset and complement the proposed union-labor reduction in the capacity fee discussed above in reference to § 2806.52.

New paragraph (e) would provide for bidders to qualify for a variable offset after a competitive offer is held. Some variable offset qualifications may not be able to be demonstrated to the satisfaction of the BLM until after the competitive offer is held, such as with new provision 2809.16(c)(11) for energy development facilities that would contain items qualifying for the Buy American preference. A bidder may conditionally qualify for a variable offset before the competitive offer and then later demonstrate their qualification to the BLM and perfect their qualification. The way a bidder may conditionally qualify for the variable offset would be described in the Notice of Competitive Offer and could include methods such as a written statement to the BLM that they intend to qualify for the variable offset and at what percentage. The bidder, if successful, must later demonstrate to the BLM that they have qualified for the variable offset at that percentage. The BLM could set a deadline in the notice for bidders to demonstrate that the proposed facility qualifies for the variable offset. If the variable offset is not qualified for in the time provided, or the bidder is not able to adequately demonstrate they qualify for the variable offset, the bid money would be retained by the U.S. Government as the balance of the bonus bid.

Section 2809.17 Will the BLM ever reject bids or re-conduct a competitive offer?

Section 2809.17 identifies situations when the BLM may reject a bid, offer a lease to another bidder, or re-offer a parcel.

Paragraph (b) would be revised to refer to the preferred applicant or presumptive lease holder, consistent with other revisions in this part for competitive processes, and to include the requirement that the successful bidder satisfy the requirements of § 2809.15. This paragraph would provide that the BLM may make the next highest bidder the successful bidder if the named successful bidder does not satisfy the successful bidder requirements identified under § 2809.15.

Paragraph (d) would be removed from this section as it is unnecessary with other revisions made under this rule to make public lands inside of designated leasing areas available to application without a competitive offer. Paragraph (d) currently states that if no bids are received for a notice of competitive offer inside a designated leasing area, the BLM may make the lands available to application. This provision would no longer be necessary, as this rule would make all designated leasing areas available to application without first requiring a competitive offer to be held. The existing provision also states that lands can be re-offered; this provision is duplicative of § 2809.15(e).

Section 2809.18 What terms and conditions apply to a solar or wind energy development lease?

Section 2809.18 lists the terms and conditions of solar and wind energy leases, which are only issued inside of areas classified or allocated for solar or wind energy (*e.g.,* designated leasing areas). The title would be revised from ''What terms and conditions apply to leases?'' to clarify to readers that this section applies to all leases for solar and wind energy development.

The introductory paragraph would be revised to clarify to a reader, consistent with other changes in this rule, that a lease may be awarded on a competitive offer or through an application. Any lease issued would be subject to the terms and conditions of this section.

Paragraph (a) would be revised to clarify that a lease awarded from a competitive offer provides site control to a lessee, but the lease holder may not construct any facilities on the right-of-way until the BLM issues a subsequent notice to proceed. As noted above in the context of paragraph 2809.15(b)(1)(ii), the competitively awarded lease, which is issued after the BLM reviews the plan of development, confers on the lease holder the right to develop a facility. Before the lease holder can begin actual construction, however, the BLM must issue a notice to proceed or other form of approval to begin surface disturbing activities.

Existing provisions in paragraph (a) referring to the term of a lease would be revised to be consistent with the new provisions added under § 2805.11(b) which provide for a reasonable term for ROWs of up to 50 years, considering the cost of the facility, its useful life, and the public purpose it serves.

Paragraph (b) provides for rent terms for solar and wind energy leases. This paragraph would be revised to require that rent must be paid as specified in § 2806.52. This change is consistent with revisions under §§ 2806.50 through 2806.58 that consolidate solar and wind energy rents into the same sections.

Paragraph (f) provides for lease assignments under § 2807.21. The BLM would not make any changes to the lease terms or conditions, as provided in

§ 2807.21(e). Changes to ROW terms or conditions would involve an amendment action by the BLM in addition to the assignment action. This paragraph would be revised to add ''apply to'' so that it is clear that the lease holder must apply to the BLM for an assignment. An assignment is not complete until the BLM has approved it.

Section 2809.19 Applications in Designated Leasing Areas or on Lands That Later Become Designated Leasing Areas

Under § 2809.19, the BLM explains how it would evaluate applications for public lands that later become a designated leasing area. This section is proposed to be removed in its entirety as it is not consistent with the changes in this rule that allow for applications in designated leasing areas without first holding a competitive offer. Because designation of a designated leasing area does not preclude non-competitive leasing, there is no need for the BLM to automatically suspend a non-competitive leasing application because the lands at issue are being considered for designation. At the same time, the BLM may in its discretion deny an application, or assign the application a low priority under § 2804.35, if the BLM believes that the proposed use would be incompatible with land use designations that are being considered by the BLM through an ongoing land use planning process.

Severability

Existing § 2801.8 provides: ''If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.'' The proposed revisions should be considered separately. If a court holds any provision of one part of this proposed rule invalid, it should not affect the other parts of the proposed rule. Any decision finding any provisions in this rule to be invalid would not affect the remaining provisions, which would remain in force.

V. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563) and Modernizing Regulatory Review (Executive Order 14094)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. E.O. 14094 updates the significance criteria in section 3(f) of E.O. 12866.

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

OIRA has determined that this proposed rule is a significant regulatory action because it may cause material budgetary impacts.

Furthermore, the BLM's threshold analysis concluded that the rule may have an effect on the economy of $200 million or more. The BLM estimated that the rule would have distributional impacts in the form of transfer payments from ROW applicants and holders to the BLM. Transfer payments are monetary payments from one group to another that do not affect total resources available to society. While disclosing the estimated transfers are important for describing the distributional effects of the rule, these payments should not be included in the estimated costs and benefits per OMB Circular A–4.

The BLM is interested in public comment on the potential impacts of this rule on the deployment of wind and solar energy generation on BLM-managed public lands. Would this proposed rule cause increased deployment of renewable energy development on public lands such that the rule may have an annual effect on the economy of $200 million or more? (See E.O. 14094 § 1(b).) What data, models, or tools should the BLM review when considering this question? What factors, aside from BLM rents and fees, influence the siting of renewable energy developments on public lands and would form the baseline for that analysis? This rule is one among a suite of actions the Federal government may take to encourage renewable energy development. How can the BLM determine the contribution this rule will make to new renewable energy development? Please provide information and reference citations for comments informing the impacts of this rule.

For more detailed information, see the Economic and Threshold Analysis for Revisions to 43 CFR 2800 (Economic and Threshold Analysis) prepared for this rule. This Economic and Threshold Analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE78,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

Regulatory Flexibility Act

This rule will not likely have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the ''notice-and-comment'' rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Size standards for the affected industries. We determined that a small share of the entities in the affected industries are small businesses as defined by the Small Business Act (SBA). However, the BLM believes that the impact on the small entities is not significant. Although the rule could potentially affect a substantial number of small entities, the BLM does not believe that these effects would be economically significant.

The rule would benefit small businesses by streamlining the BLM's processes and reducing annual rent and capacity fee payments. These reductions may motivate investment in additional generation capacity and facilities by freeing up money that would have otherwise been paid to the BLM as rents or fees. The rule does modify provisions in the regulations that allow for an entity to request a waiver or reduction to annual rent and capacity fee payments.

For the purpose of conducting its review pursuant to the RFA, the BLM believes that the rule would not likely have a ''significant economic impact on a substantial number of small entities,''

as that phrase is used in 5 U.S.C. 605. Therefore, the BLM has not prepared an initial regulatory flexibility analysis.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. The BLM did not estimate the annual benefits that this rule would provide to the economy. Please see the Economic and Threshold Analysis for this rule for a more detailed discussion.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule would benefit small businesses by streamlining the BLM's processes.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule would not have adverse effects on any of these criteria, it would encourage solar and wind energy development and promote the greatest use of solar and wind energy resources consistent with the Energy Act of 2020.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs, prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and Tribal governments, or the private sector, of $100 million or more in any 1 year.

This rule is not subject to the requirements under the UMRA. The rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. The rule would not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The rule would not interfere with private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in Section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of Section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of Section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation and Coordination With Indian tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior (DOI) strives to maintain and strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the DOI's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized 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, and that consultation under the DOI's Tribal consultation policy is not required. However, consistent with the DOI's consultation policy (52 Departmental Manual 4) and the criteria in E.O. 13175, the BLM will consult with federally recognized Indian Tribes on any renewable energy project proposals that may have a substantial direct effect on the Tribes.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor and, not withstanding any other provision of law, a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k). This rule contains information-collection requirements that are subject to review by OMB under the PRA). Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

OMB has generally approved the existing information-collection requirements contained in 43 CFR parts 2800 associated with wind and solar rights-of-way grants or leases under OMB control number 1004–0206 (expiration date: June 30, 2026). Additionally, the BLM's regulations at 43 CFR part 2800 require the use of Standard Form 299 (SF–299), ''Application for Transportation and Utility Systems and Facilities on Federal Lands,'' for ROW applications and the regulations at 43 CFR part 2800. OMB has approved the requirements associated with SF–299 and has assigned control number 0596–0249.

This rule does not include any proposed or materially substantive changes to the information-collection requirements currently contained in 43 CFR parts 2800 and 2880 and approved by OMB as noted above. There is a proposed new information-collection requirement contained in 43 CFR 2806.52(i) regarding an annual certified statement. The rule would require that by October of each year wind and solar grant or lease holders must submit to the BLM a certified statement identifying the next year's estimated energy generation on public lands and the prior year's actual energy generation on public lands. The BLM will determine the capacity fee based on the certified statement provided. To prepare the annual certified statement, grant or lease holders will need to compile information based on capacity fee as instructed in 43 CFR 2806.

The information-collection requirements contained in 43 CFR 2800 and 2880 and approved under OMB

Control Number 1004–0206 and the proposed aforementioned new information-collection pertaining to 43 CFR 2806.52(i) are described below.

Activities That Require SF–299

The following discussion describes the information-collection activities in this control number that require use of SF–299.

Application for a Solar or Wind Energy Development Project Outside Any Designated Leasing Area (43 CFR 2804.12, 2804.25(c), 2804.26(a)(5), and 2804.30(g)); and Application for an Electric Transmission Line with a Capacity of 100 kV or More (43 CFR 2804.12, 2804.25(c), and 2804.26(a)(5)).

Section 2804.12(b) applies to solar and wind energy development grants outside any designated leasing area; and electric transmission lines with a capacity of 100 kV or more.

Section 2804.12(b) includes the following requirements for applications for a solar or wind energy development project outside a designated leasing area, and for applications for a transmission line project with a capacity of 100 kV or more:

- A discussion of all known potential resource conflicts with sensitive resources and values, including special designations or protections; and
- Applicant-proposed measures to avoid, minimize, and compensate for such resource conflicts, if any.

Section 2804.12(b) also requires applicants to initiate early discussions with any grazing permittees that may be affected by the proposed project. This requirement stems from FLPMA Section 402(g) (43 U.S.C. 1752(g)) and a BLM grazing regulation (section 4110.4–2(b)) that require 2 years' prior notice to grazing permittees and lessees before cancellation of their grazing privileges.

In addition to the information listed at § 2804.12(b), an application for a solar or wind project, or for a transmission line of at least 100 kV, must include the information listed at §§ 2804.12(a)(1) through (a)(7).

Section 2804.25 provides that the BLM will notify an applicant upon receipt of an application and may require the applicant to submit additional information necessary to process the application (such as a POD or cultural resource surveys). As amended, § 2084.25(c) provides that, for solar or wind energy development projects, and transmission lines with a capacity of 100 kV or more, the applicant must commence any required resource surveys or inventories within 1 year of the request date, unless otherwise specified by the BLM. The amended regulation also authorizes an applicant to submit a request for an alternative requirement by showing good cause under § 2804.40.

Applications for solar or wind energy development outside any designated leasing area, but not applications for large-scale transmission lines, are subject to a requirement (at § 2804.12(c)(2)) to submit an ''application filing fee'' of $15 per acre. As defined in an amendment to § 2801.5, an application filing fee is specific to solar and wind energy ROW applications. Section 2804.30(e)(4) provides that the BLM will refund the fee, except for the reasonable costs incurred on behalf of the applicant, if the applicant is not a successful bidder in the competitive process outlined in subpart 2804.

Section 2804.26(a)(5) provides the authority that allows the BLM to deny an application for a ROW grant if the applicant does not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the ROW. Amendments to that provision list the following ways an applicant may demonstrate their financial and technical capability to construct, operate, maintain, and terminate a project:

- Documenting any previous successful experience in construction, operation, and maintenance of similar facilities on either public or non-public lands;
- Providing information on the availability of sufficient capitalization to carry out development, including the preliminary study stage of the project and the environmental review and clearance process; or
- Providing written copies of conditional commitments of Federal and other loan guarantees; confirmed power purchase agreements; engineering, procurement, and construction contracts; and supply contracts with credible third-party vendors for the manufacture or supply of key components for the project facilities.

General Description of a Proposed Project and Schedule for Submittal of a Plan of Development (43 CFR 2804.12(b)(1) and (b)(2)).

Sections 2804.12(b)(1) and (b)(2) require applicants for a solar or wind development project outside a designated leasing area to submit the following information, using Form SF–299:

- A general description of the proposed project and a schedule for the submission of a Plan of Development (POD) conforming to the POD template at *http://www.blm.gov;*
- A discussion of all known potential resource conflicts with sensitive resources and values, including special designations or protections; and
- Proposals to avoid, minimize, and compensate for such resource conflicts, if any.

Application for an Energy Site-Specific Testing Grant (43 CFR 2804.12(a), and 2804.30(g)); Application for an Energy Project-Area Testing Grant (43 CFR 2804.12(a), and 2804.30(g)); and Application for a Short-Term Grant (43 CFR 2804.12(a)).

Section 2804.12(a) addresses the general requirements of an application for a FLPMA ROW grant. Section 2804.30(g) authorizes only one applicant (*i.e.,* a ''preferred applicant'') to apply for an energy project-area testing grant or an energy site-specific testing grant for land outside any designated leasing area.

Each of these grants is for 3 years or less, in accordance with § 2805.11(b)(2). All of these applications must be submitted on SF–299. Applications for project-area grants (but not site-specific grants) are subject to a $2 per-acre application filing fee in accordance with § 2804.12(c)(2). Applicants for short-term grants for other purposes (such as geotechnical testing and temporary land-disturbing activities) are subject to a processing fee in accordance with § 2804.1.

Request To Assign a Solar or Wind Energy Development Right-of-Way (43 CFR 2807.21).

Section 2807.21, as amended, provides for assignment, in whole or in part, of any right or interest in a grant or lease for a solar or wind development ROW. Actions that may require an assignment include the transfer by the holder (assignor) of any right or interest in the grant or lease to a third party (assignee) or any change in control transaction involving the grant holder or lease holder, including corporate mergers or acquisitions. The proposed assignee must file an assignment application, using SF–299, and pay application and processing fees.

The assignment application must include:

- Documentation that the assignor agrees to the assignment; and
- A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

Environmental, Technical, and Financial Records, Reports, and Other Information (43 CFR 2805.12(a)(15)).

Section 2805.12(a)(15) authorizes the BLM to require a holder of any type of

ROW to provide, or give the BLM access to, any pertinent environmental, technical, and financial records, reports, and other information. The use of SF–299 is required. The BLM will use the information for monitoring and inspection activities.

Application for Renewal of a Solar or Wind Energy Development Grant or Lease (43 CFR 2805.14(g) and 2807.22).

Section 2805.14(g) provides that a holder of a ROW grant, which includes solar or wind energy generating facilities, may be applied for renewal in accordance with § 2807.22.

Section 2807.22(c) provides that an application to renew a grant must include the same information, on SF–299, that is necessary for a new application. It also provides that processing fees, in accordance with § 2804.14, as amended, apply to these renewal applications.

Sections 2807.22(a) and (b) provide that an application for renewal of any ROW grant or lease, including a solar or wind energy development grant or lease, must be submitted at least 120 calendar days before the grant or lease expires. The application must show that the grantee or lessee is complying with the renewal terms and conditions (if any), with the other terms, conditions, and stipulations of the grant or lease, and with other applicable laws and regulations. The application also must explain why a renewal of the grant or lease is necessary.

Request for Amendment, Assignment, or Other Change (FLPMA) (43 CFR 2807.11(b) and (d) and 2807.21).

Section 2807.11(b) requires a holder of any type of ROW grant to contact the BLM to seek an amendment to the grant under § 2807.20 and obtain the BLM's approval before beginning any activity that is a ''substantial deviation'' from what is authorized.

Section 2807.11(d) requires contacting the BLM, to request an amendment to the pertinent ROW grant or lease, and prior approval whenever site-specific circumstances or conditions result in the need for changes to an approved ROW grant or lease, plan of development, site plan, mitigation measures, or construction, operation, or termination procedures that are not ''substantial deviations.''

Section 2807.21 authorizes assignment of a grant or lease with the BLM's approval. It also authorizes the BLM to require a grant or lease holder to file new or revised information in circumstances that include, but are not limited to:

- Transactions within the same corporate family;
- Changes in the holder's name only; and
- Changes in the holder's articles of incorporation.

A request for an amendment of a ROW, using SF–299, is required in cases of a substantial deviation (for example, a change in the boundaries of the ROW, major improvements not previously approved by the BLM, or a change in the use of the ROW). Other changes, such as changes in project materials, or changes in mitigation measures within the existing, approved ROW area, must be submitted to the BLM for review and approval. In order to assign a grant, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, as well as pay application and processing fees. In order to request a name change, the holder will be required to file an application and follow the same procedures and standards as for a new grant or lease and pay processing fees, but no application fee is required. The following documents are also required in the case of a name change:

- A copy of the court order or legal document effectuating the name change of an individual; or
- If the name change is for a corporation, a copy of the corporate resolution proposing and approving the name change, a copy of a document showing acceptance of the name change by the State in which incorporated, and a copy of the appropriate resolution, order, or other document showing the name change.

In all these cases, the BLM will use the information to monitor and inspect ROWs, and to maintain current data.

Activities That Do Not Require Any Form

Preliminary Application Review Meetings for a Large-Scale Right-of-Way (43 CFR 2804.12(b)(4)).

''Preliminary application review meetings'' are required after submission of an application for a large-scale ROW. A large-scale ROW is for solar or wind energy development outside a designated leasing area, or for a transmission line with a capacity of 100 kV or more.

Within 6 months from the date that the BLM receives the cost recovery fee for an application for a large-scale project, the applicant must schedule and hold at least two preliminary application review meetings.

In the first meeting, the BLM will collect information from the applicant to supplement the application on subjects such as the general project proposal. The BLM will also discuss with the applicant subjects such as the status of the BLM's land use planning for the lands involved, potential siting issues or concerns, potential environmental issues or concerns, potential alternative site locations, and the ROW application process.

In the second meeting, the applicant and the BLM will meet with appropriate Federal and State agencies and Tribal and local governments to facilitate coordination of potential environmental and siting issues and concerns.

The applicant and the BLM may agree to hold additional preliminary application review meetings.

Application for Renewal of an Energy Project-Area Testing Grant or Other Short-Term Grant (43 CFR 2805.11(b)(2(ii), 2805.14(h), and 2807.22).

Section 2805.11(b)(2)(ii) provides that holders of energy project-area testing grants may seek renewal of those grants. The initial term for such a grant is 3 years or less, with the option to renew for one additional 3-year period.

For other short-term grants, such as for geotechnical testing and temporary land-disturbing activities, the initial term is 3 years or less. Short-term grants include an option for renewal.

Section 2805.14(h) provides that applications to renew an energy project-area testing grant must include an energy development application submitted in accordance with § 2801.9(d)(2). Cost recovery fees in accordance with § 2804.14, as amended, apply to these renewal applications.

Section 2807.22 provides that an application for renewal of any ROW grant or lease, including an energy project-area testing grant or a short-term grant, must be submitted at least 120 calendar days before the grant or lease expires. The application must show that the grantee or lessee is complying with the renewal terms and conditions (if any), with the other terms, conditions, and stipulations of the grant or lease, and with other applicable laws and regulations. The application also must explain why a renewal of the grant or lease is necessary.

Showing of Good Cause (43 CFR 2804.40 and 2805.12).

Under § 2804.40, an applicant for a FLPMA ROW grant who is unable to meet any of the requirements in subpart 2804 may request approval for an alternative requirement from the BLM. Any such request is not approved until the applicant receives BLM approval in writing. This type of request to the BLM must:

(a) Show good cause for the applicant's inability to meet a requirement;

(b) Suggest an alternative requirement and explain why that requirement is appropriate; and

(c) Be received in writing by the BLM in a timely manner, before the deadline to meet a particular requirement has passed.

The BLM will use the information to determine whether or not to apply an alternative requirement.

Other showings of good cause are authorized or may be required by § 2805.12, which requires due diligence in development of any ROW grant or lease. In accordance with § 2805.12(c)(6), the BLM will notify the holder before suspending or terminating a ROW for lack of due diligence. This notice will provide the holder with a reasonable opportunity to correct any noncompliance or to start or resume use of the ROW. A showing of good cause will be required in response. That showing must include:

- Reasonable justification for any delays in construction (for example, delays in equipment delivery, legal challenges, and acts of God);
- The anticipated date for the completion of construction and evidence of progress toward the start or resumption of construction; and
- A request for extension of the timelines in the approved POD.

Section 2805.12(e), as amended, applies as soon as a ROW holder anticipates noncompliance with stipulation, term, or condition of the approved ROW grant or lease, or in the event of noncompliance with any such stipulation, term, or condition. In these circumstances, the holder must notify the BLM in writing and show good cause for the noncompliance, including an explanation of the reasons for the noncompliance.

In addition, the holder may request that the BLM consider alternative stipulations, terms, or conditions. Any request for an alternative stipulation, term, or condition must comply with applicable law in order to be considered. Any proposed alternative to applicable bonding requirements must provide the United States with adequate financial assurance for potential liabilities associated with the ROW grant or lease. Any such request is not approved until the holder receives the BLM's approval in writing.

Bonding Requirements (43 CFR 2805.20).

Section 2805.20 provides that the bond amount for projects other than a solar or wind energy lease under subpart 2809 (*i.e.,* inside a designated leasing area) will be determined based on the preparation of a reclamation cost estimate that includes the cost to the BLM to administer a reclamation contract and review it periodically for adequacy.

Section 2805.20(a)(5) provides that the reclamation cost estimate must include at a minimum:

- Remediation of environmental liabilities such as use of hazardous materials waste and hazardous substances, herbicide use, the use of petroleum-based fluids, and dust control or soil stabilization materials;
- The decommissioning, removal, and proper disposal, as appropriate, of any improvements and facilities; and
- Interim and final reclamation, re-vegetation, recontouring, and soil stabilization.

Sections 2805.20(b) and 2805.20(c) identify specific bond requirements for solar and wind energy development respectively outside of designated leasing areas. A holder of a solar or wind energy grant outside of a designated leasing area will be required to submit a reclamation cost estimate to help the BLM determine the bond amount. For solar energy development grants outside of designated leasing areas, the bond amount will be no less than $10,000 per acre. For wind energy development grants outside of designated leasing areas, the bond amount will be no less than $10,000 per authorized turbine with a nameplate generating capacity of less than one Megawatt (MW), and no less than $20,000 per authorized turbine with a nameplate generating capacity of one MW or greater.

Section 2805.20(d) separates site- and project-area testing authorization bond requirements from § 2805.20(c). Meteorological and other instrumentation facilities are required to be bonded at no less than $2,000 per location. These bond amounts are the same as standard bond amounts for leases required under § 2809.18(e)(3).

Proposed Annual Certified Statement. (43 CFR 2806.52(b)(5)(i)).

The rule would require that by October of each year, wind and solar grant or lease holders must submit to the BLM a certified statement identifying the next year's estimated energy generation on public lands and the prior year's actual energy generation on public lands. The BLM will determine the capacity fee based on the certified statement provided. To prepare the annual certified statement, grant or lease holders will need to compile information based on the capacity fee as instructed in subpart 2806. This is the only new information-collection requirement contained in this rule.

Nomination of a Parcel of Land Inside a Designated Leasing Area (43 CFR 2809.11).

Sections 2809.10 and 2809.11 authorize the BLM, on its own initiative, to offer land competitively inside a designated leasing area for solar or wind energy development. These regulations also authorize the BLM to solicit nominations for such development by publishing a notice in the **Federal Register**. To nominate a parcel under this process, the nominator must be qualified to hold a ROW under 43 CFR 2803.10. After publication of a notice by the BLM, anyone meeting the qualifications may submit a nomination for a specific parcel of land to be developed for solar or wind energy. There is a fee of $5 per acre for each nomination. The following information is required:

- The nominator's name and personal or business address;
- The legal land description; and
- A map of the nominated lands.

The BLM will use the information to communicate with the nominator and to determine whether or not to proceed with a competitive offer.

Expression of Interest in Parcel of Land Inside a Designated Leasing Area (43 CFR 2809.11(c)).

Section 2809.11(c) authorizes the BLM to consider informal expressions of interest suggesting specific lands inside a designated leasing area to be included in a competitive offer. The expression of interest must include a description of the suggested lands and a rationale for their inclusion in a competitive offer. The information will assist the BLM in determining whether or not to proceed with a competitive offer.

Plan of Development for a Solar or Wind Energy Development Lease Inside a Designated Leasing Area (43 CFR 2809.18).

Section 2809.l8(c) requires the holder of a lease for solar or wind energy development to submit a plan of development (POD) within 2 years of the lease issuance date. The POD must be consistent with the development schedule and other requirements in the POD template posted at *http://www.blm.gov;* and must address all pre-development and development activities.

Section 2809.18(d) requires the holder of a solar or wind energy development lease for land inside a designated leasing area to pay reasonable costs for the BLM or other Federal agencies to review and approve the POD and monitor the lease. To expedite review and monitoring, the holder may notify the BLM in writing of an intention to

pay the full actual costs incurred by the BLM.

Request for Amendment, Assignment, or Other Change (MLA) (43 CFR 2886.12(b) and (d) and 43 CFR 2887.11).

Sections 2886.12 and 2887.11 pertain to holders of ROWs and temporary use permits authorized under the Mineral Leasing Act (MLA). A temporary use permit authorizes a holder of a MLA ROW to use land temporarily in order to construct, operate, maintain, or terminate a pipeline, or for purposes of environmental protection or public safety. See § 2881.12. The regulations require these holders to contact the BLM:

- Before engaging in any activity that is a ''substantial deviation'' from what is authorized;
- Whenever site-specific circumstances or conditions arise that result in the need for changes that are not substantial deviations;
- When the holder submits a certification of construction;
- Before assigning, in whole or in part, any right or interest in a grant or lease;
- Before any change in control transaction involving the grant- or lease-holder; and
- Before changing the name of a holder (*i.e.,* when the name change is not the result of an underlying change in control of the ROW).

A request for an amendment of a ROW or temporary use permit is required in cases of a substantial deviation (*e.g.,* a change in the boundaries of the ROW, major improvements not previously approved by the BLM, or a change in the use of the ROW). Other changes, such as changes in project materials, or changes in mitigation measures within the existing, approved ROW area are required to be submitted to the BLM for review and approval. In order to assign a grant, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, as well as pay processing fees. In order to request a name change, the holder will be required to file an application and follow the same procedures and standards as for a new grant or lease and pay processing fees, but no application fee is required. The following documents are also required in the case of a name change:

- A copy of the court order or legal document effectuating the name change of an individual; or
- If the name change is for a corporation, a copy of the corporate resolution proposing and approving the name change, a copy of a document showing acceptance of the name change by the State in which incorporated, and a copy of the appropriate resolution, order, or other document showing the name change.

In all these cases, the BLM will use the information gathered for monitoring and inspection purposes, and to maintain current data on rights-of-way.

Certification of Construction (43 CFR 2886.12(f)).

A certification of construction is a document a holder of an MLA ROW must submit to the BLM after finishing construction of a facility, but before operations begin. The BLM will use the information to verify that the holder has constructed and tested the facility to ensure that it complies with the terms of the ROW and is in accordance with applicable Federal and State laws and regulations.

The information-collection request for this rule has been submitted to OMB for review under 44 U.S.C. 3507(d). You may view the information-collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.*

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information-collection, including:

- Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
- The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How to minimize the information-collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Currently, the information-collection requirements contained in 43 CFR parts 2800 and 2880 and approved under OMB control number 1004–0206 are estimated as follows: 3,042 annual responses; 47,112, annual burden hours; and $2,182,302 annual cost burden. We are projecting a burden increase of 75 new annual responses and 150 new annual burden hours as result of this rule. This burden hour increase would result from a proposed new information collection requirement contained in § 2806.52(i) pertaining to the annual certified statement. This change in burden is considered a program change due to agency discretion. This new information collection is needed to help the BLM more accurately determine the capacity fee based on the certified statement provided.

We are also adjusting the burden for two existing and unchanged information collections to reflect more accurately the burden those activities would involve the industry. These adjustments include the following:

- *Preliminary Application Review Meetings for 2 public meetings for a Large-Scale Right-of-Way (43 CFR 2804.12(b)(4)).* The average response time is adjusted from 2 hours to 4 hours. This adjustment resulted in a 40-hour burden increase (from 40 hours to 80 hours).
- *Environmental, Technical, and Financial Records, Reports, and Other Information (43 CFR 2805.12(a)(15)).* We have added a 50 percent increase in the hours required to prepare reports (from 4 per response to 6 per response). This resulted in an increasing the estimated annual burden hours for these activities from 80 hours to 120 hours.

There are no projected changes to the non-hour cost burdens as a result of this rule.

The resulting new estimated total burdens for OMB Control Number 1004–0206 are provided below.

Title of Collection: Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development (43 CFR parts 2800 and 2880).

OMB Control Number: 1004–0206.

Form Number: SF–299 (Burden approved by OMB in Request for Common Form under OMB Control No. 0596–0249).

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Private sector (applicants for and holders of wind and solar rights-of-way grants or leases on Federal public lands.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion and annually for the Annual Certified Statement proposed in 43 CFR 2806.52(i).

Number of Respondents: 75.

Annual Responses: 3,117.

Annual Burden Hours: 47,342.

Annual Burden Cost: $2,182,302.

If you want to comment on the information-collection requirements of this rule, please send your comments and suggestions on this information-collection by the date indicated in the **DATES** and **ADDRESSES** sections as previously described.

National Environmental Policy Act

These proposed regulatory amendments are of an administrative or

procedural nature and thus are eligible to be categorically excluded from the requirement to prepare an environmental assessment (EA) or an Environmental Impact Statement (EIS). See 43 CFR 46.205 and 46.210(i). They do not present any of the extraordinary circumstances listed at 43 CFR 46.215.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

Federal agencies are to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) Is designated by the Administrator of OIRA as a significant energy action.

The BLM reviewed the proposed rule and determined that it is not likely a significant energy action as defined by E.O. 13211. While the ROWs affected by this rule are for solar and wind energy generation, the proposed rule is limited in scope and would not likely have a significant, adverse effect on the supply, distribution, or use of energy from these sources. The rule would not result in a shortfall in supply, price increases, or increase the use of foreign supplies.

Clarity of This Regulation (Executive Orders 12866, 12988, and 13563)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this rule are: Jayme M. Lopez, BLM National Renewable Energy Coordination Office; Jeremy Bluma, BLM National Renewable Energy Coordination Office; Radford Shantz, Division of Lands, Realty and Cadastral Survey; Patrick Lee, DOI, Office of Policy Analysis; Jeff Holdren, BLM Division of Lands, Realty and Cadastral Survey; Darrin King, BLM Division of Regulatory Affairs; Jennifer Noe, BLM Division of Regulatory Affairs, assisted by the DOI Office of the Solicitor.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management. The action taken herein is pursuant to an existing delegation of authority.

List of Subjects in 43 CFR Part 2800

Electric power, Highways and roads, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the BLM proposes to amend 43 CFR part 2800 as set forth below:

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

■ 1. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, 1764, and 3003.

■ 2. Amend § 2801.5:

■ a. In paragraph (a) by adding the acronym for ''FLPMA'' in alphabetical order

■ b. In paragraph (b) by:

■ i. Removing the term ''Act'';

■ ii. Adding in alphabetical order the terms ''Buy American'' and ''Capacity fee'';

■ iii. Revising the term for ''Grant'';

■ iv. Removing the term ''Megawatt (mw) capacity fee'';

■ v. Revising the term for ''Megawatt hour (MWh) rate'';

■ vi. Removing paragraphs (1) and (2) in the term ''Megawatt rate'' and redesignating paragraphs (3) and (4) as paragraphs (1) and (2);

■ vii. Revising the term ''Reasonable costs''; and

■ viii. Adding in alphabetical order the terms ''Renewable energy coordination office (RECO)'', ''Solar or wind energy development'', and ''solar or wind energy lease''.

The additions and revisions to read as follows:

§ 2801.5 What acronyms and terms are used in the regulations in this part?

(a) * * *

FLPMA means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

* * * * *

(b) * * *

Buy American means an item or product that qualifies for the Buy American preference under Section 52.225–1(b) of the Federal Acquisition Regulations, 48 CFR 52.225–1(b), or a successor regulation.

Capacity fee is the fee charged to right-of-way holders once energy production commences that is based on the production of energy on public lands from solar and wind energy generating facilities.

* * * * *

Grant means an authorization or instrument (*e.g.,* easement, license, or permit) the BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.,* and any authorization or instrument the BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority, except for solar or wind energy leases. It does not include authorizations issued under the Mineral Leasing Act (30 U.S.C. 185).

* * * * *

Megawatt hour (MWh) rate means the 5 calendar-year average of the annual average wholesale electricity prices per MWh for the major trading hubs serving the 11 western States of the continental United States.

* * * * *

Reasonable costs has the meaning found in Section 304(b) of FLPMA.

* * * * *

Renewable energy coordination office (RECO) means one of the National, State, district, or field offices established by the Secretary under 43 U.S.C. 3002(a) that is responsible for implementing a program for improving Federal permit coordination with respect to solar, wind, and geothermal projects on BLM-administered land, and such other activities as the Secretary determines necessary.

* * * * *

Solar or wind energy development means the use of public lands to generate electricity from solar or wind energy resources. It includes the construction, operation, maintenance, and decommissioning of any such facilities, as well as the subsequent reclamation of the site.

Solar or wind energy lease means any right-of-way issued for solar or wind energy development in an area

classified or allocated for solar or wind energy (*i.e.,* a designated leasing area) in a resource management plan.

* * * * *

■ 3. Amend § 2801.6 by revising paragraph (a)(1) to read as follows:

§ 2801.6 Scope.

(a) * * *

(1) Grants or leases for necessary transportation or other systems and facilities that are in the public interest and require the use of public lands for the purposes identified in 43 U.S.C. 1761, and administering, amending, assigning, monitoring, renewing, and terminating them;

* * * * *

■ 4. Amend § 2801.9 by revising paragraphs (d) introductory text, (d)(3) and (4), and adding paragraph (d)(6) to read as follows:

§ 2801.9 When do I need a grant?

* * * * *

(d) All systems, facilities, and related activities for energy generation, storage, or transmission projects are specifically authorized as follows:

* * * * *

(3) Energy generation facilities, including solar and wind energy development facilities, are authorized with a right-of-way grant or lease that may be issued for up to 50 years (plus initial partial year of issuance);

(4) Energy storage facilities, which are separate from energy generation facilities, are authorized with a right-of-way grant that may be issued for up to 50 years;

* * * * *

(6) Electric transmission lines with a capacity of 100 kV or more are authorized with a right-of-way grant that may be issued for up to 50 years.

■ 5. Revise the heading for subpart 2802 to read as follows:

Subpart 2802—Lands Available for FLPMA Grants or Leases

■ 6. Amend § 2802.11 by revising paragraphs (b) introductory text and (b)(1) and adding paragraphs (b)(10) and (11) to read as follows:

§ 2802.11 How does the BLM designate right-of-way corridors and designated leasing areas?

* * * * *

(b) When determining which public lands may be suitable for right-of-way corridors or designated leasing areas, factors the BLM may consider include, but are not limited to, the following:

(1) Federal, State, Tribal, and local land use plans, and applicable Federal, State, Tribal, and local laws;

* * * * *

(10) Access to electric transmission; and

(11) Areas for solar and wind energy development with low potential for conflict with resources or uses due to environmental, cultural, and other relevant criteria, which the BLM will identify by;

(i) Assessing the demand for new or expanded areas;

(ii) Applying environmental, cultural, and other screening criteria; and

(iii) Analyzing proposed areas through the land use planning process described in part 1600 of this chapter.

* * * * *

■ 7. Amend § 2803.10 by revising paragraph (c) to read as follows:

§ 2803.10 Who may hold a grant or lease?

* * * * *

(c) Of legal age and authorized to do business in the State or States where the right-of-way you seek is located.

■ 8. Revise § 2803.12 to read as follows:

§ 2803.12 What happens to my application or grant or lease if I die?

(a) Applications do not hold any transferable interest.

(b) If a grant or lease holder dies, any inheritable interest in the grant or lease will be distributed under State law.

(c) If the receiver of a grant or lease is not qualified to hold a grant or lease under § 2803.10 of this subpart, the BLM will recognize the receiver as grant or lease holder for up to two years, subject to full compliance with all terms, conditions, and stipulations. During that period, the receiver must either become qualified or divest itself of the interest.

■ 9. Amend § 2804.12 by revising paragraphs (c) and (f) and adding paragraph (j) to read as follows:

§ 2804.12 What must I do when submitting my application?

* * * * *

(c) You must meet additional requirements when applying for a solar or wind energy development or short-term right-of-way, as follows:

(1) Pay an application filing fee of $2 per acre for short-term right-of-way applications or $15 per acre for solar or wind energy development applications. The BLM will apply the application filing fee towards the processing fees described in §§ 2804.14 through 2804.22. The BLM will refund the balance of any application filing fee at the end of the BLM's application review process if the application filing fee exceeds the amount of the processing fee.

(2) Pay additional reasonable costs in addition to payment of the application filing fee when processing your application, pursuant to § 2804.14. A processing or monitoring Category 6 cost recovery fee may be reduced by the application filing fee paid when submitting an application.

* * * * *

(f) The BLM may require you to submit additional information at any time while processing your application. The BLM will identify additional information in a written deficiency notice asking you to provide the information within a specified time pursuant to § 2804.25(c).

* * * * *

(j) Complete applications: Your application will not be complete until you have met or addressed the requirements of this section to the satisfaction of the BLM. The BLM will notify you in writing when your application is complete.

■ 10. Amend § 2804.14 by revising paragraph (c) to read as follows:

§ 2804.14 What is the processing fee for a grant application?

* * * * *

(c) You may obtain a copy of the current year's processing fee schedule from any BLM state, district, or field office or by writing: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 5645, Washington, DC 20240. The BLM also posts the current processing fee schedule at *https://www.blm.gov.*

* * * * *

■ 11. Revise § 2804.22 to read as follows:

§ 2804.22 How will the availability of funds affect the timing of the BLM's processing your application?

(a) If the BLM has insufficient funds to process your application, we will not continue to process it until funds become available or you elect to pay full actual costs under § 2804.14(f) of this part.

(b) The BLM may deny your application if we have not received requested reasonable costs for processing your application within 90 days.

(c) If your cost recovery agreement provides that a portion of the funds you pay will be used in the hiring of additional staff or contractors, such funds may not be refundable.

■ 12. Revise § 2804.23 read as follows:

§ 2804.23 What costs am I responsible for when the BLM decides to use a competitive process for lands included in my application?

If the BLM decides to use a competitive process for lands included

in your application and your application is in:

(a) *Processing Categories 1 through 4.* You must reimburse the Federal Government for processing costs as if the other application or applications had not been filed.

(b) *Processing Category 6.* You are responsible for processing costs identified in your application. If the BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and any competing applicants must pay an equal share, or a proportion agreed to in writing among all applicants and the BLM. If you agree to share the costs that are common to your application and that of a competing applicant, and the competitor does not pay the agreed upon amount, you are liable for the entire amount due. You must pay the entire processing fee in advance. The BLM will not process your application until we receive the advance payments.

■ 13. Amend § 2804.25 by revising the section heading, removing paragraph (e)(2)(i), redesignating paragraphs(e)(2)(ii) and (iii) as (e)(2)(i) and (ii), respectively, and revising them, and revising paragraphs (e)(5) and (f)(3) to read as follows:

§ 2804.25 How will the BLM process my application?

* * * * *

(e) * * *

(2) * * *

(i) Prioritize the application in accordance with § 2804.35; and

(ii) Evaluate the application based on the information provided by the applicant and input from other parties, such as Federal, State, Tribal, and local government agencies, as well as comments received in preliminary application review meetings held under § 2804.12(b)(4) and any public meeting held under paragraph (e)(1) of this section. Based on these evaluations, the BLM will either deny your application or continue processing it.

* * * * *

(5) Determine whether your proposed use complies with applicable Federal laws;

* * * * *

(f) * * *

(3) The segregation period may not exceed 2 years from the date of publication in the **Federal Register** of the notice initiating the segregation, unless the state director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the state director determines an extension is necessary, the BLM will extend the segregation for up to 2 years by publishing a notice in the **Federal Register**, prior to the expiration of the initial segregation period. A segregation will not be extended unless the application is complete and cost recovery has been received. Segregations under this part may only be extended once and the total segregation period may not exceed 4 years.

■ 14. Amend § 2804.26 by revising the section heading and paragraph (a)(4), adding paragraphs (a)(9) and (10), and removing paragraph (c).

The revisions and additions read as follows:

§ 2804.26 Under what circumstances may the BLM deny my application?

(a) * * *

(4) Issuing the grant would be inconsistent with FLPMA, other laws, or these or other regulations;

* * * * *

(9) You do not comply with a deficiency notice (see § 2804.25(c) of this subpart) within the time specified in the notice.

(10) You fail to pay costs for processing your application within 90 days of receiving the BLM's request for funds under § 2804.22(b).

* * * * *

§ 2804.30 [Removed and Reserved]

■ 15. Remove and reserve § 2804.30:

§ 2804.31 [Removed and Reserved]

■ 16. Remove and reserve § 2804.31:

■ 17. Revise § 2804.35 to read as follows:

§ 2804.35 Application prioritization factors for solar and wind energy development rights-of-way.

(a) The BLM will prioritize the processing of applications to ensure that agency resources are allocated to applications with the greatest potential for approval and implementation.

(b) The BLM will consider relevant factors when prioritizing applications, including the following:

(1) Whether the proposed project is located within an area preferred for solar or wind energy development, such as designated leasing areas, which include solar energy zones, development focus areas, and renewable energy development areas;

(2) Whether the proposed project is likely to avoid adverse impacts to or conflicts with known resources or uses on or adjacent to public lands, and includes specific measures designed to further mitigate impacts or conflicts;

(3) Whether the proposed project is in conformance with the governing BLM land use plans;

(4) Whether the proposed project is consistent with relevant State, Tribal, and local government laws, plans, or priorities;

(5) Whether the proposed project incorporates the best management practices set forth in the applicable BLM land use plans and other BLM plans and policies; and,

(6) Any other circumstances or prioritization criteria identified by the BLM in subsequent policy guidance or management direction through land use planning.

(c) The BLM will prioritize your complete application based on all available information, including information you provide to the BLM in the application or in response to deficiency notices, and information provided to the BLM in public meetings or consultations.

(d) The BLM may re-prioritize your application at any time.

■ 18. Amend § 2804.40 by revising the introductory text to read as follows:

§ 2804.40 Alternative requirements.

If you are unable to meet any of the application requirements in this subpart, you may request approval for an alternative requirement from the BLM. Any such request is not approved until you receive BLM approval in writing. Your request to the BLM must:

* * * * *

Subpart 2805—Terms and Conditions of Grants

■ 19. Amend § 2805.10 by revising paragraph (c) to read as follows:

§ 2805.10 How will I know whether the BLM has approved or denied my application or if my bid for a solar or wind energy development grant or lease is successful or unsuccessful?

* * * * *

(c) If you agree with the terms and conditions of the unsigned grant or lease, you should sign and return it to the BLM with any payment required under § 2805.16. The BLM will issue the right-of-way by signing the grant or lease and transmitting it to you, if the regulations in this part, including § 2804.26, remain satisfied.

* * * * *

■ 20. Amend § 2805.11 by revising the section heading and paragraphs (b)(2) introductory text and (b)(2)(iv) and (v) and adding paragraph (b)(4) to read as follows:

§ 2805.11 What does a grant or lease contain?

* * * * *

(b) * * *

(2) Specific terms for energy grants and leases, such as solar or wind energy developments, are as follows:

* * * * *

(iv) Energy generation facilities, including solar or wind energy development facilities, are authorized with a grant or lease for up to 50 years (plus initial partial year of issuance); and

(v) Energy storage facilities which are separate from energy generation facilities are authorized with a right-of-way grant for up to 50 years;

* * * * *

(4) Electric transmission lines with a capacity of 100 kV or more are authorized with a right-of-way grant for up to 50 years.

* * * * *

■ 21. Amend § 2805.12 by revising paragraph (e)(2) to read as follows:

* * * * *

§ 2805.12 What terms and conditions must I comply with?

* * * * *

(e) * * *

(2) You may also request that the BLM consider alternative stipulations, terms, or conditions, other than rents or fees, except for as provided in § 2806.52(b)(1)(i). Any proposed alternative stipulation, term, or condition must comply with applicable law in order to be considered. Any proposed alternative to applicable bonding requirements must provide the United States with adequate financial assurance for potential liabilities associated with your right-of-way grant or lease. Any such request is not approved until you receive BLM approval in writing.

■ 22. Revise § 2805.13 to read as follows:

§ 2805.13 When is a grant or lease effective?

A grant is effective after both you and BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring fees as set forth in subpart 2806 of this part and § 2805.16 of this subpart. Your written acceptance constitutes an agreement between you and BLM that your right to use the public lands, as specified in the grant or lease, is subject to the terms and conditions of the grant or lease and applicable laws and regulations.

■ 23. Amend § 2805.14 by revising the section heading and paragraph (g) to read as follows:

§ 2805.14 What rights does a right-of-way grant or lease convey?

* * * * *

(g) Apply to renew your right-of-way grant or lease under § 2807.22;

* * * * *

■ 24. Amend § 2805.16 by revising the section heading and paragraph (b) to read as follows:

§ 2805.16 If I hold a grant or lease, what monitoring fees must I pay?

* * * * *

(b) The monitoring cost schedule is available from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part. The BLM also posts the current schedule at *http://www.blm.gov*.

Subpart 2806—Annual Rents and Payments

■ 25. Amend § 2806.10 by revising the section heading and adding paragraph (c) to read as follows:

§ 2806.10 What rent must I pay for my grant or lease?

* * * * *

(c) You must pay rent for your grant or lease using the per acre rent schedule for linear right-of-way grants (see § 2806.20) unless a separate rent schedule is established for your use, such as for communication sites per § 2806.30 or solar and wind energy development per § 2806.50. The BLM may also determine that these schedules do not apply to your right-of-way pursuant to § 2806.70.

■ 26. Amend § 2806.12 by revising paragraphs (a)(1) introductory text, (a)(2), and (b) to read as follows:

§ 2806.12 When and where do I pay rent?

(a) * * *

(1) If your grant or lease is effective on:

* * * * *

(2) If your grant or lease allows for multi-year payments, such as a short-term grant issued for energy site-specific testing, you may request that your initial rent bill be for the full term instead of the initial rent bill periods provided under paragraph (a)(1)(i) or (ii) of this section.

(b) You must make all rent payments for rights-of-way according to the payment plan described in § 2806.24.

* * * * *

■ 27. Amend § 2806.20 by revising paragraph (c) to read as follows:

§ 2806.20 What is the rent for a linear right-of-way grant?

* * * * *

(c) You may obtain a copy of the current Per Acre Rent Schedule from any BLM state, district, or field office or by writing the address found under section 2804.14(c) of this part. We also post the current rent schedule at *http://www.blm.gov*.

28. Revise the undesignated center heading that precedes § 2806.50 and § 2806.50 to read as follows:

Solar and Wind Energy Development Rights-of-Way

§ 2806.50 Rents and fees for solar and wind energy development.

If you hold a right-of-way for solar or wind energy development, you must pay an annual rent and fee in accordance with this section and subpart. The annual rent and fee is the greater of the acreage rent or the capacity fee that would be due in a given year, and must be paid in advance each year. The acreage rent will be calculated consistent with § 2806.11 and prorated consistent with § 2806.12(a). The capacity fee will vary depending on the project's annual energy generation on public lands and will be calculated consistent with § 2806.52(b). Any underpayment will be billed pursuant to § 2806.13 and any overpayment will be credited pursuant to § 2806.16.

■ 29. Amend § 2806.51 by revising the section heading and paragraph (c) to read as follows:

§ 2806.51 New and existing grant and lease rate adjustments.

* * * * *

(c) If you hold a right-of-way for solar or wind energy development that is in effect prior to [effective date of the final rule], you may either request that the BLM apply the annual rent and fee set forth in § 2806.52 or use the rate methodology applicable to your authorization immediately prior to this rule. If you wish to use the annual rent and fee set forth in § 2806.52, your request must be received by the BLM before [Date 2 years after effective date of the final rule]. The BLM will continue to apply the rate in effect immediately prior to this rule unless it receives your request to use the rate adjustments in this part. A request to change your rate methodology will include your agreement to a re-issuance of the grant or lease with updated Terms and Conditions found under this part, pursuant to § 2807.20(f).

■ 30. Amend § 2806.52 by revising the section heading, the introductory text and paragraphs (a), (b), and (c) to read as follows:

§ 2806.52 Annual rents and fees for solar and wind energy development.

You must pay the greater of either an annual acreage rent or a capacity fee. The acreage rent and capacity fee are determined as follows:

(a) *Acreage rent.* The BLM will calculate the acreage rent for your grant or lease by multiplying the number of acres of the authorized area (rounded up to the nearest tenth of an acre) by the annual per acre rate for the year in which the payment is due.

(1) *Per acre rate.* The annual per acre rate for your grant or lease is calculated using the State per acre value from the solar or wind energy acreage rent schedule, the encumbrance factor, the year of the grant or lease term, and the annual adjustment factor. The calculation for determining the annual per acre rate is $A \times B \times [(1 + C) \wedge D]$ where:

(i) A is the state per acre value from the solar or wind energy acreage rent schedule published by the BLM for the year on which your right-of-way grant or lease is issued, and is based on the National Agricultural Statistics Service (NASS) Survey of Pastureland Rents. The BLM will prepare the rent schedule by averaging the NASS reported pastureland rents for the most recent 5-year period, using only those years for which rent is reported by NASS. The BLM will update the rent schedule every 5 years consistent with the timing of rent adjustments under § 2806.22.

(ii) B is the encumbrance factor, which is 100 percent for solar energy and 5 percent for wind energy;

(iii) C is the annual adjustment factor, which is 3 percent; and,

(iv) D is the year of the grant or lease term, which is the number of years the grant or lease has been authorized. For example, the first year (whether partial or full year) would be 1 and the second year would be 2.

(2) You may obtain a copy of the current solar or wind energy acreage rent schedule from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part, Attention: Renewable Energy Coordination Office. The BLM also posts the current solar energy acreage rent schedule at *http://www.blm.gov*.

(b) *Capacity fee.* (1) The capacity fee is calculated using the MWh rate or the alternative MWh rate, the MWh rate reduction, the Buy American reduction, the rate of return, the year of the grant or lease, the annual adjustment factor, and the annual power generated on the right-of-way. You must pay the capacity fee annually, beginning the year in which electricity generation begins or is scheduled to begin in the approved POD, whichever comes first, unless the acreage rent (see paragraph (a) of this section) exceeds the capacity fee in a given year. The calculation for determining the capacity fee is $A \times F \times G \times B \times C \times (1 + D) \wedge E$ where:

(i) A is the *MWh rate* or the *alternative MWh rate.* The MWh rate is the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States for the full 5 calendar-year period preceding the year in which your grant or lease was issued, rounded to the nearest dollar increment (see paragraph (7)). An Alternative MWh rate may be approved by the BLM if you have entered into a power purchase agreement, such as with a utility, and that rate is lower than the MWh rate. You must provide proof of the lower rate to the BLM, and if the BLM determines the lower rate is appropriate, the alternative MWh rate will be used in place of the MWh rate.

(ii) B is the *MWh rate reduction,* which is equal to 0.2 for fee payments due before 2036, and 0.8 for fee payments due starting in 2036.

(iii) C is the *Buy American reduction,* which is calculated based on the percentage of the total cost of the facilities on the ROW attributable to Buy American items, as follows:

TABLE 1 TO PARAGRAPH (b)(1)(iii)

Total cost of the facilities on the ROW attributable to Buy American items	Buy American reduction
Less than 25 percent	1.0
25–35 percent	0.95
35–45 percent	0.9
45–55 percent	0.85
55 percent or more	0.8

(iv) *Request for conditional approval: Alternative MWh rate and Buy American reduction.* The alternative MWh rate and the Buy American reduction (paragraphs (b)(1)(ii) and (iii) of this section) may only be applied if a request for conditional approval is received by the BLM prior to the issuance of a grant or lease. A request for conditional approval must be submitted with sufficient documentation to demonstrate that the development qualifies or may later qualify for the rate reductions. A request for conditional approval is subject to the holder demonstrating, to the satisfaction of the BLM's Authorized Officer, that the development qualifies. If energy generation begins before the holder has demonstrated that the facility qualifies, the BLM will charge the holder the full capacity fee, without the alternative MWh rate or Buy American reduction. The capacity fee may be updated for subsequent calendar years after the holder demonstrates that the facility qualifies, but the BLM will not refund past payments made before the alternative MWh rate or Buy American reduction went into effect.

(2) D is the annual adjustment factor, which is 3 percent.

(3) E is the year of the grant or lease term, which is the number of years the grant or lease has been authorized. For example, the first year (whether partial or full year) would be 1 and the second year would be 2.

(4) F is the rate of return, which is 7 percent.

(5) G is the annual energy generated on the right-of-way, and will be provided to the BLM by the grant or lease holder in an annual certified statement. The BLM will bill to coincide with the start of the calendar year. Payment in advance will be based on estimated energy generation and the BLM will determine final payment based on actual energy generation.

(i) By October of each year, the holder must submit to the BLM a certified statement identifying the next year's estimated energy generation on the right-of-way and the prior year's actual energy generation on the right-of-way. The holder must submit the annual certified statement to the BLM before the first year of energy generation begins or is scheduled to begin as approved in the plan of development, whichever comes first.

(ii) The BLM will calculate the capacity fee from the certified statement. For developments that include generation on public and non-public lands, the holder will prorate the total energy generation by the percentage of the right-of-way footprint on public lands relative to the total development area footprint.

(iii) If the actual energy generation exceeds the estimated energy generation in a given calendar year, the holder will be billed for the underpayment pursuant to § 2806.13(e). If the underpayment amount is more than 10 percent of the actual capacity fee, the BLM may charge the holder late payment fees and other administrative fees consistent with § 2806.13. If the actual energy generation is less than the estimated energy generation in a given calendar year, the holder will be credited or refunded consistent with § 2806.16, but in no event will the total rent paid be less than the annual acreage rent.

(6) *MWh rate schedule.* You may obtain a copy of the current MWh rate schedule from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part, Attention: Renewable Energy Coordination Office. The BLM also posts the current MWh rate schedule at *http://www.blm.gov*.

(7) *Periodic adjustments.* (i) The MWh rate applicable to your right-of-way will be the MWh rate in effect the first year for your grant or lease and will not be updated with subsequent MWh rate schedule adjustments. The MWh rate applicable to your right-of-way will only be updated each year by the annual adjustment factor under paragraph (b)(2) of this section.

(ii) The MWh rate schedule for new grants and leases will be adjusted once every 5 years consistent with the timing of rent adjustments under § 2806.22 of this part and consistent with paragraph (b)(1) of this section.

(8) The general payment provisions for rents described in this subpart, except for § 2806.14(a)(4), also apply to the capacity fee.

(c) *Implementation of the acreage rent and capacity fee.* The rates for acreage rent and capacity fees apply to all grants and leases issued after the effective date of this rule, and to existing grants and leases if the holder elects to continue paying under the rate setting methodology established at the time of your authorization per § 2806.51(c).

* * * * *

■ 31. Add an undesignated center heading between §§ 2806.52 and 2806.54 and revise § 2806.54 by to read as follows:

Renewable Energy Rights-of-Way

§ 2806.54 Rent for energy storage facilities that are not part of a solar or wind energy development facility.

Rent for energy storage facilities that are not part of a solar or wind energy development facility will be determined pursuant to the linear rent formula set forth in § 2806.23. The BLM may determine your rent pursuant to § 2806.70 if we determine the linear rent schedule does not apply.

§§ 2806.60 through 2806.68 [Removed]

■ 32. Remove the undesignated center heading ''Wind Energy Rights-of-Way'' and §§ 2806.60 through 2806.68.

Subpart 2807—Grant Administration and Operation

■ 33. Amend § 2807.20 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?

* * * * *

(b) The requirements to amend an application or grant are the same as those for a new application, including paying processing and monitoring fees and rent according to §§ 2804.14, 2805.16, and 2806.10, except for solar and wind energy development grants and leases per § 2806.51(c) requesting a rent adjustment addressed under paragraph (f) of this section.

* * * * *

(f) A request to the BLM per § 2806.51(c) to adjust your solar or wind energy rates must be received before [date 2 years after the effective date of the final rule]. The BLM will re-issue your grant or lease for the remainder of your existing term with the requirements of this part, including processing and monitoring costs under §§ 2804.14 and 2805.16, the terms and conditions under § 2805.12, and rent provision under § 2806.50, without further review.

■ 34. Amend § 2807.21 by revising paragraph (e) to read as follows:

§ 2807.21 May I assign or make other changes to my grant or lease?

* * * * *

(e) Your assignment is not recognized until the BLM approves it in writing. We will approve the assignment if doing so is in the public interest. Except for solar or wind energy leases, we may modify the grant or lease or add bonding and other requirements, including additional terms and conditions, to the grant or lease when approving the assignment, unless a modification to a solar or wind energy lease is required under § 2805.15(e). We may decrease rents if the new holder qualifies for an exemption (see § 2806.14) or waiver or reduction (see § 2806.15) and the previous holder did not. Similarly, we may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If we approve the assignment, the benefits and liabilities of the grant or lease apply to the new grant or lease holder.

* * * * *

■ 35. Revise the heading of subpart 2809 to read as follows:

Subpart 2809—Competitive Process for Solar and Wind Energy Development Applications or Leases

■ 36. Revise § 2809.10 to read as follows:

§ 2809.10 Competitive process for energy development grants and leases.

(a) The BLM may conduct a competitive offer for solar and wind energy development grants or leases on its own initiative; or

(b) The BLM may solicit nominations for public lands to be included in a competitive offer by publishing a call for nominations under § 2809.11(a); or

(c) You may request that the BLM conduct a competitive offer by submitting a request in writing that complies with § 2809.11(b); or

(d) The BLM may conduct a competitive offer if it receives two or more competing applications.

(e) The BLM will not competitively offer lands for which the BLM has accepted a complete application, received a plan of development, entered into a cost recovery agreement, and published an Environmental Assessment or Draft Environmental Impact Statement.

■ 37. Revise § 2809.11 to read as follows:

§ 2809.11 How will the BLM call for nominations?

(a) *Call for nominations.* The BLM may publish a call for nominations for lands to be included in a competitive offer. The BLM will publish this notice in the **Federal Register** and may also use other notification methods, such as a newspaper of general circulation in the area affected, or the internet. The **Federal Register** notice and any other notices will include:

(1) The date, time, and location by which nominations must be submitted;

(2) The date by which nominators will be notified of the BLM's decision on timely submissions;

(3) The area or areas within which nominations are being requested; and

(4) The qualification for a nominator, which must include, at a minimum, the requirements for an applicant, see § 2803.10.

(b) *Nomination submission.* Nominations for lands to be included in a competitive offer must be in writing, and include the following:

(1) A refundable nomination fee of $5 per acre;

(2) The nominator's name and personal or business address. The name of only one citizen, association, partnership, corporation, or municipality may appear as the nominator. All communications relating to submissions will be sent to that name and address, which constitutes the nominator's name and address of record; and

(3) The legal land description and a map of the nominated lands. The lands nominated may be the entire area or part of the area made available under the call for nominations.

(c) The BLM will not accept your submission if it does not comply with the requirements of this section, or if you are not qualified to hold a grant or lease under § 2803.10.

(d) *Withdrawing a nomination.* A nomination cannot be withdrawn,

except by the BLM for cause, in which case the nomination fee will be refunded.

(e) The BLM may decide whether to conduct an offer for nominated lands.

■ 38. Revise § 2809.12 to read as follows:

§ 2809.12 How will the BLM select and prepare parcels?

(a) The BLM will identify parcels for competitive offer based on information received in public nominations, on existing land use designations, and on any other information it deems relevant.

(b) The BLM and other Federal agencies, as applicable, may conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, before offering lands competitively.

(c) A decision to conduct a competitive offer, or not to conduct a competitive offer, is not a decision to grant or deny a right-of-way application and is not subject to appeal under 43 CFR part 4.

■ 39. Amend § 2809.13 by revising paragraphs (b)(7) and (c) to read as follows:

§ 2809.13 How will the BLM conduct competitive offers?

* * * * *

(b) * * *

(7) The terms and conditions of the offer, including whether a successful bidder will become a preferred applicant or a presumptive lease holder; the requirements for the successful bidder to submit an application, see § 2804.12, or a POD, see § 2809.18; and any mitigation requirements, including compensatory mitigation.

(c) We will notify you in writing of our decision to conduct a competitive offer at least 30 days prior to the competitive offer if you nominated lands that are included in the offer, paid the nomination fees, and demonstrated your qualifications to hold a grant or lease as required by § 2809.11.

■ 40. Amend § 2809.15 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (d);

■ c. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

■ d. Adding a new paragraph (b); and

■ e. Revising newly redesignated paragraphs (d)(1) through (4);

■ f. Adding paragraph (d)(5); and

■ g. Revising paragraph (e).

The revisions and addition read as follows:

§ 2809.15 How will the BLM select the successful bidder?

(a) The bidder with the highest total bid, prior to any variable offset, is the successful bidder, and may become the preferred applicant or the presumptive lease holder in accordance with § 2809.15(b).

(b) The successful bidder will become the presumptive lease holder or preferred applicant only after making the payments required in subsection (d) and satisfying the requirements of this section and § 2803.10. If the successful bidder does not satisfy these requirements, the BLM may make the next highest bidder the successful bidder under § 2809.17(b) or re-offer the lands under § 2809.17(d).

(1) *Presumptive lease holder.* (i) The successful bidder will become a presumptive lease holder if:

(A) The lands for which the bidder has successfully bid are located within a designated leasing area; and,

(B) The notice of the competitive offer indicated that a successful bidder will become a presumptive lease holder.

(ii) A presumptive lease holder will be awarded a lease only if the presumptive lease holder submits a proposed plan of development in accordance with § 2804.25(c) and the proposed plan of development is approved by the BLM.

(2) *Preferred applicant.* A successful bidder who does not become a presumptive lease holder in accordance with § 2809.15(b)(1) may become a preferred applicant. The preferred applicant's application for a grant or lease will be processed for the parcel identified in the submission under § 2809.12(b). Approval of the application is not guaranteed and is solely at the BLM's discretion. The BLM will not process other applications for solar and wind energy development on lands where a preferred applicant has been identified, unless allowed by the preferred applicant.

* * * * *

(d) * * *

(1) Make payments by personal check, cashier's check, certified check, bank draft, or money order, or by other means deemed acceptable by the BLM, payable to the Department of the Interior—Bureau of Land Management;

(2) By the close of official business hours on the day on which the BLM conducts the competitive offer or such other time as the BLM may have specified in the offer notices, submit for each parcel:

(3) Within 15 calendar days after the day on which the BLM conducts the competitive offer, submit the balance of the bonus bid (after the variable offsets are applied under paragraph (c) of this section) to the BLM office conducting the offer; and

(4) Within 15 calendar days after the day on which the BLM conducts the competitive offer, submit the application filing fee under § 2804.12(c) less the application fee submitted under § 2809.11(c)(1) (if you are the preferred applicant), or submit the acreage rent for the first full year of the lease as provided in part 2806 (if you are the presumptive lease holder).

(5) You may be required to pay reasonable costs in addition to payment of the application filing fee when processing your application, pursuant to § 2804.14. A processing or monitoring Category 6 cost recovery fee may be reduced by the application filing fee paid when submitting an application.

(e) The successful bidder will not become the preferred applicant or be offered a lease and the BLM will keep all money that has been submitted with the competitive offer if the successful bidder does not satisfy the requirements of paragraph (d) of this section. In this case, the BLM may make the next highest bidder the successful bidder under § 2809.17(b) or re-offer the lands.

■ 41. Amend § 2809.16 by revising paragraphs (c) introductory text and (c)(10) and (11) and adding paragraphs (c)(12) and (e) to read as follows:

§ 2809.16 When do variable offsets apply?

* * * * *

(c) The variable offset may be based on the following factors, including progressive steps towards:

* * * * *

(10) Public benefits;

(11) Use of items qualifying for the Buy American preference; and

(12) Other factors.

* * * * *

(e) If the successful bidder's eligibility for a variable offset cannot be verified until a later time, the BLM may require the successful bidder to submit the full bid amount, without taking into account the variable offset, and hold the amount of the variable offset in suspense. The amount of the bonus bid corresponding to the variable offset will be refunded or credited to the successful bidder once the successful bidder has demonstrated that it has qualified for the variable offset. The BLM may set a deadline in the notice of competitive offer by which the successful bidder must demonstrate its qualifications.

■ 42. Amend § 2809.17 by revising paragraph (b) and removing paragraph (d).

The revision reads as follows:

§ 2809.17 Will the BLM ever reject bids or re-conduct a competitive offer?

* * * * *

(b) We may make the next highest bidder the successful bidder if the first successful bidder does not satisfy the requirements of § 2809.15, does not execute the lease, or is for any reason disqualified from holding the lease.

* * * * *

■ 43. Amend § 2809.18 by revising the introductory text and paragraphs (a), (b), and (f) to read as follows:

§ 2809.18 What terms and conditions apply to a solar and wind energy development lease?

The lease will be issued subject to the following terms and conditions:

(a) A lease provides site control to the lease holder. The term of your lease will be consistent with § 2805.11(b) and will terminate on December 31 of the final year of the lease term. You may submit an application for renewal under § 2805.14(g). A lease holder may not construct any facilities on the right-of-way until the BLM issues a notice to proceed or other written form of approval to begin surface disturbing activities.

(b) *Rent.* You must pay any rent as specified in § 2806.52.

* * * * *

(f) *Assignments.* You may apply to assign your lease under § 2807.21, and if an assignment is approved, the BLM will not make any changes to the lease terms or conditions, as provided for by § 2807.21(e), except for modifications required under § 2805.15(e).

* * * * *

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